Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ROBERT BENNER, Chairman
Environmental Quality Board
100 Capitol Square Building

DATE: 1/5/82

FROM : J. MICHAEL MILES
Assistant Attorney General
Administration Division

PHONE: 296-6555

SUBJECT: IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES RELATING TO SITING LARGE ELECTRIC POWER GENERATING PLANTS

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Nancy Onkka
2169

Our File No. 757

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12-16-81
DATE FOR REVIEW 12-28-81
DATE DUE 1-5-82

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved 1/5/82 Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 1/6/82 Revisor approved 12/24/81
disapproved 12/24/81

✓ Rule as Adopted

✓ Rule as Proposed see SR.

✓ Order Adopting 12.14.81 Date combined with F of F.

✓ Notice of Intent to Solicit Outside Opinion SR. 5/19/80

✓ Order for rulemaking
7/21 - 9/2/81 date of Hearings

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavits of Mailing Notice or rulemaking
6.15.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
6.15.81 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
✓ _____ Approving agency action

✓ Agency's Findings of Fact combined with Order Adopting.

_____ LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes ~~transcript~~ or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

STATE OF MINNESOTA
BEFORE THE
ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Amendments to Rules Relating to Siting Large Electric Power Generating Plants

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES

The above-captioned matter came on for hearing before Hearing Examiner Allan Klein of the Minnesota Office of Administrative Hearings. The hearing commenced on July 20, 1981 at 1:00 p.m. at the Area Technical Vocational School in Granite Falls and was continued at the following times and places:

July 20, 1981	1:00 p.m., 7:00 p.m.	Granite Falls Technical Vocational Institute-Cafeteria Granite Falls, Minnesota
July 22, 1981	1:00 p.m., 7:00 p.m.	St. Cloud Public Library 405 West St. Germain St. Cloud, Minnesota
July 27, 1981	1:00 p.m., 7:00 p.m.	Holiday Inn Grand Rapids, Minnesota
July 29, 1981	1:00 p.m., 7:00 p.m.	YWCA 208 Northwest 4th Avenue Austin, Minnesota
August 31, 1981	1:00 p.m., 7:00 p.m.	Little Theater Granite Falls High School Granite Falls, Minnesota
September 2, 1981	1:00 p.m., 7:00 p.m.	St. Cloud Public Library 405 West St. Germain St. Cloud, Minnesota

Proper notice as required by Minn. Stat. § 15.0412 was served upon all persons, associations and other interested groups registered with the Minnesota State Planning Agency and the Minnesota Environmental Quality Board (hereinafter "Board") for that purpose.

The hearings continued until all interested persons or groups had an opportunity to be heard concerning the adoption of the proposed amendments. The record remained open for written submissions for 20 days after the end of the last hearing and closed on September 22, 1981.

Christie B. Eller, Special Assistant Attorney General, appeared as counsel for the Board. Nancy Onkka, environmental planner on the Board's power plant siting staff (hereinafter "staff"), John Hynes, research scientist on the staff, Sheldon Mains, acting assistant manager of the Power Plant Siting Program and Lee Alnes, planner on the staff, appeared and testified on behalf of the Board. Robert Gray, former executive director of the National Agricultural Lands Study; Ray Diedrick, State Soil Scientist, and Paul Nyberg and Carrol Carlson, soil scientists, the Soil Conservation Service of the U.S. Department of Agriculture; and Dr. Matt Walton, Director of the Minnesota Geological Survey, appeared as expert witnesses on behalf of the Board.

The matter under consideration is proposed amendments to the rules relating to siting large electric power generating plants (6 MCAR §§ 3.071 - 3.082), which were adopted pursuant to the Power Plant Siting Act, Minn. Stat. § 116.51 et seq.

The purpose of the hearings is to establish a record upon which the Board can determine whether the amendments, as proposed, properly provide for the administration of the Power Plant Siting Act (PPSA), and that the amendments are necessary and reasonable. This must be shown by an affirmative presentation of facts by the agency.

The proposed amendments amend the Rules for Routing High Voltage Transmission Lines and Siting Large Electric Power Generating Plants to address two topics. First, the proposed amendments change the process by which power plant sites are selected by revising the site selection criteria and by adding an avoidance area criterion that places limits on use of prime farmland for power plant sites. Second, the proposed amendments establish criteria, standards and administrative procedures for preparation of an inventory of power plant study areas (Inventory), an advance planning tool. The Inventory is intended as a guide for power plant siting, but it does not identify specific power plant sites.

The proposed amendments were developed over a three year period. They incorporate concerns expressed by interested persons at many public meetings throughout the state, and at numerous meetings with utilities and interested persons and agencies.

On November 5, 1981, Hearing Examiner Allan Klein recommended that the Board adopt the proposed amendments.

After affording interested persons an opportunity to present written and oral data, statements and arguments, and having considered all of the evidence adduced upon the records, files and proceedings herein, the Board makes the following:

FINDINGS OF FACT ON PROCEDURAL MATTERS

1. On March 16, 1981, Chief Hearing Examiner Duane Harves issued an order approving the Board's request for incorporation by reference.

2. On May 19, 1980, a Notice of Intent to Solicit Outside Opinion Regarding Revision of Rules Relating to Power Plant Siting was published in the State Register at pages 1832-1833.

3. On May 22, 1981, the Board filed the following documents with the Chief Hearing Examiner:

   a. A copy of the proposed Amendments;
   b. An Order for Hearing;
   c. A proposed Notice of Hearing; and
   d. A Statement of the estimated length of hearing and the number of people attending the hearing.

4. On June 15, 1981, the Notice of Hearing and the proposed amendments were published in the State Register at pages 1995-2000.

5. On June 15, 1981, the Notice of Hearing, the proposed amendments and supplemental materials were mailed to all persons and organizations registered with the Minnesota State Planning Agency and the Board for the purpose of receiving such notice and to a supplemental group of persons identified by the Board as being interested in the matter.

6. On June 25, 1981, the Board filed the following documents:

   a. The Notice of Hearing as mailed;
   b. Mailing list certificate;
   c. Affidavit of Notice to all persons on the agency's list;
   d. Two Affidavits of Additional Notice;
   e. The Statement of Need and Reasonableness, including a Statement of Evidence;
   f. All materials received pursuant to the May 19, 1980 Notice of Intent to Solicit Outside Opinion in the State Register; and
   g. The names of Board personnel who will represent the agency.

   The aforementioned documents were availble for inspection at the Office of Administrative Hearings from the date of filing to the date of hearing. Exhibits cited in the Statement of Need and Reasonableness were available for inspection at Board offices during this time period.

7. Copies of the Statement of Need and Reasonableness were available to all requestors during the rulemaking process.

8. In its proposed amendments, the Board proposed a range of possible limits to the use of prime farmland for power plant sites. The range was proposed to encourage the public to provide available information that would aid the Board in making a determination of appropriate final limits. The hearing notice encourage interested persons to make recommendations on the limits at the Stage I hearings in July so that Board staff would have the benefit of their

testimony in developing the Board staff recommendation before the Stage II hearings in August and September.

9. The record remained open through September 22, 1981, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

10. On November 5, 1981, Hearing Examiner Allan Klein submitted the Hearing Examiner's report to the Board.

11. The Board is authorized to promulgate the proposed amendments in Minn. Stat. § 116C.55 and .66 (1980).

FINDINGS OF FACT ON THE PROPOSED AMENDMENTS

I.Site Selection Criteria

6 MCAR § 3.074 H.1.j.

12. The proposed amendment would expand the existing site selection criterion on energy conservation to include consideration of cogeneration, use of biomass and development of waste-to-energy (solid waste as fuel) systems. The Statement of Need and Reasonableness discusses this amendment on pages 2-4.

13. Mr. Alders testified that the amendment was inappropriate because the technologies "are not uniformly accepted as better than the other production methods" and that the "rules have never advocated one sort of technology over others and should not" (St. Cloud, p. 48). Staff response is contained in the Statement of Need and Reasonableness; on pages 2-4, staff documents the statutory directives that such considerations be weighed by the Board and indicates the reasons why the Board believes these factors should be included in this site selection criterion. Mr. Alders did not offer testimony indicating that these technologies are not feasible. Therefore, his objection is without merit.

Indeed, the Hearing Examiner found that:

> The record contains various exhibits dealing with the specific technologies proposed for inclusion herein. While these will not be discussed in detail in this Report, it is found that as new technologies emerge (or older technologies are re-evaluated in light of current conditions), it is entirely appropriate to amend the rules to reflect current thinking. While the application of any of these technlogies must be considered on a case-by-case basis, and will not be applicable to every plant siting, that is no reason to ignore them. In

fact, with regard to one of them (cogeneration), the legislature has specifically directed the agency to evaluate "the potential for beneficial uses of waste energy" from power plants. Minn. Stat. § 116C.57, subd. 4(4) (1980). (Hearing Examiner Finding 8) (emphasis added).

14. Testimony in support of this amendment was received from Representative Ken Nelson (Nelson Statement), Minnesota Citizen-Labor-Farmer-Senior Energy coalition (CLFSEC) (CLFSEC Statement), E. Miller (Public Exhibit A), Mr. and Mrs. Scott Mead (Austin, p. 96), Mark McAfee representing the Minnesota Farmers Union (St. Cloud aft, p. 29), Sister Mary Catherine Nolan, New Ulm Diocesan Pastoral Center (Nolan statement), and Sister Mary Tacheny, Minnesota Catholic Rural Life Directors (Tacheny statement).

15. Jim Alders, representing the Northern States Power Company, Dan McConnon, representing the United Power Association, and the Minnesota/Wisconsin Power Suppliers Group Environmental Committee (MN/WIS Power Suppliers) testified that the amendment conflicted with the statutory authority of the Minnesota Energy Agency (MEA) to determine power plant fuel type (St. Cloud aft, pp. 48-49; Grand Rapids, pp. 22-23; MN/WIS statement, pp. 11-12).

    Staff argued that the amendment did not conflict with the MEA authority, since the amendment addressed supplemental fuel for the plant (Statement of Need and Reasonableness, p. 3; St. Cloud, p. 77; Austin, p. 52; St. Cloud Stage II aft, p. 39). This indicates that there should be no conflict between the authorities of the two agencies.

16. Mr. Alders, Mr. McConnon and the MN/WIS Power Suppliers also criticized the criterion as amended as not being "site differentiating" (St. Cloud, pp. 48-49; Grand Rapids, pp. 22-23; MN/WIS statement, p. 12).

    As staff responded, the site selection criteria serve two purposes when the Board compares alternative sites and selects the final site. First, the criteria are useful in comparing different sites. To that extent they are site differentiating, since they compare existing conditions at the sites. Second, they are used by the Board to determine conditions in the Certificate of Site Compatibility to ensure that the expressed preferences are followed (St. Cloud Stage II aft, pp. 38-39). Therefore, the concerns of the utility representatives are without merit.

17. The Hearing Examiner specifically found that the proposed change has been demonstrated to both needed and reasonable (Hearing Examiner Finding 9).

18. The Board finds that the proposed amendment of 6 MCAR § 3.074 H.1.j. is needed to update the criterion to acknowledge and incor-

porate recent technological advances. The amendment is reasonable because it references feasible options to further energy conservation, in accord with legislative directives.

6 MCAR § 3.074 H.1.n.

19. This amendment concerns deletion of the site selection criterion that states "(p)referred sites allow for future expansion". The subsequent two site selection criteria are then renumbered. The Statement of Need and Reasonableness discusses the amendment on pages 4-7.

20. Mr. McAfee testified in support of the proposed deletion (St. Cloud aft, p. 30). Mr. Alders, Mr. McConnon and the MN/WIS Power Suppliers testified against the deletion (see findings 21-25 for citations).

21. This site selection criterion (somewhat differently worded) was included in the original 1974 edition of the Power Plant Siting Rules. However, utility forecasts on the number and size of plants needed in the next 15 years have dropped dramatically since 1974. Table 1 in the Statement of Need and Reasonableness documents a decrease of at least 4800 MW in plants proposed and projected to be located in Minnesota. Now, in addition to an 800 MW plant already sited, the 1980 15-year advance forecast shows only a 60 MW plant for the Twin Cities Metro Area and 1183 MW that may or may not even be located in Minnesota. Therefore, a critical review of this criterion is necessary to determine whether it is still relevant.

22. Mr. Alders, Mr. McConnon and the MN/WIS Power Suppliers testified that such deletion would result in more adverse environmental impacts (St. Cloud aft, pp. 46-48; Grand Rapids, pp. 21-22; MN/WIS statement, p. 12). The only example given was loss of the economy of scale in land requirements, cited by Mr. Alders.

The Statement of Need and Reasonableness pointed out that the existing rule was adopted at a time when it appeared that expansion of existing sites would minimize adverse impacts and justified on that basis. Now, it is clear that this is not always the case. Concentration of power generation results in major pollution impacts that, while perhaps less than the total of impacts from smaller dispersed plants, may still be significant (MEQB Exhibit 77 compares the impacts of plants between 50-2400 MW.) Further, minimizing pollution is but one aspect of siting a plant. The existing and proposed site selection criteria list several other factors that should be of at least equal weight (Statement of Need, p. 5).

The Statement of Need also cites the likelihood that continued use of the criterion may cause the Board to overlook appropriate siting opportunities: "The criterion directs utilities to look for sites that are suitable for facilities larger than actually needed. This can exclude many reasonable sites for the plant size actually

needed, because there are fewer reasonable sites for larger plants than smaller plants" (p. 4). The Statement of Need also points out the difficulties of accurately evaluating the potential for expansion, given the change over time in resource availability and other factors that affect site suitability. Since more time will elapse between plant sitings in the future, the likelihood that major changes will occur is increased.

Finding 21 points out that it is no longer probable that expansion will be needed. The referenced portions of the Statement of Need show that the Board will be unable to fulfill the directives of the PPSA and the other governing statutes if the criterion remains in place. 6 MCAR § 3.074 H.1.1. now prefers expansion at existing operating sites, so the benefits of expansion can be considered by the Board on a case-by-case basis, as appropriate.

23. Mr. McConnon and the MN/WIS Power Suppliers were also concerned that such deletion would contradict the non-proliferation policy ennunciated in the PEER decision (People for Environmental Enlightenment and Responsibilities, Inc. v. Minnesota Environmental Quality Council, 226 N.W. 2d 858 (Minn. 1978); (MN/WIS statement, p. 12; Grand Rapids, p. 21). Staff responded with three points: 1) the Board would still be required by 6 MCAR § 3.074 H.1.1. to consider expansion of existing sites; 2) continued existence of the criterion may actually contradict the PEER policy due to the decreased likelihood that plants with cogeneration would be built (Statement of Need, p. 7); and 3) continued existence of the criterion may contradict the PEER policy because larger plants may well result in more or larger transmission lines than smaller plants (Austin, pp. 98-99).

The Hearing Examiner found that:

> Opposition to the deletion of this criterion centered around the idea that it would contradict the non-proliferation policy enunciated in the PEER decision. . . and could result in more adverse environmental impacts from the siting of future plants. However, another existing criterion (which is not proposed for deletion) provides that:
>
> > Preferred sites maximize the use of already existing operating sites if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites.
>
> While obviously this criterion cannot come into play if an exisiting site is not capable of future expansion, the need for future plants is far smaller today that it was in the past. Also, the deletion of the criterion does result in a policy which is "size neutral", and in no way prohibits the selection of a site which is capable of future expansion if that site is also the best possible one (Hearing Examiner Finding 11).

Another site selection criterion prefers expansion at exisitng sites. This fact, coupled with the other points made by staff, shows that the proposed deletion does not conflict with the non-proliferation policy.

24. The Hearing Examiner found that the proposed deletion had been justified as both needed and reasonable (Hearing Examiner Finding 12).

25. The Board finds that the deletion of 6 MCAR § 3.074 H.1.n. is necessary and reasonable to update the site selection criteria to reflect the decreased number of plants that must be sited. The reasons for this determination have been established in Findings 21-25 and in the Statement of Need and Reasonableness. The subsequent two site selection criteria must, necessarily, be relettered.

6 MCAR § 3.072 S.

26. This definition specifies the meaning of "community benefits", which is used in proposed 6 MCAR § 3.074 H.1.p., to distinguish these benefits from economic development benefits. The definition includes a list of reasonable examples, for further clarification. The definition is discussed in the Statement of Need and Reasonableness on page 7. The concept of community benefits received support from Mr. McAfee (St. Cloud aft, pp. 29-30), E. Miller (Public Exhibit A), CLFSEC (CLFSEC statement), Representative Ken Nelson (Nelson statement), and Myron Peterson (Granite Falls, p. 196).

No issues were raised with respect to the definition. The Hearing Examiner found that the record demonstrates the need for and reasonableness of the proposed addition (Hearing Examiner Finding 15). The Board finds that the definition is necessary and reasonable to give meaning to the term "community benefits". The need for and reasonableness of the proposed amendment have been adequately justified in the Statement of Need and Reasonableness.

6 MCAR § 3.074 H.1.p.

27. This proposed amendment adds a new site selection criterion stating that preferred sites maximize opportunities for community benefits and economic development. This criterion concerns the potential positive benefits that can result to the local community from near location of power plant. The Statement of Need and Reasonableness discusses the amendment on pages 7-8.

28. Support for the criterion was given by E. Miller (Public Exhibit A), CLFSEC (CLFSEC statement), Rep. Ken Nelson (Nelson statement), Sister Nolan (Nolan statement), Mr. McAfee (St. Cloud aft, pp. 29-30), Myron Peterson (Granite Falls, p. 196) and Sister Tacheny (Tacheny statement).

29. The Hearing Examiner found that:

> It is argued that the implementation of this criterion will make future plant sitings more acceptable to the local area that bears the burden of a nearby power plant. With proper planning and site selection, the examples given in the definition could well mitigate some of the adverse consequences of plant sitings. In the 1979 Draft Inventory meetings, for example, the City of Austin was identified as having recently lost the use of its sanitary landfill. Some of the waste heat from one of the two exisitng plants was being used for a district heating system. A new meat packing plant was under construction. City residents who attended that meeting argued that any new plant in Austin should provide not only adequate electric power, but also (1) incineration of solid waste, and (2) waste heat for district heating. The 1979-1980 Power Plant Siting Advisory Committee devoted a major portion of its recommendations to co-location, cogeneration, and also advocated the use of wastes for fuels (Hearing Examiner Finding 14) (emphasis added).
>
> Again, with sufficient planning, there is no reason why it should not be possible to increase the community benefits accruing from the location of a power plant. In light of the present climate of public opinion regarding both energy waste and the siting of facilities, it would appear to be in everyone's interest to maximize community benefits and community acceptance (Hearing Examiner Finding 15) (emphasis added).

30. Mr. Alders testified that this criterion was not site differentiating (St. Cloud aft, pp. 49-50). Staff responded at the two St. Cloud hearings (St. Cloud aft, pp. 77-78; St. Cloud Stage II aft, pp. 38-39). The issue here is the same as in Finding 15; this argument is rejected for the same reason.

31. Mr. Alders also testified that he believed the matters contemplated in this criterion were actually addressed in other site selection criteria. He cited a few instances where topics addressed in other site selection criteria could be considered community benefits (St. Cloud aft, pp. 49-50). However, as staff testified, he did not demonstrate that the community benefits and economic development concerns contemplated in the proposed criterion are contained in other criteria, nor did he indicate why these concerns were inappropriate to the selection of power plant sites. (Staff Response dated September 21, 1981). Therefore, his concerns are without merit.

32. The Hearing Examiner found that the record demonstrates both the need for and the reasonableness of the proposed addition (Hearing Examiner Finding 15).

33. The Board finds that the addition of this site selection criterion is necessary to ensure that the Board considers these positive benefits of plant location during the site selection process. This will encourage the utilities and other parties to identify possible benefits and undertake the early planning necessary so that design changes needed to provide the benefits are actually incorporated in plant design or site arrangement. The criterion is reasonable because it will improve the site selection process and also serve to make plant location more acceptable to the local area. The potential positive benefits are realistic, as shown by the examples contained in the Statement of Need and Reasonableness.

II. Avoidance Area Criterion Relating to Prime Farmland

34. The proposed amendments also contain a proposed avoidance area criterion that places limits on the use of prime farmland for power plant sites. 6 MCAR § 3.074 H.3.d. contains the major policy statement; two related definitions are contained in 6 MCAR § 3.072 P. and R. The Statement of Need and Reasonableness discusses the proposed amendments on pp. 9-30 and in Appendix 2.

The proposed avoidance area criterion limits the amount of prime farmland in the developed portion of the plant site and in the water storage reservoir or cooling pond site to a certain amount based on the net generating capacity of the plant. The limits would not apply to certain urbanizing areas. Since this is an avoidance area criterion, the limits would apply unless there are no feasible and prudent alternatives.

The proposed criterion would complement an existing site selection criterion which provides as follows:

> Preferred sites minimize the removal of valuable and productive agricultural, forestry, or mineral land from their uses (6 MCAR § 3.074 H.1.g.).

The criterion was developed after numerous meetings with Board member agencies, interested citizens, Power Plant Siting Advisory Committees (PPSAC), utilities and other interested agencies, and after considerable effort to reconcile opposing viewpoints and work out technical problems. Major changes were made in the criterion to incorporate recommendations received during this period (Statement of Need, p. 9).

35. Most of the testimony during the hearings concerned this avoidance area criterion. All parties agreed that valuable and productive agricultural lands should be protected from unnecessary loss, including the representatives of the utilities who spoke against the proposed criterion (Granite Falls, pp. 260, 281; St. Cloud, p. 53; Grand Rapids, p. 15; Granite Falls Stage II eve, p. 54; MN/WIS statement, p. 1). Support for the need to limit use of prime farmland for power plant sites was received from the following agencies, organizations and individuals:

1. Renville County Board, Renville statement
2. Frank Zupfer, Granite Falls, pp. 72, 81-82
3. Bob Skulbek, Granite Falls, pp. 79-80
4. Senator Randy Kamrath, Granite Falls, pp. 83-84
5. John Johnson, Granite Falls, pp. 95-98
6. Leon Velde, Public Exhibit J
7. Rex Sala, Austin, pp. 81-83
8. Mr. & Mrs. Scott Mead, Austin, p. 79
9. Richard E. Badge, Badge statement
10. Ray Diedrick, Granite Falls, pp. 55-56, 151
11. Robert Gray, NALS, Granite Falls, pp. 157-180; Gray statement
12. Harold Schultz, Granite Falls, p. 282
13. Florence Dacy, Granite Falls, p. 94, Dacy statement
14. Minnesota Citizen/Labor/Farmer/Senior Energy Coalition (CLFSEC), CLFSEC statement
15. Minnesota Farm Bureau, Public Exhibit C
16. Gary Velde, Granite Falls, pp. 267-275
17. Charles Dayton, Myron Peterson, Circuit-Breakers; Granite Falls, pp. 191-193, 198-199; Dayton statement
18. Charles Dayton & Paul Ims, Concerned Citizens for the Protection of the Environment; Granite Falls, pp. 214, 221-225; Dayton statement
19. Paul Homme, Granite Falls, pp. 201-207
20. Mrs. Leon Velde, Granite Falls, pp. 276-280
21. M.E. Beito & Mark McAfee, Minnesota Farmers Union, Granite Falls, p. 76; St. Cloud aft, pp. 27-28
22. Lloyd Schutte, Countryside Council, Granite Falls, pp. 216, 219
23. Neil Deters, Granite Falls, pp. 181-181
24. PPSAC, MEQB Exhibit 28
25. Minnesota Department of Agriculture, Austin, pp. 70-73; Seetin statements
26. Minnesota Department of Natural Resources, MEQB Exhibit 36
27. Dick Conway, Mower County Coalition, Austin, pp. 75-76+
28. Metropolitan Council, Public Exhibit B
29. Wayne Kling, Granite Falls Stage II eve, pp. 26-27
30. Representative Gaylin Den Ouden, Granite Falls Stage II eve, pp. 39-42
31. Gerald Peterson, Granite Falls Stage II eve, pp. 44-45
32. Victor Nelson, Granite Falls Stage II eve, pp 88-89
33. Minnesota Catholic Conference, St. Cloud Stage II eve, pp. 19-23
34. Rev. Elmer J. Torborg, Torborg statement
35. Alma Kramer, Kramer statement
36. Edythe Ashburn, Ashburn statement
37. Rep. Steven Wenzel, Chairman, House Agriculture Committee, Wenzel statement
38. Sister Mary Catherine Nolan, New Ulm Diocesan Pastoral Center, Nolan statement
39. Linda Curtler, Curtler statement
40. Mrs. Helen Agre, Agre statement
41. Virginia Homme, Homme statement
42. Herb Botz, Botz statement

43. Sister Mary Tacheny, Minnesota Catholic Rural Life Director, Tacheny statement
44. Mary Kuzer, Kuzer statement
45. Mr. and Mrs. Chryst Premus, Premus statement
46. Hugh DeCramer, Granite Falls Stage II aft, p. 33
47. Gene Appelborn, Granite Falls Stage II, aft, pp. 45-46

The Statement of Need and Reasonableness discusses the need for the criterion on pages 9-16.

36. The supporters of the proposed criterion spoke to the need to protect prime farmlands. They stressed the following points:

- o prime farmlands are being converted at a rapid rate, mostly in a piecemeal fashion.
- o prime farmlands converted to other uses are not replaceable
- o environmental consequences of use of non-prime soils as replacement acreage are high
- o a large amount of cropland will be needed in the future
- o the current criterion does not provide sufficient guidance and protection

Many participants recognized that power plant sites may be needed in the future, yet felt that these sites could be accommodated without unnecessary loss of prime farmland. In particular, Mr. Dayton, representing Circuit-Breakers and Concerned Citizens for the Protection of the Environment, testified to the "urgent need to preserve prime farmland from permanent dedication to power plant sites" (Dayton statement, p. 3).

37. The Hearing Examiner found that:

> The National Agricultural Lands Study demonstrated that agricultural land losses to non-agricultural uses have been occurring at an extremely alarming rate. Coping with the problem of this conversion is especially difficult because of its incremental and piecemeal nature. The Executive Director of the Study described Minnesota as a key agricultural state, and described the loss of farmland as a "pivital issue", with ramifications not only for the present, but growing more vital in the future.
>
> Between 1967 and 1977, Minnesota lost almost 500,000 acres of agricultural land through conversion to non-agricultural uses. The Agricultural Census uses different definitions, but supports the trend noted in the previous statement...(Hearing Examiner finding 21).

Although the aggregate losses for the state as a whole are large, the causes of those losses are less clearly identifiable and, perhaps most importantly, the National Agricultural Land Study concluded that they could best be described as "piecemeal". Housing, manufacturing, and numerous uses all contributed to the loss of prime agricultural land. The Executive Director of the NALS described it as follows:

> It was a few acres here, a few acres there, and that is what adds up. The accumulative incremental effect of conversion. That's why it's such a difficult thing, sometimes, to visualize it. You go into a county and you see a few acres taken along one section, and a few acres taken someplace else, and you think of the land base in that particular county and that amount that comes out seems relatively small, but it adds up and it adds up quickly. . . . (Granite Falls, Stage 1, p. 166) (Hearing Examiner Finding 27).

38. As indicated in Finding 35, NSP, UPA and the MN/WIS Power Suppliers supported the need to protect valuable and productive agricultural lands. However, they questioned whether the proposed avoidance area criterion was necessary. In particular, they testified that the criterion was not needed because the loss of these lands to power plants had not been great in the past and that, given the few plants forecast in the next 15 years, the loss would not be great in the future. They calculated that future loss would not exceed 3,000 acres, or .01 percent of the current cropland base (Granite Falls, pp. 241-243, 260-261; St. Cloud, p. 52; Grand Rapids, pp. 15-16; MN/WIS statement, pp. 3-4).

The Statement of Need and Reasonableness demonstrates the loss of prime farmland, the consequences of such loss and the concerns about such loss expressed by the Minnesota Legislature through various statutes and other studies (pp. 9-16). Exhibits submitted by other participants in these hearings echo these concerns (for example, Public Exhibits D, G, H, I, and BB).

The question raised by the utilities is whether there is a need to limit use of prime farmland for power plant sites. Staff argued that the criterion was needed to provide sufficient protection for the prime farmland resource during site selection, as directed and authorized by the Legislature, for plants that will be proposed by the utilities in the future (Statement of Need, pp. 9-16; St. Cloud aft, pp. 66-70; Grand Rapids, pp. 44-48; Austin, pp. 45-46; St. Cloud Stage II aft, p. 23). There was considerable support expressed for this view (see Finding 36).

The utility perspective that, in percentage terms, the loss to plant sites was not significant enough to deserve protection was

also disputed. In particular, Robert Gray, Executive Director of the National Agricultural Lands Study (NALS), testified that the NALS showed that agricultural land losses to non-agricultural uses have been occurring at an extremely alarming rate and that coping with the problem of this conversion is made doubly hard due to its incremental and piecemeal nature. He stressed the importance of minimizing this peicemeal loss in Minnesota, concluding that "the fact that Minnesota is one of our key agricultural states makes this whole question of farmland loss a pivotal issue...Decisions made at this time on the siting of projects will become even more significant as time goes on" (Gray statement). Staff argued that this demonstrated the need to minimize loss to plant sites, one of the piecemeal losses (St. Cloud, pp. 67-68). Mark Seetin, Commissioner of Agriculture, agreed (Austin, p. 73). Gary Velde, and others, also agreed. Mr. Velde characterized the loss of 3,000 acres as "a big bite" (Granite Falls, p. 261). Other support was voiced at Granite Falls; in particular, note statements of Dr. Homme at p. 207 and at Granite Falls Stage II eve, pp. 19-21.

Clearly, plants will likely be proposed in the future. Clearly, loss of valuable agricultural lands is a problem of "nibbling away". Therefore, the Board has the responsibility to minimize unnecessary loss of prime farmlands to power plant sites.

39. The Hearing Examiner found that:

> It is extremely difficult to say at what point enough land has been taken (or is projected to be taken in the future) so that one could say that there is a "problem", so as to justify the need for a rule such as the Board's proposal. The utilities argued that .01% was not enough to justify need. The United States Supreme Court recently had to decide a similar question. In the case of Hodel v. State of Indiana, 49 U.S.L.W. 4667 (decided June 15, 1981), the Court was faced with arguments over the constitutionality of a federal statute known as the Surface Mining and Reclamation Control Act of 1977. The portions of the Act at issue related to certain restrictions on the strip mining of land which was both (a) prime farmland and (b) had historically been used as cropland. The restrictions included a requirement that a permit be obtained, and that the applicant demonstrate that the land could be restored to its pre-mining productivity level. To ensure that this restoration could be accomplished, applicants were required to post a bond, and agree to segregate and store topsoil from prime farmland which they proposed to mine. The State of Indiana, several coal mine operators, and other filed suit, alleging that the statute violated the Commerce Clause and other provisions of the Constitution. A Federal District Court decided in Plaintiff's favor, holding that provisions of the Act did violate the

Commerce Clause because there was an insufficient impact on interstate commerce to justify federal regulation. 501 F.Supp. 452 (S.D.Ind., 1980). The Supreme Court described the District Court's rationale as follows:

> The court reached this conclusion by examining statistics in the Report of the Interagency Task Force on the Issue of a Moratorium or a Ban on Mining in Prime Agricultural Lands (1977). These statistics compared the prime farmland acreage being disturbed annually by surface mining to the total prime farmland acreage in the United States. The Interagency Report stated that approximately 21,800 acres of prime farmland were being disturbed annually and that this acreage amounted to .006% of the total prime farmland acreage in the Nation. 501 F.Supp. at 459. This statistic and others derived from it, together with similar comparisons for Indiana, persuaded the (District) court that surface coal mining on prime farmland has "an infinitesimal effect or trivial impact on interstate commerce". [Footnotes and citations omitted].

The Supreme Court, however, described this rationale as "untenable", because it was not for the courts to nullify legislation based on their own judgments of what amount of prime farmland was significant; rather, the Supreme Court stated that the test was whether Congress had a rational basis for concluding that there was some interstate commerce involved.

The Examiner does not cite this case for the proposition that the taking of any amount of prime farmland -- even one acre -- would be an adequate showing of "need" under the Minnesota Administrative Procedure Act. However, he does believe that the case is of assistance in dealing with the fact that only a small percentage of Minnesota's prime farmland would be protected by the proposed rule. At some point -- a point which does not need to be precisely defined by this case -- the amount of land at risk does become adequate to support a rule such as this (Hearing Examiner 23) (emphasis added).

40. NSP, UPA and the MN/WIS Power Suppliers also argued that the criterion was not needed because loss of prime farmlands to power plants is but a small fraction of the total loss of prime farmlands to all users. They believed that the Board should instead concern itself with the other losses (Granite Falls, p. 240; Grand Rapids, pp. 15-16; pp. 43-51; MN/WIS statement, pp. 3-6).

Staff responded by pointing out that the criterion addresses the question of loss of prime farmland to plant sites, since the power

plant siting rules are the subject of this rulemaking. Other types of losses must be addressed in other forums (St. Cloud II aft, pp. 24-25; Grand Rapids, pp. 43-51; Austin, pp. 45-48). In its testimony, staff also noted that the PPSA gives the Board direct authority over siting of power plants; therefore, the Board has sole authority and the final decision over potential conversion of prime farmland in this instance. In other areas, the authority given to the Board is one of study. Therefore, staff believed it appropriate that the first action taken by the Board is in the area of power plant siting. Other parties noted that this action by the Board would serve as an example to other decision-makers (e.g., Granite Falls, pp. 275; Granite Falls II, Den Oudin, Homme, Velde). These arguments have merit.

Indeed, the Hearing Examiner found that:

> While undoubtedly there are other uses (housing and manufacturing, to name but two) which do take larger amounts of prime farmland than power plants, the Board is not empowered to regulate those takings. What the Board is empowered to regulate is the siting of power plants. In addition, because the Board is made up of persons with a broad range of other responsibilities (including the Departments of Natural Resources, Agriculture, Health, Transportation, Energy, etc.), this action by the Board may serve as an example to other decision-makers. In some respects, it can be described as "symbolic", but in the minds of some of the people who testified at the hearings, such symbolism may be necessary to influence other decision-makers (Hearing Examiner Finding 24).

41. The utilities also contended that the current rules provide sufficient protection of the agricultural resource (Granite Falls, pp. 243-244; Grand Rapids, p. 19). Mr. Alders testified that the current site selection criterion allows the Board to consider several indices of "valuable and productive agricultural land" and directs the Board to select sites that minimize useage of such lands (Granite Falls, pp. 259-260, 263-264).

The Statement of Need and Reasonableness indicates that there is little guaranteed protection under the current rules "because the 16 site selection criteria are balanced against each other and the final site need not meet all the criteria" (p. 15). Staff and other parties, including Mr. Dayton, Mr. Ims and those who testified in support of the limits, stated that more definitive protection is required (Granite Falls, pp. 260, 263; St. Cloud aft, pp. 70-71). They also noted the many possible definitions of "valuable and productive agricultural land," which further diminishes the effective guidance given by the existing criterion. Dr. Homme noted that nothing in the current rules says that you must do

so; the proposed rule would (Granite Falls Stage II eve, pp. 55-56). These arguments demonstrate that the current criterion will not ensure protection of the agricultural resource.

42. The Hearing Examiner found, "based on the record as a whole, that the Board has justified the need for a rule limiting the amount of prime farmland which may be taken for power plant sites" (Hearing Examiner Finding 25).

43. The Board finds that the need to address the loss of prime agricultural lands to power plant sites in these rules and to provide a better guide on what is a reasonable use of such lands than is done in the existing rules has been established.

6 MCAR § 3.072 R.

44. The definition of "prime farmland" in proposed 6 MCAR § 3.072 R. identifies the lands that the Board believes should be identified as the natural resource of productive agricultural land and given the protection of the avoidance area criterion proposed in 6 MCAR § 3.074 H.3.d. The proposed definition states tht prime farmlands are those soils that meet the specifications of 7 C.F.R. § 657.5 (a)(1980), which is the prime farmland definition established by the U.S. Department of Agriculture Soil Conservation Service (SCS) as part of the SCS's Important Farmland Inventory Program. The definition is discussed in the Statement of Need and Reasonableness on pages 17-23.

45. Ray Diedrick, State Soil Scientist with the USDA Soil Conservation Service, testified at length on this definition of "prime farmland" (Granite Falls, pp. 28-49, 151-154; St. Cloud aft, pp. 21-24). This testimony indicates that the definition is based upon the physical and chemical characteristics of the soils and that these soils are capable of high sustained yields with minimum adverse environmental impacts with minimum normal management inputs.

46. Specific support for this definition was given by Neale Deters, Myron Peterson, Dr. Paul Homme, Paul Ims, Lyle Schutte for the Countryside Council, and Charles Dayton (Granite Falls, pp. 184-5, 192, 201-207, 221-225; Granite Falls Stage II eve, pp. 21-22, 87. Many others testified to the need to protect the better farmlands, citing the adverse consequences of farming marginal lands.

47. Mr. Alders and Mr. McConnon questioned whether this definition indeed identified prime farmland. Mr. Alders cited instances where soils that do not meet the definition had higher productivity than prime soils. Mr. Alders also referenced other possible definitions such as the crop equivalency rating system and indicated that these were additional ways of identifying valuable and productive lands (Granite Falls, pp. 244-248, 259-260, 265; St. Cloud, pp. 54-58, NSP statement). Mr. McConnon voiced similar concerns (Grand Rapids, p. 20).

Ray Diedrick addressed the first concern when he testified to the adverse environmental consequences of farming the non-prime soils and the likelihood that necessary conservation measures would not be taken to minimize such loss (especially at St. Cloud aft, pp. 34-39). He had earlier testified that the definition of prime soils is concerned with sustained productivity and minimal adverse environ-mental impacts (Finding 46); he cited the portion of the definition concerning soil erodability as one instance of this two-part concern (Granite Falls, pp. 41-44). Staff testified to the importance of both factors in identifying prime farmlands (St. Cloud aft, pp. 74-75; Austin, pp. 15-20, 49-50); staff noted that the non-prime soils cited by Mr. Alders were soils identified by Mr. Diedrick as having severe or very severe management problems due to water manage-ment or erosion (Austin, pp. 15-20). Mr. Diedrick also testified that, in general, prime soils have higher productivity than non-prime soils with normal management (Granite Falls, p. 46). These arguments clearly show that the definition of prime farmland is reason able in its concern for environmental consequences as well as produc tivity.

Mr. Alders mentioned a number of other possible definitions of valuable and productive agricultural lands, and indicated that the Board should use all of these definitions in defining such agricultural lands. Staff responded by saying that the multiplicity of possibly definitions indicated the need to clearly identify what resource is being protected; staff had considered and rejected these other definitions (Granite Falls, pp. 53-55; St. Cloud, pp. 73-75; Austin, pp. 18-20, 43; Statement of Need, pp. 17, 21-22). The chosen definition of prime farmland is not invalidated or suspect merely because other potential definitions exist. The selection of this particular definition for use in the avoidance area criterion has been adequately justified. The fact that there is a clearly defined definition will help to alleviate problems of false expections about what is being protected, which was of concern to Mr. McConnon (Grand Rapids, p. 20).

48. Rep. Bob Lemon suggested deletion of the part of the prime farmland definition relating to frequency of flooding, so that wild rice paddies would be considered prime farmland (Grand Rapids, pp. 92-94). Staff argued against this, stating that frequency of flooding is a very important factor for most crops; staff noted that wild rice paddies are an unusual occurance and that the Board would consider them under the current site selection criterion (Grand Rapids, pp. 92-94). The Hearing Examiner also noted the disadvantages to not using an existing definition; deletion of one portion of the definition would require examination of the 1000 soil series to determine whether each meets the definition (Grand Rapids, pp. 92-93).

This suggestion is not reasonable for the reasons given by the staff and the Hearing Examiner.

49. The Metropolitan Council recommended that the Board substitute the aricultural preserves established under the Metropolitan Agricultural Preserves Act for the specific prime farmland soils as a basis for protection (Public Exhibit B). Staff argued that this is not appropriate, because these preserves are based on local planning and zoning, not upon the protection of a natural resource; "that is, it focuses upon the land use and on land that is in agricultural use. The Environmental Quality Board in its Power Plant Siting Act is able to protect natural resources. It is not in a position under the statute to protect the agricultural use of land. Therefore, we feel that the Metropolitan Ag Preserves Act is an inappropriate standard and instead have chosen the Soil Conservation Service definition because it does focus upon the natural resource of prime agricultural land" (Austin, pp. 96-97).

Although the use of metropolitan agricultural preserves is inappropriate in this rule, for reasons specified by staff, it must be recognized that the Metropolitan Agricultural Preserves Act does provide another mechanism to slow the loss of valuable and productive agricultural lands in the Metro Area. As staff testified, the Board is able to consider and minimize loss of lands within the metropolitan agricultural preserves through the existing site selection criterion 6 MCAR § 3.074 H.1.g., as the Board selects the final site (Austin, pp. 97-98).

50. The prime farmland definition is designed to be used in conjunction with the SCS county soil surveys and site surveys. The MN/WIS Power Suppliers were concerned that the lack of county soil surveys in certain counties will bias siting into counties or areas that have been mapped and that suitable sites in unmapped areas will not be considered (MN/WIS statement, p. 7).

Mr. Diedrick's testimony shows that these concerns are unfounded (Granite Falls, pp. 49-53). Mr. Diedrick testified that the SCS plans to survey the entire state by 1991 and that the SCS is working now in all but 25 counties. He also testified that there is considerable information available in unsurveyed counties to assist persons in identifying areas of prime farmland. He indicated that the SCS will do site surveys, as was done for an earlier plant siting exercise by MP&L, so that one can determine whether a site contains more than the allowable amount of prime farmland. Mr. Alders testified that he found access to soils information in two counties without soil surveys (St. Cloud aft, pp. 58-59). The Statement of Need and Reasonableness discusses this at pages 20-21.

The MN/WIS Power Suppliers also were concerned that the lack of survey maps for some counties made it impossible to determine the impact of the criterion (MN/WIS statement, p. 7). Staff disagreed, concluding that the number of test sites identified in six search areas indicated the existence of many more siting opportunities outside of these small search areas. Staff also noted that many counties do not have resources needed for plant location, like

water, so the lack of surveys in these counties is somewhat irrevelant; in any event, the SCS's target date for surveying the state is 1991 (St. Cloud II aft, pp. 25-29). Persons at Granite Falls agreed the entire state need not be surveyed, seeing that argument as a delaying tactic (p. 225). This concern is not substantial for the reasons specified by staff.

Indeed, after review of these arguments, the Hearing Examiner determined that:

> With regard to the second objection, it is true that the SCS has not published maps of soils in all counties as yet. Approximately 35 county maps have been published, and approximately 20 counties are presently either being surveyed or their maps are in the process of being published. In the remaining 25 counties, no work has yet been commenced. The SCS plans, however, to have surveyed the entire state by 1991. In addition, even for the presently unsurveyed counties, there is considerable information available to assist persons in identifying areas that would meet the SCS test. Finally, the SCS has done a specific site survey for a power plant (the Brookston site for Minnesota Power and Light: See, MEQB Ex. 131). If requested, either the SCS or any competant soil scientist, could identify prime soils using the SCS definition. Therefore, the Examiner does not believe that the fact that the SCS has not completed its work in all counties is a bar to adopting its definition (Hearing Examiner Finding 37). (emphasis added).

51. Mr. Alders questioned whether the Board was trying to protect the agricultural land use rather than a natural resource (Granite Falls, p. 248). Staff responded that the definition in question clearly refers to a natural resource because it is based upon the inherent soil characteristics. The fact that the Board is protecting all prime farmland, regardless of current use, emphasizes the Board's concern with the physical resource rather than land use (St. Cloud aft, p. 74; Austin, pp. 43-44). Staff arguments have merit.

52. There are non-prime soils and agricultural land uses other than cropland that can be considered "valuable and productive agricultural lands". The Board can use existing site selection criterion 6 MCAR § 3.074 H.1.g. to minimize loss of these lands as the final plant site is being selected.

53. The Hearing Examiner found:

> As the Statement of Need and Reasonableness admits, there are other methods of defining the best land, and crop productivity would be one of them. After reviewing all of the testimony on this point, however, it is found that

the SCS definition (the one adopted by the Board) is a reasonable one in terms of attempting to define a difficult line (Hearing Examiner Finding 37).

Based on the foregoing, the Examiner finds that the Board's proposal to use the SCS definition of "prime farmland" has been demonstrated to be both needed and reasonable (Hearing Examiner Finding 38).

54. The Board finds that the proposed definition is necessary to specify which lands the Board considers prime farmlands for purposes of implementing the proposed avoidance area criterion concerning prime farmland. This clarification is vital. The term "prime" can take on many meanings, ranging from "my land" to "all agricultural land". Many of them have been used by various participants during the development of this policy.

The proposed definition is reasonable. It identifies a natural resource of productive agricultural lands. These soils are "prime" because they are inherently best suited for sustained crop yield with minimum adverse environmental consequences. The definition is based on specific standards, so it is less subject to variation in interpretation. Soils that meet the definition can be readily identified, so the proposed avoidance area criterion can be administered consistently. The definition was developed after extensive study by an agency with considerable expertise in the area. Finally, the definition is better than other possible options.

6 MCAR § 3.072 P.

55. This amendment gives meaning to the term "developed portion of the plant site", which is used in 6 MCAR § 3.074 H.3.d. By this definition, the developed portion of the plant site would consist of structures, facilities and land uses that preclude crop production. The buffer area would not meet this definition, since agricultural uses are allowable in a buffer area (Statement of Need and Reasonableness, p. 23).

56. Only one issue was raised concerning this amendment. Mr. Dayton suggested that "as a practical matter" be added at the end of the definition. He felt that, as a practical matter, lands within the buffer area would not be used for farming even though they may be available for farming (Granite Falls, pp. 100-101). Staff disagreed with this suggestion, since agricultural uses are not precluded and indeed are allowable within the buffer area. Since the intent of the criterion is to minimize the acreage of prime farmland that is lost to a power plant, the suggested language should not be added to the definition.

57. The Hearing Examiner found that:

The final item to be considered in connection with the prime farmland rule is another related definition, that

of "developed portion of the plant site". Based upon the discussion in the Statement of Need and Reasonableness, it is found that this definition has been justified as being both needed and reasonable (Hearing Examiner Finding 39).

58. The Board find that it has been established that the definition is necessary and reasonable for reasons contained in the Statement of Need and Reasonableness (p. 23).

6 MCAR § 3.074 H.3.d.

59. The proposed avoidance area criterion contained in 6 MCAR § 3.074 H.3.d. proposes a limit to the prime farmland that can be taken for the developed portion of the plant site and a separate limit for a water storage reservoir or cooling pond. The amounts are proportional to the net generating capacity of the power plant--an "acres per megawatt (MW)" approach. A range of possible values for the limits for prime farmland was suggested for consideration during the rule hearings; the range is from 0.25-0.75 acres per megawatt of net generating capacity. The proposed limits do not apply to certain urbanizing areas. The criterion is an avoidance area criterion, so it would apply unless there are no feasible and prudent alternatives. The criterion is discussed on pages 16-17 and 23-30 and in Appendix 2 of the Statement of Need and Reasonableness.

60. Several participants specifically testified in favor of the placement of prime farmland protection in the avoidance area criteria, because such placement affords prime farmland considerable protection (Granite Falls, pp. 77, 207; St. Cloud aft, p. 27; Austin, p. 84). Mr. Dayton testified that "we believe that an avoidance category does not provide sufficient protection for the resource" unless the allowable amounts are fairly restrictive (Dayton statement, p. 9).

61. The proposed criterion is an avoidance area criterion, which offers considerably more protection to prime farmlands than would similar limits in a site selection criterion. The MN/WIS Power Suppliers and NSP argued that the Board did not have statutory authority to do so (MN/WIS statement, pp. 2-3, NSP statement). On the other hand, Mr. Dayton argued that the prime farmland resource already enjoys status as a protectible natural resource under the Minnesota Environmental Rights Act (MERA), and that, perhaps, the criterion does not afford sufficient protection (Grand Rapids Stage II eve, pp. 86-87).

As argued in the Statement of Need, legislative concern for the preservation of the natural resource of productive agricultural land is reflected in several policy statements including the Minnesota Environmental Rights Act (MERA) Minn. Stat. ch. 116B (1980)), the Minnesota Environmental Policy Act (MEPA) (Minn. Stat.

ch. 116D (1980)), the Power Plant Siting Act (Minn. Stat. §§ 116C.53 to 116C.69 (1980)), the Metropolitan Agricultural Preserves Act (Minn. Stat. ch. 473H (1980)), and Minn. Laws 1979, ch. 315.

In both MERA and MEPA the legislature declares the preservation of the air, water, productive land and other natural resources to be the policy of the state. Minn. Stat. § 116B.01 (1980); Minn. Stat. § 116D.02 (1980). As the Minnesota Supreme Court has stated, both MERA and MEPA prohibit:

> any activity which significantly affects the quality of the environment if there is a "feasible and prudent alternative" consistent with the "state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment or destruction. Economics alone shall not justify such conduct. Minn. Stat. § 116B.09, subd. 2 (1978).
>
> Floodwood-Fine Lakes et. al, v. MEQC, 287 N.W. 2d 390, 397 (Minn. 1979).

As delineated in MERA, protectible natural resources include "all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources." Minn. Stat. § 116B.02, subd. 4 (1980). The Supreme Court has further determined that protectible resources are those resources the destruction of which "is noncompensible and injurious to all present and future residents of Minnesota." People for Environmental Enlightnement and Responsibility, Inc. v. Minnesota Environmental Quality Council (hereinafter cited as PEER), 266 N.W. 2d 858, 869 (Minn. 1978).

While the Minnesota Supreme Court has not yet explicitly accorded productive agricultural land full status as a protectible natural resource, the Court has made it clear that productive agricultural land is entitled to substantial protection. In State by Skeie v. Minnkota Power Cooperative, 281 N.W. 2d 372 (Minn. 1979), the Minnesota Supreme Court refused to hold that interference with the economic operations of farming constituted a violation of the legislative protection afforded land and soil under MERA. However, the Court noted that if there had been evidence showing that the proposed action would have made "the soil sterile; or caused its erosion; or limited its cropping potential, in some significant, irreversible way, we would have a different situation." Id. at 374. The protection to be accorded productive agricultural land is not absolute, and as a dissenting justice in the Skeie case noted, "(W)hen productive farm lands are compared with (the traditionally-recognized) natural resources, the latter should typically receive protection, absent unusual and extraordinary circumstances." Id at 375. (Yetka, J. dissenting). This was the result in County of Freeborn by Tuveson v. Bryson, 309 Minn. 178, 243 N.W. 2d 316 (1976), where the Court held that a proposed highway must be routed

through agricultural land in order to preserve a natural wildlife marsh. The enforcement of MERA and MEPA is a clear statutory obligation of the Board in siting a power plant under the PPSA. Minn. Stat. § 116D.03, subd. 1 (1980); Minn. Stat. § 116C.53, subd. 1 (1980); PEER, supra at 865-866; No Power Line v. Minnesota Environmental Quality Council, 262 N.W. 2d 312, 325-326 (Minn. 1977). In siting a power plant, the Board is required under MERA, MEPA and the PPSA, as interpreted by the Supreme Court, to determine whether the likely environmental impacts of a site on productive agricultural land are more or less significant than the likely impacts on other natural resources. It is then required to select the power plant site with the least significant adverse impacts unless other extraordinary circumstances compel a different site.

The existing rules governing the power plant siting process do not provide sufficient protection for the natural resource of productive agricultural land, as required by MERA, MEPA and PPSA.

62. It would be inappropriate for the proposed criterion on prime farmland to be designated as either an exclusion area criterion or a site selection criterion. If it were designated as an exclusion criterion under 6 MCAR § 3.074 H.2., the "feasible and prudent alternative" standard would not be applicable and agricultural land would assume as importance above most other "traditional" natural resources. Such a consequence is not intended by the proposed amendments and would be inappropriate in light of the Minnesota Supreme Court's decision in Skeie, supra., which does not accord productive agricultural land full status as a protectible natural resource. On the other hand, if the proposed criterion on prime farmland were designated as a general site selection criterion, the protection proposed to be afforded prime agricultural land would dissolve. The general criteria in 6 MCAR § 3.074 H.1. are stated as "preferences" and are not applicable to "all plants in the same degree." The legislative directives, as interpreted by the Court, clearly mandate according protection against significant conversions of prime farmland more than mere status as a "preference" (Statement of Need, p. 16).

63. Mr. Dayton, Dr. Homme and Mr. Peterson all recommended that the word "net" be stricken from the avoidance area criterion (Granite Falls, pp. 102-104, 196-197 and 208). The stated reasons were to simplify the criterion and to minimize utility manipulation of the number. Staff argued that the definition was reasonable, because it would clarify which capacity (gross or net) would determine the allowable acreage of prime farmland, the Board has used a similar term in other sitings and it would result in a smaller acreage of prime farmland being taken (Granite Falls, pp. 103-104). Staff arguments have merit.

64. The proposed avoidance area criterion contains two limits to the use of prime farmland, one for the developed portion of the plant site and one for an associated water storage reservoir or cooling

pond. There was some question about whether two standards were needed, or whether a combined limit might be appropriate (Austin, pp. 116). The two standards are appropriate, since not all plants will have reservoirs (Austin, pp. 117, 118). A combined limit will not adequately protect prime farmland because the full amount would be available to a plant that does not have a reservoir.

65. There was considerable discussion on whether the criterion contained a size bias. On the one hand, Mr. Dayton testified that the criterion encouraged building of larger plants, because larger plants could take more acres of prime farmland; Mr. Dayton cited certain instances in the six search areas where an 800 MW site was permissable while a 400 MW site at the same location was not. Mr. Dayton also indicated that "the cap may encourage the construction of plants of 400 megawatts or less, which is the policy proposed by the Power Plant Siting Advisory Committee in its 1980 report. However, a maximum limit would not be unduly restrictive, since the staff and the PPSAC predict that such smaller power plants will be likely to be the plant of the future" Dayton statement, p. 8). Mr. Dayton also was concerned whether such treatment of larger plants conflicted with the proposed deletion of 6 MCAR § 3.074 H.1.n., which prefers sites allowing for future expansion (Granite Falls, pp. 125-126), as was Mr. McConnon (Grand Rapids, pp. 21-22). On the other hand, Mr. Alders testified that the criterion favored smaller plants (Granite Falls, p. 266; Grand Rapids, p. 88). The Statement of Need and Reasonableness discusses this issue on page 26.

Staff responded to these comments by saying that first, the Minnesota Energy Agency determines plant size, so utilities would not be able to increase plant size solely to take more acres of prime farmland, and second, that the policy has "no inherent size bias. It does not favor smaller power plants, nor does it favor larger power plants. It simply says that, of your power plant site, that only a certain proportion can be prime farmland". Indeed, expanded plants are allowed the same number of acres as a one-time plant of similar size. Staff indicated that the proposed deletion of 6 MCAR § 3.074 4.1.n. will also make the site selection criteria neutral regarding size (Granite Falls, pp. 115, 121, 125-126, 128-129, 234-236). Mr. Alders testified that the Minnesota Energy Agency determines size, type in terms of fuel and the timing of a power plant (Granite Falls, p. 266).

The criterion is neutral in that it allows the same amount of prime farmland per megawatt regardless of plant size. It is not likely that the utilities will be able to increase plant capacity merely to obtain a site that takes more acres of prime farmland. Staff research indicates that the criterion allows sufficient siting opportunities, even for larger plants, as discussed in later findings. It is not appropriate to regulate plant size through a criterion designed to protect prime farmland.

66. CLFSEC recommended a limit to prime farmland use that is based on a precentage of the site rather than the "acres per megawat" approach in the criterion (CLFSEC Statement). This is not an appropriate basis for the limit. Since the area of a site can be expanded rather easily by a utility, this type of a limitation could be too easily circumvented to adequately protect prime farmland (Statement of Need, p. 26).

67. The MN/WIS Power Suppliers testified that there is no indication how the avoidance area criterion relates to plants fueled by alternative energy or nuclear plants. They testified that plants fueled by alternative energy may be penalized, since many of them "require larger areas per megawatt than do conventional fired power plants" (MN/WIS Statement, pp. 7-8). Mr. Coleman later testified that a 100 MW centralized wind generation facility of multiple 2.5 MW generators may require 3-13 acres per MW (St. Cloud Stage II aft, p. 41). Staff argued that no nuclear plants and no alternative energy plants anywhere near 50 MW are proposed by the utilities in their current 15 year advance forecast (St. Cloud Stage II aft, pp. 29-30, MEQB Exhibit 106; Statement of Need, p. 26).

    It is unlikely that a centralized wind facility greater than 50 MW would be proposed in the near future, given the projections made by the Minnesota Energy Agency. Therefore, there is no need to alter the criterion at this time. Such revision can be considered when such theoretical possibilities become more likely.

68. The criterion as proposed contained a range of possible limits to the use of prime farmland. Considerable testimony was received on which numbers within the range of 0.25-0.75 acres per megawatt provided the most reasonable limit, including:

			Recommendation*
1.	John Johnson	Granite Falls, pp. 98-99	Avoid prime farmland
2.	Florence Dacy	Granite Falls, p. 94	No prime farmland can be used
3.	Dick Conway, Mower County Coalition	Austin hearing	No prime farmland can be used
4.	Minnesota Citizen/ Labor/Farmer/Senior Energy Coalition (CLFSEC)	Written testimony	Prime farmland on no more than 10% of site
5.	Wayne Kling	Granite Falls Stage II eve, pp. 26-27	Less than 0.25 acres/MW
6.	Gary Velde	Granite Falls, pp. 275-276	0.25 acres/MW; 80 acre cap

7.	Minnesota Farm Bureau	Public Exhibit C	0.25 acres/MW; 100 acre cap
8.	Charles Dayton & Myron Peterson, Circuit Breakers	Granite Falls, pp. 193-196, Dayton statement	0.25 acres/MW; 100 acre cap
			Recommendation*
9.	Charles Dayton & Paul Ims, Concerned Citizens for the Protection of the Environment	Granite Falls, pp. 213, 228-230; Dayton statement	0.25 acres/MW; 100 acre cap 0.25 acres/MW: 200 acre cap
10.	Paul Homme	Granite Falls, pp. 208-209	0.25 acres/MW; 100 acre cap
11.	Mrs. Leon Velde	Granite Falls, pp. 279	0.25 acres/MW; 100 acre cap
12.	M.E. Beito & Mark McAfee, Minnesota Farmers Union	Granite Falls, pp. 77-78 St. Cloud, pp. 27-28 McAffee statement	0.25 acres/MW
13.	Lloyd Schutte, Countryside Council	Granite Falls, p. 217	0.25 acres/MW
14.	Representative Gaylin Den Ouden	Granite Falls Stage II eve, p. 40	0.25 acres/MW
15.	Neil Deters	Granite Falls, p. 189	0.25 acres/MW
16.	PPSAC	MEQB Exhibit 28	0.5 acres/MW, 200 acre cap
17.	Minnesota Dept. of Agriculture	Seetin statement II	0.5 acres/MW
18.	MEQB Staff	MEQB Exhibit 146	0.5 acres/MW
19.	Minnesota Dept. of Natural Resources	MEQB Exhibit 36	Upper end of range
20.	Minnesota Catholic Conference	St. Cloud Stage II eve, p. 23	0.25 acres/MW
21.	Rev. Elmer J. Torberg	Toberg statement	0.25 acres/MW

22. Agnes Kramer	Kramer statement	0.25 acres/MW
23. Sr. Nolan New Ulm Diocesan Pastoral Center	Nolan statement	0.25 acres/MW 100 acre cap
24. Linda Curtler	Curtler statement	0.25 acres/MW
25. Virginia Homme	Homme statement	0.25 acres/MW 100 acre cap
26. Sr. Tacheny, MN Catholic Rural Life Directors	Tacheny statement	0.25 acres/MW

*The specified amount is the recommended limit for the developed portion of the plant site and also the recommended limit for the reservoir or cooling pond site.

As discussed earlier, NSP, UPA and the MN/WIS Power Suppliers testified that no such limits were needed.

69. Clearly, to be reasonable, the limit must protect prime farmlands while still ensuring sufficient siting opportunities throughout the state. There was considerable discussion as to what "sufficient siting opportunities" actually means.

Persons arguing for a very restrictive limit made such points as:

- Since there won't be very many plants anyway, you don't need very many sites in agricultural areas. You can find lots of sites in non-prime areas.
- Special techniques discussed in Attachment 2 of the Statement of Need and Reasonableness can be used to minimize site size so that a very restrictive limit can be met.
- If sites really are needed in agricultural areas, the "no feasible and prudent alternatives" standard can be used to make that site available.

Persons arguing for no limit made these points:

- Not all test sites that meet the prime farmland limits will make acceptable plant sites.
- Forcing plants onto sites with major problems will increase costs.
- There may well be plant sites needed in agricultural areas (Grand Rapids, pp. 19-21).

Staff, after consideration of these statements, made the following recommendations:

- "To have "sufficient siting opportunities", it must be possible to identify a reasonable number of alternative sites so that a final site can be selected that minimizes the impact on protectible natural resources, which are given explicit protection under the Minnesota Environmental Rights Act (Minn. Stat. ch. 116B (1980)), and fulfill the other preferences expresed in the site selection criteria in the Power Plant Siting Rules (6 MCAR § 3.074 H. 1.)" (MEQB Exhibit 146).

- Plants may well need to be sited in agricultural areas, so there should be a reasonable number of potential sites even in heavily prime areas. It is not appropriate to rely upon an unusual standard such as the "no feasible and prudent alternatives" standard to provide siting opportunities for a foreseeable occurrence.

- "It is not reasonable to rely heavily upon these unusual or special measures [those identified in Appendix 2 of the Statement of Need] to identify siting opportunities, since these measures may not be appropriate or reasonable for all cases. It is more appropriate that the Board consider the appropriateness of these measures as it assesses alternative sites, when the site-specific data necessary for such evaluation is available. It must be emphasized that the Board can still seek to minimize removal of prime farmland under the existing site selection criterion (6 MCAR § 3.074 H.1.g.) as it selects the final site." (MEQB Exhibit 146).

Under the Board's statutory responsibilities and regulatory process, the position argued by staff is most appropriate.

70. The Hearing Examiner found that:

> In order to select a limitation which is reasonable, it is necessary to have some idea of the impact of that limitation upon siting opportunites. Given the fact that "need" has been established, one could ask, "Why allow <u>any</u> prime farmland to be used?" The answer is that if one were to have a total ban on the use of prime farmland, certain portions of the state would have few, if any, areas where plants could be sited. The prime farmland in the state is concentrated in an arc along the southern and western borders. It is likely that the need for future plants will be in agricultural, rather than urban, areas. The exact location of those areas is, however, not clear from this record. If one assumes that there must be some sites in the heavily prime areas, then the reasonableness of this rule may be analyzed by examining how many sites would be available in heavily prime

areas, as that would be the "worst case" situation (Hearing Examiner Finding 28).

71. Staff research in six search areas identified many test sites for three plant sizes that contained no more than 0.75 acres prime farmland per megawatt (Statement of Need, Appendix 2; MEQB Exhibits 88 and 143) (The search areas were used by utilities in previous plant siting exercises). These test sites are a useful basis for assessing the impact of the criterion in heavily prime areas, since they are reasonable "first cut" potential sites (MEQB Exhibits 90, 144, 146, p. 2-3; Austin, pp. 20-34, 36-39; Grand Rapids, pp. 61-70, 98-100).

Mr. Alders had testified that most of the test sites were unsuitable as plant sites (Granite Falls, pp. 248-252, 258-259, and referenced exhibits). Mr. McConnon and the MN/WIS Power Suppliers voiced similar concerns (Grand Rapids, pp. 17-18, MN/WIS statement, p. 7). Staff reviewed Mr. Alders' data and eliminated test sites likely to have major difficulties (MEQB Exhibits 143 and 144; discussion at Austin, pp. 20-34, 36-39).

Indeed, the Hearing Examiner found that:

> Studies of available sites in heavily prime areas were made by the staff, and used as the basis for argument by both the utilities (who claimed that they were unrealistic) and those favoring a strict rule (who claimed that they showed plenty of availabile sites even at the strictest limitation). While all participants admitted that these studies were not definitive, the Examiner accepts them (as amended) as a reasonable basis for testing the impact of various limitations on the use of prime farmland (Hearing Examiner Finding 29). (emphasis added).
>
> The Examiner adopts EQB Exhibit 143 [Appendix A] as being reasonably accurate for the purposes of examining the reasonableness of various limitations. . . However, the mere fact that the table indicates, for example, that there is one site for an 800 MW plant in Goodhue County, does not mean that that site has been identified as the best site in Goodhue County. In fact, there could be other sites which were not found by the staff which are better; on the other hand, that one site could have serious drawbacks in light of all of the factors which must be considered in attempting to arrive at the best possible site.
>
> As can be seen from the figures, the number of available sites increases substantially as the acreage limitation is loosened (Hearing Examiner Finding 30).

72. As several parties testified, the ability of staff to find this many reasonable test sites within its time constraints indicates that other test sites are likely to be available in other areas,

particularly areas with less prime farmland. Therefore it is not necessary to survey the entire state before one can assess the impact of the criterion, as the MN/WIS Power Suppliers had testified (MN/WIS statement, pp. 6-7).

73. Staff and the Minnesota Department of Agriculture recommended that a limit of 0.5 acres per megawatt of net generating capacity for the developed portion of the site provided a reasonable level of protection for prime farmland and also provided sufficient siting opportunities throughout the state (MEQB Exhibit 146, pp. 3-4; Seetin Statement II). Staff determined that this limit would allow a reasonable number of siting opportunities, even within areas of high concentrations of prime farmland, without resorting to unusual or special measures. This will allow the Board to identify enough alternative sites so that a final site can be selected that will minimize impacts on protectible natural resources and fulfill other preferences expressed in the site selection criteria. Staff cited several reasons for this determination, including the number of test sites in the six search areas and the additional siting opportunities in the areas exempt from the criterion and areas outside of seach areas. The Department of Agriculture made similar conclusions. Both parties indicated that this limit would still protect prime farmland. No more than about half of the site could be prime farmland (MEQB Exhibit 146, p. 3).

74. Most participants recommended a limit of 0.25 acres per megawatt or lower, which would provide stronger protection of prime farmland. Certain participants also saw additional benefits, including an encouragement of smaller plants that might allow better use of waste heat (Granite Falls, pp. 193-196). Staff testified that this limit was too low, because it severely limited siting opportunities in heavily prime areas, as shown in the six search areas (MEQB Exhibit 146, pp. 4-5; Granite Falls Stage II, aft and eve); staff noted that there were only 8 test sites for 400 MW plants, 7 for 800 MW plants and 2 for 1600 MW plants.

During the Stage Il hearings, supporters of the 0.25 acres per megawatt limit disagreed with this determination, pointing out that additional siting opportunities came from test sites containing 0.25-0.35 acres per megawatt that could likely be adjusted to the lower figure, areas within two miles of cities of the first, second and third class and areas outside the six small seach areas. They also asked, "How many sites will you need, anyway..." (Granite Falls Stage II, aft and eve; Peterson et al). Staff responded by emphasizing its belief that these did not provide a sufficient number of siting opportunities, given the need to consider protectible natural resources and the preferences expressed in the site selection criteria (MEQB Exhibit 146, Granite Falls Stage II). Testimony by Mr. Alders and Mr. McConnon indicates a similar concern (Granite Falls, pp. 248-252; Grand Rapids, pp. 19-21; Granite Falls Stage II). In its testimony, staff noted that there are few cities of the first, second and third class in heavily prime areas

with sufficient resources needed for plant operation (eg. water), so this will not open up significant siting opportunities. Staff stressed the need to be able to site in heavily prime areas for reasons given on page 31 of the Statement of Need and Reasonableness.

These are valid reasons for determining that a limit of 0.25 acres per megawatt is too restrictive. As staff noted, the Board can use the existing site selection criterion to select a site that contains less than 0.5 acres of prime farmland per megawatt.

75. Staff also testified that a limit of 0.75 acres or more per megawatt was not reasonable. Staff determined that a limit of 0.75 acres of prime farmland per megawatt provides insufficient protection of prime farmland, since this allows prime farmland on over 80% of the site (p. 3, Appendix 2 of the Statement of Need). Because the 0.5 acres per megawatt limit provides sufficient siting opportunities, there is no need to adopt a less protective limit.

76. A limit of 0.5 acres of prime farmland per megawatt of net generating capacity is determined to be reasonable for the developed portion of the plant site for reasons cited in Finding 73.

77. Staff and the Minnesota Department of Agriculture also recommended a limit of 0.5 acres of prime farmland per megawatt of net generating capacity for the site of an associated make-up water storage reservoir or cooling pond, for similar reasons as given in their recommendations on the developed portion of the plant site in Finding 73 (MEQB Exhibit 146, pp. 5-7, Seetin statement II).

78. Most of the participants recommended a limit of 0.25 acres per megawatt for the reservoir or cooling pond site to increase the protection given to prime farmland. Board staff testified that this was not an appropriate limit for reasons similar to those given in Finding 74 (MEQB Exhibit 146, p. 6). This proposal is rejected for reasons similar to those given in Finding 74.

Mr. Dayton testified that the limit for a reservoir/cooling pond site could be more restricive than the limit for the developed portion of the plant site. He suggested that the ability to locate the reservoir away from the plant site increases siting options and techniques such as increasing dike heights to increase storage volume and decrease land requirements are available (Granite Falls Stage II eve, pp. 61-66, 80-81, Dayton statement). Staff testified that these are unusual measures that may not be appropriate in all cases, and that they should be considered by the Board on a case-by-case basis as a site is selected (MEQB Exhibit 146, pp. 2,6). Mr. Dayton offered no testimony demonstrating the contrary; therefore, his suggestion is without supporting evidence.

79. Staff testified that a limit of 0.75 acres per megawatt for the reservoir or cooling pond site would not sufficiently protect prime farmland. Nearly all sites in Tables 4 and 5 in Appendix 2 of the

Statement and all 104 test sites for the developed portion of the plant site contain less than this amount. The issue here is similar to the one in Finding 75; a similar conclusion is reached.

80. A limit of 0.5 acres of prime farmland per megawatt of net generating capacity for the site of an associated make-up water storage reservoir or cooling pond is determined to be reasonable for reasons cited in Findings 73 and 77.

81. The Hearing Examiner found that:

> The goal of any siting proceeding is to select the best possible site. There are numerous factors which enter into this determination. Not only are there exclusion areas (where a plant may not be sited), but there are also avoidance areas (where a plant should not be sited unless there is no feasible and prudent alternative). Finally, there are 16 different site selection criteria to be applied. While there is merit to limiting the amount of prime farmland which can be taken for a site, it is wholly improper to assume that protecting prime farmland is the only goal of site selection. Therefore, the limitation to be selected must permit enough sites so that the other factors can be taken into account. Based upon all of the testimony and argument in the record, the Examiner finds that .5 acres per megawatt is reasonable. He finds that .25 acres per megawatt is unreasonable, because of the small number of sites which it would allow. It is further found that these findings apply to both the developed portion of the plant site and the reservoir/cooling pond portion of a site (Hearing Examiner Finding 31). (emphasis added).

82. In its hearing notice, the Board invited comment on whether or not there ought to be, in addition to an "acres per megawatt" limitation, an absolute maximum acreage or "cap" on the amount of prime farmland that can be taken for the developed portion of the plant site and for an associated water storage reservoir or cooling pond. "Caps" of 80, 100, or 200 acres were suggested (see Finding 68).

The amendments for such a "cap" included:

- The criterion is biased for larger plants unless there is a cap; this is discussed in Finding 65.

- There are sufficient siting opportunities even with a cap (e.g. Granite Falls, pp. 197, 212; Granite Falls Stage II aft and eve, several persons), particularly since the policy is an Avoidance Area criterion, not an Exclusion Area criterion.

- It would encourage building of smaller plants (Granite Falls, pp. 197-198, 209).

- It would provide stronger protection of prime farmland (Granite Falls, pp. 197-198, 275; Granite Falls Stage II aft and eve, several persons).

Staff argued that a cap was neither needed, since the criterion is sufficiently protective of prime farmland, nor reasonable, primarily because the cap is biased against large plants and would severely limit siting opportunities in agricultural areas (MEQB Exhibit 146, pp. 7-8; State of Need, p. 31; Granite Falls, pp. 123-132, 234-237; Granite Falls Stage II aft and eve).

The Hearing Examiner considered the effect of a 200 acre cap/0.5 acres per megawatt policy and found that:

> For the very same reasons that led to the rejection of the .25 acre per megawatt limitation, the Examiner finds that a 200 acre cap is unreasonable because it goes too far in restricting the number of available sites. The same argument would, of course, lead to a finding that a smaller cap is also unreasonable (Hearing Examiner Finding 35).

Inspection of Table 2 in MEQB Exhibit 146 demonstrates that a cap would severely restrict siting opportunites in heavily prime areas, thereby reducing the possibility that a reasonable number of alternative sites can be identified by the Board. Arithmetic indicates that a cap would make sites for larger plants harder to find than sites for smaller plants. The Board is able to use the existing site selection criterion to minimize loss of prime farmland as it designates the final site. At that time the Board can also consider site-specific data and determine whether it is appropriate to further minimize the taking of prime farmland by requiring such measure as increasing waste pond dikes to reduce site size (MEQB Exhibit 146).

83. The proposed avoidance area criterion does not apply to certain urbanizing areas. The exemption is limited to three cases -- areas located within home rule charter or statutory cities (the two types of cities), areas located within two miles of first, second and third class home rule charter or statutory cities; and areas designated for orderly annexation under Minn. Stat. § 414.0325 (1980).

84. A number of persons testified that this exemption was reasonable because it opens up sitng opportunities in heavily prime areas and encourages plant location near cities where advantage can be taken of possibilities for use of waste heat and community benefits and also thereby avoiding agricultural areas (Granite Falls, pp. 195-196, 208; St. Cloud aft. p. 29; Granite Falls Stage II aft and eve, Dayton et al; Seetin statement II; Austin, p. 83). However, Mr. McAfee of the Minnesota Farmers Union urged that plant siting within the two mile zone around cities of the first, second and

third class be done to "preserve the agricultural land within the zone to the greatest extent" (St. Cloud, p. 29).

85. Mr. Alders and Mr. McConnon testified that the exemption related to cities of the 1-3 class exempted too much land, and that this exemption was inconsistent with the intent of the criterion to protect prime farmland (Granite Falls, p. 244; Grand Rapids, p. 19). Mr. Alders estimated that this provision would exempt roughly 3/4 million acres (St. Cloud aft, pp. 60-63).

Staff testified that this exemption was reasonable, as explained in the Statement of Need and Reasonableness (St. Cloud, p. 71-73; Austin, p. 49), on pages 28-29. The reasons include: furtherance of certain existing site selection criteria like location near large load centers, the remedy of the inequity of requiring utilities and others in the siting process to avoid use of prime farmland near urban areas only to watch it go to urban uses shortly thereafter, and the legislative presumption that these areas are subject to urban growth. These arguments are persuasive. It should also be noted that these areas would be subject to the existing site selection criterion concerning agricultural lands, so the Board can seek to still minimize removal of prime farmland in these areas, as appropriate.

86. Mr. McConnon also was concerned that the criterion would mandate plant location near urbanizing areas. He felt this to be inappropriate due to UPA's dispersed load (Grant Rapids, pp. 19-20). Staff testified that the criterion "does not mandate location near urbanizing areas. It exempts these areas, and we feel that that is a reasonable exemption. In fact, we note that we have in our research identified a significant number of test sites which would indicate there would be ample opportunity to site even in rural areas" (Austin, p. 49). Clearly, the criterion does not mandate location near urbanizing areas. The existence of 104 test sites in the 6 heavily prime search areas provides support for staff's statement concerning siting opportunities (MEQB Exhibit 143).

87. The Board finds that the proposed avoidance area criterion, with the limits contained in Findings 76 and 80, is reasonable because it provides reasonable protection while still ensuring sufficient siting opportunites throughout the state. Further instances of its reasonableness are given in the Statement of Need and Reasonableness (pp. 16-17, 23-30). The need for and reasonableness of proposed amendment 6 MCAR § 3.074 H.3.d. establishing an avoidance area criterion for prime farmland has been established.

III. Inventory of Power Plant Study Areas

88. The PPSA directs the Board to adopt an Inventory of Power Plant Study Areas (Minn. Stat. § 116C.55 (1980)). The Inventory of Power Plant Study Areas (Inventory) is intended to be an advance planning

guide useful in identifying appropriate areas for power plant location. A study area is a large land area which meets certain criteria and standards and in which one or more plant sites will likely be found after further study.

The PPSA also requires the Board to use a "public planning process where all interested persons can participate in developing the criteria and standards to be used by the Board in preparing an inventory of large electric power generating plant study areas (.)" (Minn. Stat. § 116C.55, subd. 2 (1980)). As directed, there was wide citizen participation in the development of the proposed Inventory criteria and standards over a three year period (Statement of Need and Reasonableness, pp. 32-33).

The proposed amendments relating to the Inventory contain criteria and standards necessary to the identification of study areas; they also contain necessary administrative procedures. The proposed amendments, and the Inventory adopted pursuant to them, will provide guidance to the Board, utilities and interested persons in finding appropriate areas for power plant sites.

89. Mr. McAfee, Representative Ken Nelson and Sister Tacheny testified in support of the Inventory related amendments (St. Cloud aft, p. 30; Nelson statement; Tacheny statement).

90. The MN/WIS Power Suppliers testified that the Inventory-related amendments were not needed, since there are no plants proposed in the future; they also said the statutory requirement for an Inventory was not a "persuasive argument", since the Inventory is almost three years late. They further stated that "there are simply too many complex variables involved for such an effort to succeed" (MN/WIS statement, pp. 9-10).

Staff disagreed, stating that the Board has a responsibility to fulfill the statutory directive, unless and until the legislature directs otherwise. The staff further testified that the work done in preparation for these rules-hearings, particularly the 1979 Draft of the Inventory (MEQB Exhibit 85), showed that the proposed amendments provide a reasonable method for fulfilling the statutory request (St. Cloud Stage II aft, pp. 31-33). It is clear that the statutory requirement must be followed.

Indeed, the Hearing Examiner found that:

> Many of the objections to the amendments (all of which-came from the utilities) were based on the facts that (1) it does not appear at the present time that new power plants will have to be sited, and (2) since the passage of time may result in different policies toward both conventional and alternative energy systems, it is not necessary to adopt any procedures relating to the inventory at this time. While both of the assumptions may be correct, the argument misses an important point:

That the legislature has mandated that there be an inventory of study areas and that the Board "promptly initiate" a public planning process to evelop criteria and standards to be used in preparing the inventory. (Minn. Stat. § 116C.55). Unless and until the legislature changes these directives, the Board had a responsibility to fulfill them, and that, alone, is enough to justify need. As if to underscore this point, the Chairman of the House Energy Committee, Representative Ken G. Nelson, submitted a written statement which notes, in part, ". . . Revisions of the criteria. . . to evaluate. . . and develop an inventory of power plant study areas seem to be appropriate at this time" (Hearing Examiner Finding 41) (emphasis added).

91. The MN/WIS Power Suppliers and Mr. McConnon were concerned that the Inventory might restrict siting opportunities (MN/WIS statement, p. 10; Grand Rapids, pp. 23-24). However, the PPSA specifies that the Inventory is one of power plant study areas, not sites. Study areas are large land areas in which one or more plant sites will likely be found upon further study. As staff testified, as the first step of the siting process, the Inventory does not identify sites, nor does it limit sites (St. Cloud Stage II aft, p. 35). The PPSA clearly envisions that sites can be proposed from outside of the study areas; the failure of a site to be included in the Inventory will not preclude its consideration (Austin, pp. 99-100). Therefore, the Inventory does not restrict siting opportunities.

92. The MN/WIS Power Suppliers also questioned whether the Inventory should instead be a natural resources inventory or augment the siting process (MN/WIS statement, p. 11). Staff testified that these suggestions were not relevent, since the PPSA requires the Board to adopt an Inventory of Study Areas, not a natural resources inventory (St. Cloud Stage II aft, p. 36). Augmentation of the site selection process would occur through changes in the exclusion, avoidance or site selection criteria in 6 MCAR § 3.074. The MN/WIS group did not mmake any specific recommendations for these changes. Therefore, these concerns are without merit.

93. The MN/WIS Power Suppliers Group also testified that the Inventory-related rules "should be held in abeyance until such a time when one may more clearly perceive future state policies toward conventional and alternative energy systems . . . noting that the proposed rules address themselves only to coal-fired systems and today's technology and recognizing that no such plants are planned" (MN/WIS statement, pp. 9-10). In response, staff again referenced the statutory requirement for an Inventory, and indicated the need for an Inventory to handle plants that may be proposed. Staff also testified that various criteria and standards are applicable for various fuel-types and designs; further flexibility is provided by updating the inventory to reflect new technical assumptions (St. Cloud Stage II aft, pp. 32-33). The MN/WIS Power Suppliers provided no testimony to demonstrate what changes might occur that

would drastically change the major factors useful in surveying the state to identify study areas. Therefore, their concerns are without merit.

94. The Hearing Examiner specifically found that the Inventory-related amendments are needed to fulfill the requirements of the PPSA (Hearing Examiner Finding 41).

95. The Board finds that the proposed Inventory-related amendments are needed to prepare an Inventory of Power Plant Study Areas as required by the PPSA.

6 MCAR § 3.072 H.

96. This amendment updates the definition of "study area" to reflect the establishment of criteria and standards to be used to identify study areas in 6 MCAR § 3.083 A. No issues were raised concerning this amendment. The Hearing Examiner found the proposed amendment to be both needed and reasonable (Hearing Examiner Finding 42). The Board finds that the amendment is both needed and reasonable for reasons contained in the Statement of Need and Reasonableness (pp. 33-34).

6 MCAR § 3.072 Q.

97. This amendment gives meaning to the term "technical assumptions" used in 6 MCAR § 3.083. The definition explains what types of assumptions are needed to apply the Inventory criteria and standards to identify land areas that meet the Inventory criteria and standards. Each Inventory criterion and standard addresses a resource needed for plant operation. Assumptions must be made to estimate resource requirements of the power plant (e.g. water needs) and resource availability (e.g., amount of water that is available for plant use from a particular river segment).

98. Mr. Alders was concerned that, since "technical assumptions. . . define the (Inventory) standards and the standards established in the inventory are used to evaluate plant site proposals (the technical assumptions), therefore, are site selection criteria. . ." (St. Cloud aft, p. 46). As discussed in Finding 91, the Inventory does not identify sites. Rather, the site selection, exclusion and avoidance criteria are used to identify and evaluate sites (St. Cloud Stage II aft, p. 38). Therefore, it is clear that the technical assumptions are not site selection criteria, but rather are necessary for application of the Inventory criteria and standards.

99. Mr. Alders then raised the issue of whether the technical assumptions must be adopted in rule form. He references the PPSA, which requires Chapter 15 rulemaking hearings before substantial modifications of the initial criteria and standards are made. He states that "it is obvious from the discussion of inventory in the Statement of Need and Reasonableness that technical assumptions

will substantially modify inventory criteria and standards, and, therefore technical assumptions must have the benefit of chapter 15 rulemaking . . ." (St. Cloud aft, pp. 44-46). Mr. McConnon also was concerned, if sites from the Inventory are given preference in the siting process (Grand Rapids, p. 24).

As staff testified, from the definition of technical assumptions and the nature of the criteria and standards, it is clear that the technical assumptions are important in allowing determination of lands that meet the Inventory criterion and standards. However, it is also clear that the changes in technical assumptions will not modify the criteria and standards; rather, any changes will better enable the Board to determine the areas that meet the Inventory criteria and standards (Statement of Need, pp. 35-45; Austin, pp. 102-107). This is because the technical assumptions related to resource require ments are specific to plant size, fuel type and design, which will change over time based on utility plans and advances in technology; likewise, the asumptions necessary to evaluate resource availability will change. The technical assumptions provide the mechanism whereby updating can be done, to ensure that the Inventory is an accurate, effective guide, as intended by the PPSA, and to allow updating of the Inventory, as required by the PPSA (Austin, p. 100).

As staff testified, the PPSA clearly contemplates that technical assumptions not go to rulemaking (Austin, p. 101) The PPSA requires that the Inventory criteria and standards be adopted as rules. However, the PPSA does not require that planning policies do so (Minn. Stat. § 116C.55, subd. 3). Staff testified that technical assumptions are planning policies (Austin, p. 101). The PPSA does reuire that the planning policies, or technical assumptions, be explicitly stated, as is done by this definition.

Indeed, the Hearing Examiner found that:

> The method proposed by the Board appears to follow the statutory directive. Minn. Stat. § 116C.55, subd. 3 provides as follows: On or before January 1, 1979, the Board shall adopt an inventory of large electric power generating plant study areas and publish an inventory report. The inventory report shall specify the planning policies, criteria and standards used in developing the inventory. After completion of its initial inventory, the Board shall have a continuing responsibility to evaluate, update and publish its inventory.
>
> The proposed rule first adopts criteria and standards to both guide the Board in preparing the inventory and to guide the Board in evaluating any proposed site not located within a study area (a site may be considered even though it is not in the inventory). The criteria

and standards set forth in the proposed rule deal with exclusion areas, air quality, transportation, and water.

The second part of the proposed rule then defines what shall be in the inventory...Included shall be such things as maps, discussion of types of plants covered, and "discussion of specific inventory criteria and standards and technical assumptions used to develop the maps". One of the related definitions proposed for adoption now is of "technical assumptions." The proposed rule defines them to be "the assumptions necessary to evaluate resource requirements of a LEPGP of a specific capacity, fuel type and design and to evaluate the availability of resources to meet those requirements". Under the Board's proposed rule, these "technical assumptions" would not be adopted as rules, but the rule requires the Board to consult with Board member agencies, utilities, and other agencies or persons with applicable information during the course of their development. It was the fact that these would not be adopted as rules that gave rise to some comment.

Different types of generating plants and different sizes of generating plants require different kinds of resources. For example, the water requirements of a 200 MW coal-fired plant using wet cooling towers are substantially different from those of an 800 MW plant of similar type and design. Even if the size is held constant, but the type of cooling tower is changed, the water requirements also change. As is pointed out in great detail in the Statement of Need and Reasonableness, there are numerous combinations and permutations of factors which influence the requirements of a plant. It would be a Herculean effort to write a rule which would cover all those factors. Therefore, what the Board has done is to propose a rule which provides (using the same example, water) that in identifying study areas, water sources shall be considered adequate based on a number of enumerated factors, such as flow, cooling, technology and size constraints of reservoir design. What the rule omits (and leaves for more detailed treatment in the technical assumptions) are the actual numbers which would be used to decide whether or not a particular water source meets the needs of a particular type of plant.

The Examiner finds that the approach of using broad criteria in the rules and leaving detailed matters for technical assumptions outside of the rules is not a violation of the rulemaking provisions of Chapter 15. The situation here is not unlike the situation in Can Manufactures Institute, Inc. v. State, 289 N.W.2d 416 (Minn. 1979) where the Court was faced with a vagueness challenge to certain proposed rules. The Court dismissed

the challenge stating that under the circumstances that the rules were designed to cover, it was unlikely that the rules could have been more precise. The Examiner believes that the same kind of analysis applies to these assumptions, and it is not improper to omit them from the rule. The persons threatened by the omission, the utilities, are specifically listed as persons who must be consulted prior to their development, and the very fact that the assumptions are not adopted as rules means that the Board cannot apply them with the force and effect of law. It is found that the rule relating to the inventory process, as well as the two related definitions, have been demonstrated to be both needed and reasonable (Hearing Examiner Finding 42) (emphasis added).

100. The Hearing Examiner found that the porposed definition has been demonstrated to be both needed and reasonable (Hearing Examiner Finding 42).

101. The Board finds that the definition of technical assumptions is needed, to define the term used in 6 MCAR § 3.083 and to allow application of Inventory criteria and standards. The definition is reasonable because it allows updating of the Inventory, as required by the PPSA, so that the Inventory can be an effective guide to the Board and utilities.

6 MCAR § 3.083 A.

102. This amendment establishes the Inventory criteria and standards to be used to identify study areas and also to evaluate proposed plant sites which are not included within the appropriate study area. The amendment limits the criteria and standards to the four major resources that define large areas as being appropriate potential areas for plant location. These four resource needs are land where siting is prohibited by Board rule (6 MCAR § 3.083 A.1.), acceptable air quality impacts (6 MCAR § 3.083 A.2.), water availability (for plants using evaporative cooling systems) (6 MCAR § c.038 A.4.) annd access to transportation (for coal-fired plants) (6 MCAR § 3.083 a.3.)) The Statement of Need and Reasonableness discusses the amendment on pp. 39-44.

103. As discussed in Finding 98, Mr. Alders was concerned that the technical assumptions and the Inventory criteria and standards are actually site selection criteria. This statement is rejected for the reasons given in the earlier finding.

104. Mr. Alders testified that certain criteria and standards related to air quality, transportation and water (6 MCAR § 3.083 A. 2, 3 and 4, respectively), appeared vague (St. Cloud aft, pp. 44-46). Mr. McConnon voiced similar concerns for the air quality criterion and standard (Grand Rapids, p. 23).

Their concern appears to relate to the interaction of technical assumptions and the Inventory criteria and standards. As Findings 98-101 indicate, the technical assumptions are a necessary and reasonable method for applying the criteria and standards to allow use of the most accurate information, so that the Inventory can be a useful guide. The Statement of Need and Reasonableness and staff testimony cited in those findings provide ample explanation of the criteria and standards and the method by which they would be applied; in particular, staff noted that NSP and others expressed grave concern when earlier drafts of the rules contained more detailed standards (Austin, pp. 109-110). On balance, the detail contained in the criteria and standards is reasonable.

105. Mr. McConnon and the MN/WIS Power Suppliers criticized the two standards relating to "reasonable access" -- 12 miles for transportation (6 MCAR § 3.083 A.3.b.) and 25 miles for water (6 MCAR § 3.083 A.4.b.(2)) -- as being arbitrary (Grand Rapids, p. 23; MN/WIS statement, p. 10). Their concern appeared to center on possible application of these standards to specific plant sites. Finding 103 indicates that these standards are not site selection criteria. The Statement of Need and Reasonableness contains justification of the reasonableness of these standards for these purposes (pp. 42 and 44).

106. The Hearing Examiner found that this rule has been demonstrated to be both needed and reasonable (Hearing Examiner Finding 42).

107. The Board finds that the amendment is needed to specify the basis by which study areas are identified and, thus, satisfy the requirements of the PPSA. The amendment is reasonable because it is limited to those factors most important in dientifying large study areas and therefore makes the Inventory a more useful guide.

6 MCAR § 3.083 B.

108. This proposed amendment concerns the application of the Inventory criteria and standards. It outlines the procedures to be followed by the Board in adopting the Inventory of Power Plant Study Areas and also specifies Inventory content. There was no testimony on this proposed amendment. The Hearing Examiner found the definition to be both needed and reasonable (Hearing Examiner Finding 42). The Board finds that the Statement of Need and Reasonableness properly justified its need and reasonableness (pp. 45-48).

Based upon the foregoing Findings of Fact, the Board specifically adopts the following conclusions contained in the Hearing Examiner's Report:

CONCLUSIONS

1. The Board gave due, timely and adequate notice of the hearing.

2. All relevant procedural requirements of law or rule, including the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been fulfilled.

3. The Board has documented its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. § 15.0412, subd. 4e and 15.052, subd. 3 (4)(i) and (ii) 1980.

4. The Board has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980); with regard to the limitation on the use of prime farmland, the Board has documented the reasonableness of a limitation of .5 acres per megawatt.

5. That any Findings which might properly be deemed Conclusions, or any Conclusions which might properly be deemed Findings, are hereby adopted as such.

ORDER OF ADOPTION

The Minnesota Environmental Quality Board hereby adopts the proposed amendments to Rules Relating to Siting Large Electric Power Generating Plants, as rules reasonable and necessary to carry out its responsibilities pursuant to Minn. Stat. § 116C.51 et. seq. (1980).

Dated this 14th day of December, 1981.

Robert Benner, Chairman
Environmental Quality Board

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Environmental Quality Board

Rule Numbers: 6 MCAR S 3.072, 6 MCAR S 3.074, 6 MCAR S 3.083

Rule Title: Adopted Amendments to Rules Relating to Siting Large Electric Power Generating Plants

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

APPROVED AS TO LEGALITY
January 5 19 82
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
~~SPECIAL~~ ASSISTANT ATTORNEY GENERAL

Steven C. Cross
Revisor of Statutes

Name: Lorna M. Breiter
Lorna M. Breiter

Title: Assistant Revisor

Phone: 296-2778

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 6 1982
Joan Anderson Growe
Secretary of State

2:50 P.M.

AG copy

Environmental Quality Board

Adopted Amendments to Rules Relating to Siting Large Electric Power Generating Plants

Rules as Adopted

6 MCAR S 3.072 Definitions.

H. "Large electric power generating plant study area" or "study area" means a geographic area that meets inventory criteria and standards for a LEPGP of a specified capacity, fuel type and design.

P. "Developed portion of plant site" means the portion of the LEPGP site, exclusive of make-up water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.

Q. "Technical assumptions" means the assumptions necessary to evaluate resource requirements of a LEPGP of a specified capacity, fuel type and design and to evaluate the availability of resources to meet those requirements.

R. "Prime farmland" means those soils that meet the specifications of 7 C.F.R. S 657.5 (a) (1980).

S. "Community benefits" means those benefits to the local community, other than economic development, that result from power plant design or location. Examples include use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines and increased tax base.

6 MCAR S 3.074 H.1. Site selection criteria.

j. Preferred sites maximize opportunities for significant conservation of energy, utilization of by-products or biomass, cogeneration and development of waste-to-energy systems.

n. [Repealed.]

6 MCAR S 3.074 H.1. o. and p. [Reletter as 6 MCAR S 3.074 H.1. n. and o.]

p. Preferred sites maximize the opportunities for community benefits and economic development.

6 MCAR S 3.074 H.3. Large electric power generating plant avoidance areas.

d. When there exists a feasible and prudent alternative with less adverse environmental and noncompensable human effects, no LEPGP site shall be selected where the developed portion of the plant site includes more than ~~0.25-0.75~~ 0.5 acres of prime farmland per megawatt of net generating capacity, and no make-up water storage reservoir or cooling pond site shall be selected that includes more than ~~0.25-0.75~~ 0.5 acres of prime farmland per megawatt of net generating capacity. These provisions shall not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second and third class; or areas designated for orderly annexation under Minn. Stat. S 414.0325.

HE 16-39

6 MCAR S 3.083 Identification of large electric power generating plant study areas.

A. Inventory criteria and standards. The following criteria and standards shall be used by the board to prepare an inventory of large electric power generating plant study areas and by the utility and the board to evaluate any proposed site not located within the appropriate study area.

1. Exclusion areas.

a. Criterion. Study areas shall be compatible with board rules on exclusion criteria for LEPGP site selection.

HE 40-41

b. Standard. Geographic areas identified in 6 MCAR S 3.074 H.2.b. shall not be part of any study area.

2. Air quality.

a. Criterion. Study areas for LEPGPs shall be compatible with existing federal and state air quality regulations and rules.

b. Standard. Study areas shall not include those areas in which operation of a LEPGP would likely result in

violation of primary or secondary standards or exceedence of prevention of significant deterioration increments for sulfur dioxide or particulate matter as established under 42 U.S.C. SS 7401-7642 (1980), Minn. Stat. S 116.07 and Minn. Rule APC 1.

~~* Note: A range of numbers has been proposed for the allowable amount of prime farmland per megawatt. Ultimately, one specific number will be adopted for the developed portion of the plant site and one specific number for the reservoir or cooling pond site.~~

3. Transportation.

a. Criterion. Study areas for coal-fired LEPGPs shall have reasonable access to existing transportation systems which are or can be made capable of transporting the required quantities of coal.

b. Standard. In identifying study areas for coal-fired LEPGPs, "reasonable access" shall mean no more than 12 miles distant from the existing transportation system.

4. Water.

a. Criterion. Study areas for LEPGPs using evaporative cooling systems shall have reasonable access to an adequate water source.

b. Standards.

(1) In identifying study areas for LEPGPs using evaporative cooling, rivers and lakes shall be considered potential water sources.

(2) In identifying study areas for LEPGPs using evaporative cooling, "reasonable access" shall mean no more than 25 miles distant from the water source.

(3) In identifying study areas for LEPGPs using evaporative cooling, a water source shall be considered adequate if it appears likely to allow LEPGP operation through periods of historic low flows or historic low elevations, either by direct withdrawal or by using supplemental stored water. This evaluation shall be based on historic stream flows, cooling

water system technology and the environmental, economic and engineering constraints of reservoir design related to size.

B. Application of inventory criteria and standards. The board shall adopt an inventory of study areas for the LEPGP capacities, fuel types and designs reasonably anticipated to be subject to application for a certificate of site compatibility in the near future. The inventory shall consist of the maps of the study areas; discussion of specific inventory criteria and standards and technical assumptions used to develop the maps; and discussion of the LEPGP capacities, fuel types, and designs for which the maps are developed. The board shall consult with board member agencies, utilities and other agencies or persons with applicable information as it develops the technical assumptions necessary for application of inventory criteria and standards.

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

X The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

Page 1, line 28, replace "Delete." with "Repealed."

Page 2, line 22, correct the spelling of "exlusion"

Page 3, line 31, correct the spelling of "critieria" to conform to the correct spelling in the State Register.

Steven C. Cross
Revisor of Statutes

Name: Lorna M. Breiter
Lorna M. Breiter
Title: Assistant Revisor
Phone: 296-2778

____ The changes requested by the revisor are approved by the agency.

____ The changes requested by the revisor are not approved by the agency

Agency's Representative

____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

Assistant Attorney General

Environmental Quality Board

Amendments to Rules Relating to Siting Large Electric Power Generating Plants

Amendments as Adopted, Showing Changes from Amendments as Proposed

6 MCAR § 3.072 Definitions.

H. "Large electric power generating plant study area" or "study area" means a geographic area that meets inventory criteria and standards for a LEPGP of a specified capacity, fuel type and design.

P. "Developed portion of plant site" means the portion of the LEPGP site, exclusive of make-up water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.

Q. "Technical assumptions" means the assumptions necessary to evaluate resource requirements of a LEPGP of a specified capacity, fuel type and design and to evaluate the availability of resources to meet those requirements.

R. "Prime farmland" means those soils that meet the specifications of 7 C.F.R. § 657.5 (a) (1980).

S. "Community benefits" means those benefits to the local community, other than economic development, that result from power plant design or location. Examples include use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines and increased tax base.

6 MCAR § 3.074 H.1. Site selection criteria.

j. Preferred sites maximize opportunities for significant conservation of energy, utilization of by-products or biomass, cogeneration and development of waste-to-energy systems.

6 MCAR § 3.074 H.1.n. Delete.

6 MCAR § 3.074 H.1. o. and p. Reletter as 6 MCAR § 3.074 H.1. n. and o.

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A. Inventory criteria and standards. The following criteria and standards shall be used by the Board to prepare an inventory of large electric power generating plant study areas and by the utility and the Board to evaluate any proposed site not located within the appropriate study area.

1. Exclusion areas.

a. Criterion. Study areas shall be compatible with Board rules on exlusion criteria for LEPGP site selection.

b. Standard. Geographic areas identified in 6 MCAR § 3.074 H.2.b. shall not be part of any study area.

2. Air quality.

a. Criterion. Study areas for LEPGPs shall be compatible with existing federal and state air quality regulations and rules.

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a. Criterion. Study areas for coal-fired LEPGPs shall have reasonable access to existing transportation systems which are or can be made capable of transporting the required quantities of coal.

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B. Application of inventory criteria and standards. The Board shall adopt an inventory of study areas for the LEPGP capacities, fuel types and designs reasonably anticipated to be subject to application for a certificate of site compatibility in the near future. The inventory shall consist of the maps of the study areas; discussion of specific inventory critieria and standards and technical assumptions used to develop the maps; and discussion of the LEPGP capacities, fuel types, and designs for which the maps are developed. The Board shall consult with Board member agencies, utilities and other agencies or persons with applicable information as it develops the technical assumptions necessary for application of inventory criteria and standards.

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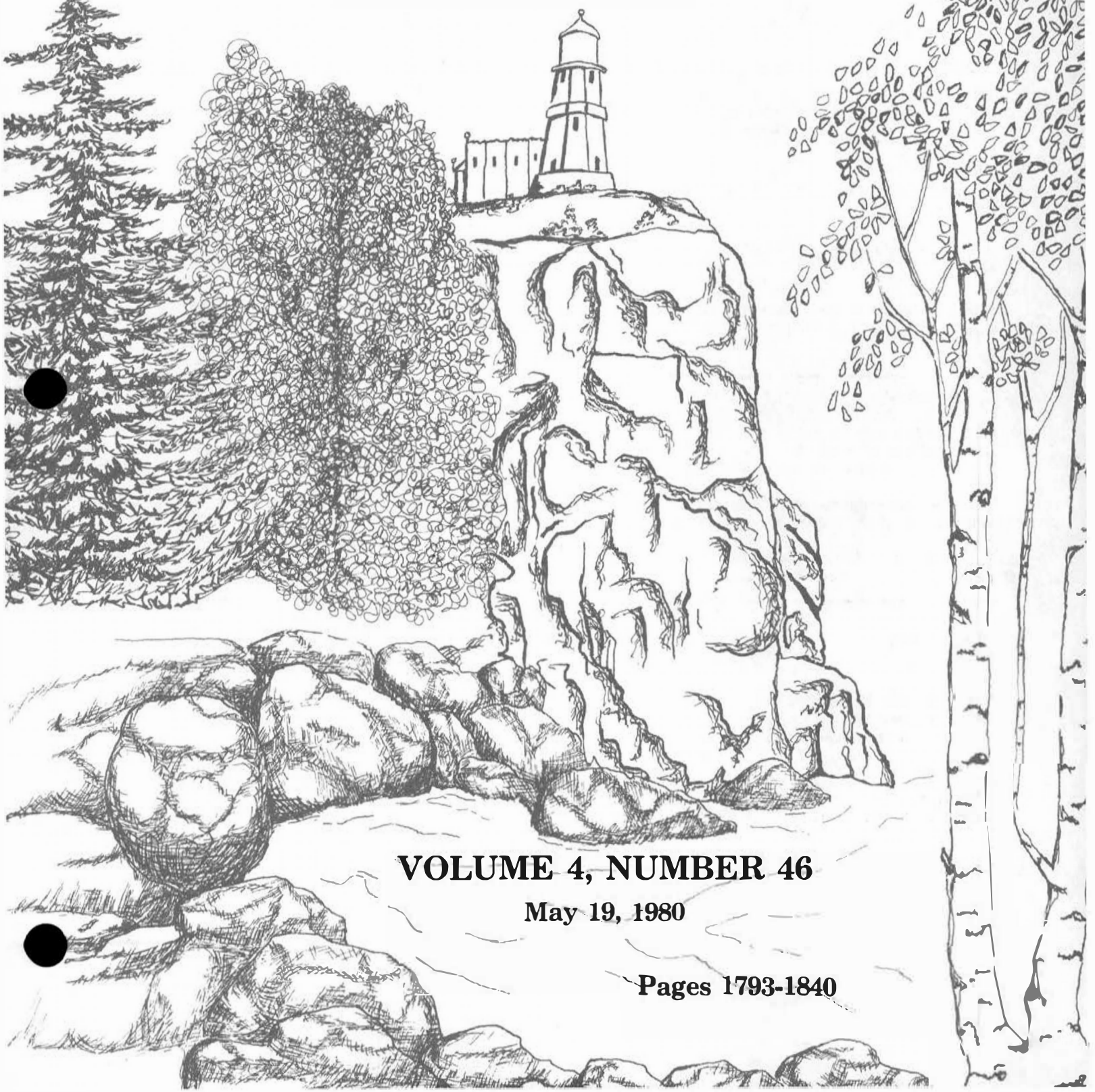
STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 46

May 19, 1980

Pages 1793-1840

STATE REGISTER

Volume 4 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 4		
47	Monday May 12	Monday May 19	Monday May 26
48	Monday May 19	Friday May 23	Monday June 2
49	Friday May 23	Monday June 2	Monday June 9
50	Monday June 2	Monday June 9	Monday June 16

*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 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, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $118 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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

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

Cover graphic: *Split Rock Lighthouse*, pen and ink drawing by Barbara J. Peterson.

CONTENTS

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:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

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

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

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

Issues 1-13, inclusive
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.

MCAR AMENDMENTS AND ADDITIONS

EXECUTIVE ORDERS

Executive Order No. 80-5

Amending Executive Order No. 79-1

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 amending Executive Order 79-1:

WHEREAS, Executive Order No. 79-1, providing for the establishment of the Governor's Committee on Appointments was issued on February 20, 1979; and

WHEREAS, it is desirable to have the chairperson or co-chairpersons who serve as coordinators of the committee be voting members of the Committee and receive reimbursement for expenses reasonably incurred;

NOW, THEREFORE, I Order:

That Section 2 of the Executive Order No. 79-1 be amended to read as follows:

"2. That there be a chairperson or co-chairpersons selected by the Governor from among the members of the Committee who shall serve as coordinators of the Committee."

Pursuant to Minn. Stat. § 4.035 (1978), this Order shall be effective fifteen (15) days after filing with the Secretary of State and its publication in the *State Register* and shall remain in effect until it is rescinded by proper authority or expires in accordance with Minn. Stat. §§ 4.034 or 15.0593.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 30th day of April, 1980.

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

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.

Public Hearings on Proposed Agency Rules May 26-31, 1980

Date	Agency and Rule Matter	Time & Place
May 29	Transportation Department Amendment of Rules on Public Transit Subsidy, Paratransit Grant Program, Regular Route Transit Improvement Program, Financial Application for Subsidy & Grant Assistance; and New Rules on Uniform Performance Standards, Metro Transit Taxing District, & Public Transit Capital Grant Assistance Program Hearing Examiner: Richard DeLong	10:00 a.m., Rm. 81, State Office Bldg., 435 Park Street, St. Paul, MN

Board of Dentistry

Proposed Amendments to Rules Relating to Applications for Licensure, Fees, Licensure by Credentials, Auxiliary Personnel Services, Advertising and Classification, and Reorganization of Existing Rules

Notice Of Hearing

A public hearing concerning the proposed amendments to the rules captioned-above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on June 26, 1980, commencing at 9:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, Telephone number: (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411, 15.0417, and 15.052, and by 9 MCAR §§ 2.010-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

If adopted, the proposed amendments would make the following changes:

1. An amendment to 7 MCAR § 3.005 would permit the board to set licensure fees below, but not above, the fees already established by rule.

2. An amendment to 7 MCAR § 3.011 E. would carry out the provisions of Minn. Stat. § 150A.06, subd. 1 (1978) by requiring graduates of nonaccredited dental schools who are seeking licensure to pass a clinical examination prior to taking the National Board examination.

3. Amendments to 7 MCAR § 3.014 would carry out the provisions of Minn. Stat. § 150A.06, subd. 4 (1978) which authorizes the board to grant licensure to dentists and dental hygienists who are already licensed in other states or Canada. The proposed rule specifies the procedures and requirements for licensure.

4. An amendment to 7 MCAR § 3.015 would update the present rule and would carry out the provisions of Minn. Stat. § 150A.09, subd. 1 (1978) which requires annual registration of all registered dental assistants.

5. Amendments to 7 MCAR §§ 3.031, 3.032 A. and 3.034 would carry out the provisions of Minn. Stat. § 150A.10, subd. 2 (1978) which authorized the board to specify what functions dentists may delegate to registered and nonregistered assistants. The proposed rule would allow an assistant to monitor a patient who has been given nitrous oxide anesthesia by a dentist. It would allow registered dental assistants to remove rubber dams and place peridontal packs. The proposed rule would also allow dental hygienists to place any sealants, not just cement, for the

temporary replacement of restorations and to administer local anesthesia under the direct supervision of a dentist.

6. An amendment to 7 MCAR § 3.032 B. would clarify the intent of the Board at the time the rule was adopted to allow qualified persons in allied health fields, such as X ray technicians, to take dental radiographs.

7. An amendment to 7 MCAR § 3.044 would permit the use of the words clinic or institute, except when used with the name of a state, city, or political subdivision. It would prohibit the use of specific adjectives which would create false expectations of favorable results.

8. Amendments to 7 MCAR § 3.045 would carry out the provisions of Minn. Stat. § 150A.11, subd. 2 (1978) permitting the board to establish rules for professional advertising and would conform to the US Supreme Court decision allowing professional advertising. The proposed rule establishes limitations on advertising, services that can be advertised, the criteria that will be used to define these services, and what types of advertising would violate this rule.

9. An amendment to 7 MCAR § 3.0451 would identify all of the recognized specialty areas in dentistry and the specialty credentialling bodies. The rule would prohibit any dentist from using the term specialist unless the dentist has met the education and experience criteria provided by the amendment.

10. An amendment to 7 MCAR § 3.063 would remove the restrictions on the use of such words as "chartered" and would instead require that the use of these terms conform to the provisions of Minn. Stat. § 319A.07 (1978), the Professional Corporations Act.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Dale Forseth, Minnesota Board of Dentistry, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

Twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The statutory authority of the Board of Dentistry to adopt these rules is contained in Minn. Stat. §§ 150A.04 subd. 5 (1978).

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

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

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, Telephone Number: (612) 296-5615.

May 5, 1980

Dale J. Forseth
Executive Secretary

Amendments as Proposed

7 MCAR § 3.002 Definitions.

D. "Auxiliary" means a dental hygienist, registered dental assistant, ~~and~~ assistant, and dental technician.

O. "Person" includes an individual, corporation, partnership, association or any other legal entity.

P.~~O.~~ "Registered dental assistant" means an assistant registered by the board pursuant to § ~~150A.16~~ 150A.06, subd. 2a of the Act.

Q.~~P.~~ "Registrant" means a registered dental assistant.

R.~~Q.~~ "Registry" means the centralized recordkeeping service of the American Dental Association, Continuing Education Registry.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

S.R. "Sponsor" means an organization approved by the board pursuant to § 3.052 to offer CDE courses.

T.S. "Supervision" shall be defined in one of the following classifications:

7 MCAR § 3.004 Officers. The officers of the board shall consist of a President, a Vice-President, and a Secretary-Treasurer, as provided in § 150A.03, subd. 1, of the Act. Election of officers may be held at any regular or special meeting.

7 MCAR § 3.005 Fees.

B. Annual license or registration fees. Each dentist, dental hygienist and registered dental assistant shall submit with his annual license or registration renewal application a fee as established by the Board not to exceed in the following amounts:

1. Dentist—$38.00
2. Dental hygienist—$15.00.
3. Registered dental assistant—$10.00.

7 MCAR § 3.011 Applications to practice dentistry.

C. The applicant must furnish certification of having passed all parts of the a national board examination as defined in Rule 7 MCAR § 3.002 N.

E. 3. After successful completion of steps 1 and 2, the board may then certify the applicant as eligible to take National Board examination. applicant must complete such pre-clinical and clinical testing procedures at the School of Dentistry, University of Minnesota, or its equivalent, as the board may approve, to determine whether the applicant has the clinical proficiency in dentistry comparable to that of a student who has graduated from the University of Minnesota, School of Dentistry.

4. Upon the evidence of passage of National Board examination, applicants of dental schools not accredited by the Commission on Accreditation must complete such testing procedures, clinical training in the School of Dentistry, University of Minnesota, or its equivalent, as the board may prescribe in order to establish that the knowledge, skill and competence of the applicant to practice dentistry is equivalent in all respects to that of a graduate of a dental school accredited by the Commission on Accreditation and approved by the board.

4. Only after successful completion of steps 1, 2, and 3 will the board certify the applicant's eligibility to take a national board examination as defined in 7 MCAR § 3.002 N.

5. Only Upon completion of the first four steps may the applicant may make application to the board to take the examination for licensure.

G. The applicant shall furnish a testimonial of good moral professional character from an authorized representative of the dental school from which the applicant graduated. If he is a member of a dental society, he shall furnish the recommendation of the president or secretary of the society, and a certification by the secretary of the Board of Dental Examiners of the state or Canadian Province in which he is licensed. Provided, however, the board may in its discretion and for good cause waive the certification of good moral professional character by an authorized representative of the dental school.

7 MCAR § 3.012 Application to practice dental hygiene.

B. Applicants must furnish certification that they have passed the National Board Examination as defined in 7 MCAR § 3.002N.

F. The applicant shall furnish evidence of good moral professional character satisfactory to the Board and certification from the Board Of Dental Examiners in the state or Canadian Province in which he is already licensed.

7 MCAR § 3.013 Application for registration as a registered dental assistant.

B. The applicant shall furnish a certified copy or its equivalent of a diploma or certificate of satisfactory completion of a training program approved by the Commission on Accreditation or other program which, in the judgment of the board, is equivalent. If the curriculum of the training program does not include training in the expanded duties specified in DE 31 and 32 A. 7 MCAR § 3.032 A., applicant must successfully complete a course in these functions which has been approved by the board.

7 MCAR § 3.014 Application for licensure by credentials. Any person, who is already a licensed dentist or dental hygienist in another state or Canadian Province desiring to be licensed to practice dentistry or dental hygiene in Minnesota, must present to the board an application and credentials, as prescribed by the Act. The applicant shall conform to the following rules of the board:

A. The applicant shall complete an application and credential verification questionnaire on forms furnished by the board.

B. The applicant shall furnish satisfactory evidence of having graduated from a school of dentistry, or dental hygiene, whichever the case may be, which has been accredited by the Commission on Accreditation.

C. An applicant for licensure as a dentists must have been in active practice in another state or Canadian Province for at least three years immediately preceding application. United States Governmental service may be included, and submit at least three references from other dentists. The application must include a physician's statement attesting to the applicant's physical and mental condition.

D. An applicant for licensure as a dental hygienist must have been in active practice in another state or Canadian Province for at least one year immediately preceding application, and must submit at least two character references from dentists and two references from practicing hygienists.

E. Each applicant must submit with the application a fee as prescribed in 7 MCAR § 3.005 C.

F. For identification purposes, the applicant shall furnish one notarized unmounted passport-type photograph, 3" x 3", taken not more than six (6) months before the date of application.

G. An applicant must appear before the board for a personal interview to determine the applicant's fitness to practice dentistry or dental hygiene in Minnesota.

H. An applicant shall successfully complete an examination designed to test knowledge of Minnesota laws relating to the practice of dentistry and the rules of the board.

~~7 MCAR § 3.014~~ 7 MCAR § 3.015 Requirements for all ~~Applications~~ applicants.

A. Every applicant shall provide evidence of having fulfilled all the requirements of the Act.

C.~~A.~~ Incomplete applications shall be returned to the applicant with the tendered fee, together with a statement setting forth the reason for such rejection.

D.~~C.~~ Nothing contained in these rules shall be construed to limit the board's authority to seek from an applicant such other information pertinent to the character, education, and experience of the applicant insofar as it relates to the applicant's ability to practice as a licensee or registrant as the board may deem necessary in order to pass on the applicant's qualification.

~~7 MCAR § 3.015~~ 7 MCAR § 3.016 Expiration of license and registration and renewal thereof. ~~Any person already registered by the board as of the effective date of this rule shall submit to the board no later than December 31, 1976, or within one (1) month after the effective date of this rule, whichever occurs last, an initial registration renewal application as prescribed below together with the fee prescribed in 7 MCAR § 8.005B.~~ Each dentist, dental hygienist and each registered dental assistant~~, except as modified by the immediately preceding sentence,~~ shall submit an application for renewal of his license or registration together with the necessary fee no later than ~~January 1,~~ December 31, of the year preceding that for which the license or registration renewal is requested. The application form shall provide a place for the renewal applicant's signature and shall solicit information to include but not be limited to the applicant's office address or addresses, the number of his license or registration certificate whether such licensee or registrant has been engaged during the year preceding the year for which renewed licensure or registration is sought in the active practice of dentistry or dental hygiene or has worked as a registered dental assistant, and if so, whether within or without the state, and such other information which may be reasonably requested by the Board.

~~7 MCAR §§ 3.016~~ 7 MCAR §§ 3.017-3.020 Reserved for future use.

7 MCAR § 3.021 Written examination procedures: dentists, dental hygienists, and registered dental assistants.

F. Notes, ~~testbooks,~~ textbooks or other informative data shall not be brought to the examination rooms.

7 MCAR § 3.022 Scope of clinical examinations: dentists, dental hygienists, and registered dental assistants applicants.

7 MCAR § 3.025 Scope of written examination, dental hygienists.

B. At the discretion of the board, any dental hygienist duly licensed to practice as such in another state which has and maintains laws regulating the practice of dental hygiene by dental hygienists, equivalent to this state's, who is of good moral professional character and is desirous of ~~moving to this~~ licensure in this state and presents a certificate from the examining board of the state in which the applicant is licensed so certifying, may be exempted from taking a National Board examination provided the applicant has been licensed for five or more years.

7 MCAR § 3.031 Assistants. Assistants may:

A. Retract a patient's cheek, tongue or other parts of tissue during a dental operation; assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created or accumulated during the course of treatment being rendered by a licensed dentist during or after operative procedures by the dentist by the use of vacuum devices, compressed air, mouthwash and water; monitor a patient who has been inducted by a dentist into nitrous oxide-oxygen relative analgesia; provide any assistance, including the placement of articles and topical medication in a patient's oral cavity in response to a specific direction to do so by a licensed dentist who is then and there actually engaged in performing a dental operation as defined in the Act and who is then actually in a position to give personal supervision to the rendition of such assistance. In addition, assistants may aid dental hygienists and registered assistants in the performance of their duties as defined in 7 MCAR § 3.032 B., and 7 MCAR § 3.034.

7 MCAR § 3.032 Registered dental assistants.

A. 4. Place and remove rubber dam.

9. Place and ~~R~~remove periodontal packs.

~~11. Monitor a patient who has been inducted by a dentist into nitrous oxide oxygen relative analgesia.~~

B. A dental assistant, who by virtue of academic achievement which is equal to or greater than that of a registered assistant~~,~~ and is currently ~~registered or licensed~~ qualified in Minnesota in related health profession may, at the Board's discretion, be permitted to take dental radiographs after successful completion of an approved course. Such permission shall not be granted until such dental assistant shall have filed with the Board an application for permission, along with proof of suc-

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cessful completion of such course. and proof of current Minnesota licensure or registration in an allied health profession.

7 MCAR § 3.033 Display of certificate of registered dental assistant. In each office in which there is employed a registered dental assistant there shall be prominently displayed the certificate of registration of said registered dental assistant. [This deleted material is moved to 7 MCAR § 3.046 B.]

7 MCAR § 3.034 Dental hygienists. Dental hygienists may perform:

B. Complete prophylaxis to include scaling, root planning, soft tissue currettage, polishing of fillings, and placement of temporary cement material replacement of lost restorations.

C. Preliminary examination charting of the oral cavity and surrounding structures to include case histories, and periodontal examination and charting recording of clinical findings; this does not infer the making of a diagnosis.

G. Administer local anesthesia after successful completion of a course approved by the Board.

H.G. Procedures A., B., C., and D., and F. may be carried out under the general supervision of a dentist. whether or not a dentist is present or supervising, but acting under his direction. Examination and diagnosis must be accomplished only by a dentist.

7 MCAR § 3.044 Practice of dentistry under any name except the licensee's own proper name. Names.

A. The use of the words, "clinic," "institute," or any other title that may suggest a public or semi-private activity, or teaching institution or that could be interpreted to imply superiority over other practitioners, shall constitute the unlawful practice of dentistry by an individual or under the name of a corporation, company association, or trade name, as those terms are used in § 150A.11, subd. 1 of the Act and shall be grounds for discipline under § 150A.08, subd. 1. Any name which incorporates the use of the name of a state, city, or other political subdivision in whole or in part or which connotes unusual or superior dental ability, or which is likely to create a false or unjustified expectation of favorable results shall be in violation of § 150A.11, subd. 1 of the Act and Minn. Stat. § 319A.07.

B. The title on a building wherein one or more dentists practice shall be used as an address only.

7 MCAR § 3.045 Professional advertising. There shall be no public advertising by dentists other than as provided for herein. Dentists shall be permitted to insert a professional card in the local press, in programs and in yearbooks, providing that such professional card contain the name of the dentist and his title or degree using the abbreviation "D.D.S." or "D.M.D." only. Institutional advertising promoting dentistry generally, by dental associations and groups is encouraged and approved, provided individual dentists are not advertised therein. A dentist shall be permitted to use signs to advertise his name, the fact that he is engaged in the practice of dentistry, the location of his office and his office hours. These signs shall be limited to a total area of not more than six hundred (600) square inches and shall not contain letters more than seven (7) inches in height. Such signs shall not be specially luminated or have other attention-getting properties or characteristics. No sign shall be permitted to hang over or beyond the edge of the public thoroughfare. Within thirty (30) days immediately following the opening of an office, changing locations, association or type of practice, announcement cards may be mailed to bona fide patients and members of the health science professions and placed in the local press for not more than two consecutive issues, but such cards shall not be greater insize than eight column inches nor more than two columns in width and four inches in depth. Such announcement cards shall state only the dentist's name, degree, or any specialty as recognized by the Board, office location, telephone number and office hours. Professional cards shall not be greater in size than two inches by three and one half inches and shall include only the dentist's name, degree or any specialty, office location, telephone number and office hours. Residence telephone number may be included. All directory listings shall be consistent in style and text with the custom of dentists of the community. A dentist may permit one listing of his name in the alphabetical and may permit only listing of his name in the commercial section of the telephone directory. A dentist may permit one listing of his name in other directories provided that all dentists in similar circumstances have access to the same listing. Such listing shall be limited to the dentist's name, dental degree, "D.D.S." or "D.M.D." using the abbreviation only, any specialty to which the dentist confines his practice exclusively, office location, residence and office telephone numbers, residence address, and hours during which the telephone will be answered.

A. A person shall not, on behalf of himself, a partner, associate or any other dentist affiliated with him through a corporation or association, use or participate in the use of any form of public communication containing a false, fraudulent, misleading or deceptive statement or claim.

1. A false, fraudulent, misleading or deceptive statement or claim is one which:

a. Contains a misrepresentation of fact;

b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;

c. Is self-laudatory or is intended or is likely to create false or unjustified expectations of favorable results;

d. Implies unusual or superior dental ability;

e. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

B. A person shall not compensate or give anything of value to a representative of the press, radio, television, or other communicative medium in anticipation of or in return for professional publicity unless the fact of compensation is made known in such publicity.

C. A person shall not directly or indirectly offer, give, receive, or agree to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.

D. Fees may be advertised for routine services only.

1. A routine service is defined as one which is performed frequently in the dentist's practice; is usually provided at a set fee; is provided with little or no variance in technique; and includes all professionally recognized components within generally accepted standards. If the following routine dental services are advertised, they must adhere to these minimum standards (which are examples of the comprehensiveness required to satisfy the above definition):

a. Examination—a study by the dentists of all of the structures of the oral cavity, including the recording of the condition of all such structures and appropriate history thereof, including as a minimum the charting of caries, identification of periodontal disease and occlusal discrepancies, and the detection of oral abnormalities. If an examination fee is advertised, the same advertisement must include the following additional diagnostic procedures and their fees:

(1) Radiographs (X-rays)—X-rays of the oral structures to be used for purposes of diagnosis and which included either: 1) a panograph and four bitewings, or 2) an intraoral full mouth review utilizing a minimum of fourteen periapical and four bitewing films. Any films must be adequate to provide a complete radiographic study.

(2) Diagnosis—a written opinion of items found in an examination.

(3) Treatment planning—A written itemized treatment recommendation and written itemized fee estimate provided to the patient.

b. Denture—either a full upper or full lower replacement of the natural dentition with artificial teeth. If the service advertised is for a denture which is partially prefabricated or is intended to be used as an emergency or temporary denture, such fact shall be fully set forth in the text of the advertisement. The fee shall include a reasonable period for readjustment.

c. Prophylaxis—the removal of calculus (tartar) and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing.

d. Extractions—this service is for the removal of non-impacted teeth and includes necessary x-rays, anesthesia, preoperative and post-operative care.

2. At the request of the board, the licensee, office or professional corporation shall bear the burden of proving that any advertised services, are in fact "routine dental services" as defined.

3. Related services which may be required in conjunction with the advertised services, and for which additional fees will be charged, must be identified as such in the advertisement.

E. Advertising a range of fees for a given service is prohibited.

F. Advertised fees must be honored for those seeking the advertised services during the entire time period stated in the advertisement, whether or not the services are actually rendered in that time. If no time period is stated, the advertised fees shall be so honored for 30 days or until the next scheduled publication, whichever is later.

G. Any advertising must include the corporation, partnership, or individual dentist's (dentists') name and address.

H. Advertisements shall not:

1. Include descriptive words or phrases which are qualitative representations or comparative claims such as, but not limited to: painless, high quality, low prices and reasonable;

2. Include testimonials and endorsements, including but not limited to character references, statements of benefits from dental services received, or expressions of appreciation for dental services;

3. Include the use of celebrities;

4. Use dramatization or graphic illustrations to imply patient satisfaction;

5. Reveal a patient's identity or personally identifiable facts, data, or information obtained in a professional capacity;

6. After one year, include the name of any dentists formerly practicing at or associated with any advertised location;

7. Indicate or imply affiliation with any organization other than the dental practice being advertised.

I. Advertising of practice in a dental specialty:

1. The following special areas of dentistry are recognized as suitable for the announcement of specialty dental practices:

Endodontics (Endodontist);
Oral and Maxillofacial surgery (Oral Surgeon/Oral and Maxillofacial Surgeon);
Oral Pathology (Oral Pathologist);
Orthodontics (Orthodontist);
Pedodontics (Pedodontist);
Periodontics (Peroidontist);
Prosthodontics (Prosthodontist);
Public Health

a. Only licensed dentists who have successfully completed a post-doctoral course approved by the Commission

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on Accreditation in one of the specialty areas, or who announced a limitation of practice prior to 1967, or who have been approved by one of the following specialty examining boards, may announce specialty practice and may advertise as a specialist: American Board of Dental Public Health, American Board of Endodontics, American Board of Oral Surgery, American Board of Oral Pathology, American Board of Orthodontics, American Board of Pedodontics, American Board of periodontology, and American Board of Prosthodontics.

b. 7 MCAR § 3.045I. a. does not prohibit a dentist who does not meet the above education or experience criteria from restricting his practice to one or more specific areas of dentistry. Such individuals may not use the terms specialist, specialty, specializing, or limited to. The advertising must state that the services are being provided by a general dentist.

J. Failing to respond within 30 days to written communications from the Board of Dentistry or failure to make available to the board any relevant records with respect to an inquiry or complaint about the licensee's advertising practices shall constitute a violation of § 150A.08, subd. 1 (5) of the Act and 7 MCAR § 3.045. The period of 30 days shall commence on the date when such communication was sent from the Board by certified mail with return receipt requested to the address appearing in the last registration.

7 MCAR § 3.046 Display of name and certificates.

B. Every licensed dentist, upon changing his place of business, and every dental hygienist and registered dental assistant upon changing his address, shall within ~~ten~~ 30 days thereafter, furnish the ~~secretary-treasurer of the~~ Board with ~~his~~ the new address. A practicing dentist shall inform the Board of ~~his~~ the office address(es).

7 MCAR § 3.063 Corporation ~~N~~names. ~~The use of any name for a corporation other than the name or names of one or more of the participating dentists followed by the word "Chartered," "Limited," "Ltd.," "Professional Association," or "P.A." is declared to be an unlawful attempt to imply superiority or quasi public sponsorship in violation of Minn. Stat. § 319A.07 of the Minnesota Professional Corporations Act and 7 MCAR § 3.044.~~ The names of professional corporations shall be governed by Minn. Stat § 319A.07 and 7 MCAR § 3.044.

Department of Health

Proposed Amendments to Rules Governing the Minnesota Hospital Rate Review System

Notice of Hearing

A public hearing concerning the proposed amendments to the rules captioned above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on June 27, 1980, commencing at 9:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter Erickson, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8108, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411, 15.0417, and 15.052, and by 9 MCAR §§ 2.010-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

Twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

A copy of the proposed rules is attached hereto and made a part hereof. The statutory authority of the Commissioner of Health to adopt these rules is contained in Minn. Stat. § 144.703 (1978) and Minn. Stat. § 144.7021 (Supp. 1979).

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

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she

commences lobbying. A lobbyist is defined in Minn. Stat § 10A.01, subd. 11 (Supp. 1979) 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, telephone: (612) 296-5615.

April 29, 1980

George R. Pettersen, M.D.
Commissioner of Health

Amendments as Proposed

7 MCAR § 1.472 G. "Charges" means the regular amounts charged less expected bad debts, contracted allowances and discounts to patients and/or insurers, prepayment plans and self-insured groups on the patient's behalf. The terms "charges" and "rates" are synonymous for the purposes of these rules. "Gross charges" means "charges" irrespective of any discounts, deductions, or other reductions which by contract or other agreement may be applicable. The terms "gross charges," "gross acute care charges," and "gross rate" are synonymous for the purpose of these rules.

7 MCAR § 1.474 A.9. Each hospital claiming exempt status pursuant to Minn. Stat. § 144.7021 and 7 MCAR § 1.505 shall include or append a clearly identifiable statement(s) of annual gross acute care charges.

7 MCAR § 1.505 Acceptable increases in hospital gross acute care charges: Exemptions from hospital rate review.

A. Each hospital that anticipates an increase in budget year gross acute care charges which is less than the acceptable increase determined by the Commissioner of Health may claim and shall be granted, and an exemption from the filing of a rate revenue and expense report as required by 7 MCAR § 1.481 C. and as described in 7 MCAR § 1.481 C. and the review and comment provisions of 7 MCAR § 1.487 C.2., upon filing an abbreviated projected operating statement as described in 7MCAR § 1.505 E.2.

B. Commissioner of Health establishment.

1. The Commissioner of Health shall establish at the beginning of each quarter of the fiscal year (July 1, October 1, January 1, April 1), a percentage figure for each set of hospitals described in 7 MCAR § 1.505 B.3., representing an acceptable increase in gross acute care charges for the succeeding six quarters (eighteen months).

a. Each hospital being reviewed by the Commissioner of Health pursuant to Minn. Stat. § 144.701 shall be notified of each quarterly established acceptable increase in and adjustments to the acceptable increase in gross acute care charges pursuant to 7 MCAR § 1.505 D.

b. Each voluntary non-profit rate review organization approved pursuant to 7 MCAR § 1.496 shall be notified of each quarterly established acceptable increase in and adjustments to the acceptable increase in gross acute care charges and shall in turn notify each of the hospitals electing to be reviewed by said organization.

2. Basis. The single percentage figure established by the Commissioner of Health shall be the algebraic sum of the following percentages:

a. An estimate of the forthcoming annual rate of change in the average total cost of all goods and services to hospitals. This estimate shall be determined by summing the weighted change in price of each of the natural expense classifications described in 7 MCAR § 1.474 A.2.f. The weights shall be the proportionate contributions of each of these natural expense classifications to hospitals' total cost. The estimate shall explicitly recognize the expected overall level of price change in the state's economy and shall be derived from expected annual changes in the Consumer and/or Producer Price Indices, and/or relevant components of the Consumer and/or Producer Price and/or other similar economic indices published by the Bureau of Labor Statistics, United States Department of Commerce.

b. An estimate of the dollar value of the forthcoming annual statewide rate of change in:

(1) the average mix of patients utilizing hospitals, and

(2) the average intensity of services received by patients during hospital stays or visits as is consistent with the delivery of medical care which is of generally accepted quality and efficiency. The estimate shall not be less than zero nor more than .036.

For the purposes of this section:

(1) "Mix" means the types of illnesses, injuries, and conditions treated in hospitals.

(2) "Intensity of services" means the styles and

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methods of treating illness, injuries, and conditions in hospitals.

c. An estimate of the forthcoming annual rate of change in the statewide number of hospital adjusted admissions per 1,000 population as is consistent with the delivery of medical care which is of generally accepted quality and efficiency.

3. For purposes of 7 MCAR § 1.505, hospitals shall be divided into two sets, as of the effective date of these rules and every 5 years thereafter, as follows:

a. Set I shall be composed of hospitals whose combined total gross acute care charges (inpatient plus outpatient) comprise 15% of total gross acute care charges (inpatient plus outpatient) for all non-state, non-federal acute care hospitals. Determination of the hospitals to be included in this set shall be made as follows:

(1) The total gross acute care charges used shall be for each hospital's 1977 fiscal year, pursuant to 7 MCAR § 1.474 B.1.a.

(2) The hospital with the lowest total gross acute care charges shall be selected first. The hospital with the second lowest total gross acute care charges shall be selected second and its gross acute care charges shall be added to the charges of the first selected hospital. The hospital with the third lowest gross acute care charges shall be selected third and its total gross acute care charges shall be added to the sum of the gross acute care charges of the hospitals selected first and second. The procedure shall continue in direct ascending order so as to maximize the number of hospitals included, but the sum of gross patient acute care charges included shall not exceed 15% of the total gross acute care charges for all non-state and non-federal acute care hospitals subject to the provisions of Minn. Stat. §§ 144.695-144.703.

b. Set II shall be composed of all non-state, non-federal acute care hospitals subject to the provisions of Minn. Stat. §§ 144.695-144.703 and not included in Set I as described in 7 MCAR § 1.505 B.3.a.

C. Conformity.

1. Each exempted hospital, by the close of the third quarter of its fiscal year, shall assess its likely conformity with its most recently filed abbreviated projected operating statement. If the anticipated actual increase in gross acute care charges, to be reported pursuant to 7 MCAR § 1.474 A.9., for an exempt hospital is in excess of the acceptable increase in gross acute care charges under which exemption was claimed pursuant to 7 MCAR § 1.505 A., as adjusted pursuant to 7 MCAR § 1.505 D., then that hospital shall file a rate revenue and expense report for the coming budget year pursuant to 7 MCAR § 1.474 B. and 7 MCAR § 1.481 C.

2. If an exempt hospital estimates that it is likely to conform with its most recently filed abbreviated projected operating statement and does not file a rate revenue and expense report pursuant to 7 MCAR § 1.505 C.1. and it is subsequently found that the actual increase in gross acute care charges was more than .00125 in excess of the acceptable increase in gross acute care charges under which exemption was claimed pursuant to the 7 MCAR § 1.505 A., as adjusted pursuant to 7 MCAR § 1.505 D., then that hospital shall file a rate revenue and expense report pursuant to 7 MCAR § 1.481 C. no later than 150 days after the close of the fiscal year in question.

D. Adjustments to the acceptable change. Each figure in 7 MCAR § 1.505 B. shall be adjusted and updated at the close of the third quarter after its establishment according to the criteria specified in 7 MCAR § 1.505 B.2.a. and shall reflect actual changes in the overall price change level throughout the state's economy. The updated figure shall be used when judging conformity to 7 MCAR § 1.505 C.1.

E. Abbreviated projected operating statement.

1. Each hospital claiming exempt status shall file an abbreviated projected operating statement no later than the commencement of its fiscal year or up to sixty days prior to the commencement of its fiscal year. Pursuant to Minn. Stat. § 144.701, subd. 5. no change in rates may be made until sixty days have elapsed from the date of filing.

2. An abbreviated projected operating statement for hospitals in Set II, as described in 7 MCAR § 1.505 B.3.b.1. shall include the following data for the prior, current and budget years:

a. A natural expense summary consisting of total institutional expenses for:

(1) Salaries and wages,

(2) Employee benefits,

(3) Medical fees,

(4) Raw food,

(5) Drugs,

(6) Medical supplies,

(7) Other supplies,

(8) Utilities,

(9) Repairs and maintenance,

(10) Rental expense,

(11) Insurance,

(12) Interest,

(13) Depreciation—buildings and fixed equipment,

(14) Depreciation—movable equipment,

(15) Other expense.

b. Total acute care hospital operating expense.

c. Total institutional patient charges.

d. Total acute care hospital patient charges.

e. Total acute care hospital inpatient charges.

f. Total acute care hospital outpatient charges.

g. An expense analysis consisting of acute care:

(1) Direct costs for:

(a) Daily hospital services,

(b) Ancillary service,

(c) Non-revenue producing centers.

(2) Costs after allocation of non-revenue producing centers costs to:

(a) Daily hospital services,

(b) Ancillary service.

h. An acute care hospital statistical summary consisting of:

(1) Number of patient days (excluding nursery),

(2) Number of nursery days,

(3) Number of total patient days,

(4) Number of admissions,

(5) Average length of stay,

(6) Occupancy—licensed beds,

(7) Occupancy—staffed and set-up beds,

(8) Number of outpatient and emergency room visits.

i. An acute care hospital full time equivalent summary consisting of salary and numbers of full-time equivalent personnel for:

(1) Daily hospital services,

(2) Ancillary services,

(3) Non-revenue producing centers,

(4) Total hospital,

(5) Total institution.

j. An acute care bed summary consisting of:

(1) Number of licensed beds,

(2) Number of physically present beds,

(3) Number of staffed and set-up beds.

k. Depreciation fund.

(1) Beginning balance,

(2) Ending balance.

3. An abbreviated projected operating statement for hospitals in Set I, as described in 7 MCAR § 1.505 B.1.a., shall include all data elements found in 7 MCAR § 1.505 B.2.b., c., d., e., f., g., h., i., j., k.

4. The information provided on the abbreviated projected operating statement shall support the hospital's claim that it will achieve an increase in gross acute care charges less than that established by the Commissioner of Health pursuant to 7 MCAR § 1.505 B.

Office of Hearing Examiners

Proposed Amendments to Rules Relating to the Procedural Conduct of Rulemaking and Contested Case Hearings

Notice of Hearing

A public hearing concerning the proposed rule amendments will be held at the William Mitchell College of Law, Room 111, 875 Summit Avenue, Saint Paul, Minnesota, on Tuesday, June 24, 1980, commencing at 9:30 a.m. The proposed rule amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested (or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Melvin B. Goldberg, Hearing Examiner, Room 326, William Mitchell College of Law, 875 Summit Avenue, Saint Paul, Minnesota 55105, telephone (612) 227-9171, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at Hearing Examiner Goldberg's office and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The proposed rule amendments regarding rulemaking would modify and add to the content of the Notice of Hearing, would clarify the use of the Statement of Need and Reasonableness at the hearing, would clarify the agency's burden in regard to existing rules when amendments are proposed, would modify and add to the documents to be filed 25 days prior to hearing, would provide a disqualification procedure for hearing examiners, would modify registration at the hearing, would delete the

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incorporation by reference rule effective July 1, 1981, would clarify the meaning of the phrase "recommended by the Hearing Examiner" in Minn. Laws 1980, ch. 615, § 6, subd. 4e, would outline a revised procedure for submission of a rule to the Chief Hearing Examiner, would clarify what rules are compared in determining a substantial change, and would make other housekeeping changes.

The proposed amendments regarding contested cases would authorize a summary disposition of cases, would allow prefiled testimony, would simplify Chief Hearing Examiner approval of shortened notice periods, would require a Notice of Appearance to be served upon all parties and in all hearings, would clarify when a default occurs, would permit consideration of the Rules of Civil Procedure, would conform the evidence rules to statutory changes, would clarify the burden of proof, would require hearing examiner orders and continuance requests to be served on a non-party agency, would clarify the meaning of "late filed exhibits," would permit a Notice of and Order for Rehearing to be served less than 30 days before the Rehearing, and would make other housekeeping changes.

The agency's authority to adopt the proposed rule amendments is contained in Minn. Stat. § 15.052, subd. 4 (1978). Several of the proposed amendments are required by the passage of Minn. Laws 1980, ch. 615.

The agency estimates that there will be no cost to local public bodies in the State to implement the amendments for the two years immediately following its adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule amendments are now available and at least one free copy may be obtained by writing to Duane R. Harves, Chief Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8100. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments, contact Chief Hearing Examiner Harves.

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

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

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

May 1, 1980.

Duane R. Harves
Chief Hearing Examier
by George A. Beck
Hearing Examiner

Amendments as Proposed

9 MCAR § 2.102 Initiation of Hearing. Any agency desiring to initiate a rule hearing pursuant to Minn. Stat. §§ 15.0411 through ~~15.051~~ 15.0417 and § 15.052 shall first file with the Chief Hearing Examiner or his designee the following documents:

A. A copy of the proposed rule or rules.

B. ~~The~~ An Order for Hearing ~~proposed to be issued. The Order for Hearing~~ which must contain the following:

1. A proposed time, date and place for the hearing to be held.

2. A statement that the Notice of Hearing shall be given to all persons who have registered with the ~~Secretary of State~~ agency for that purpose and a statement that the Notice of Hearing shall be published in the *State Register*.

3. The signature of the person authorized to order a hearing. If a board is ordering the hearing, the person signing the Order must be so authorized and a document of authority must be attached to the Order for Hearing.

C. The Notice of Hearing proposed to be issued which must contain the following:

1. A proposed time, date and place for the hearing to be held.

2. A statement that all interested or affected persons will have an opportunity to participate.

3. A statement or a description of the subjects and issues involved. If the proposed rules themselves are not included with the Notice of Hearing, then the Notice must clearly indicate the nature and extent of the proposed rules and a statement shall be included announcing the availability and the means of obtaining upon request at least one free copy of the proposed rules.

4. A citation of the agency's statutory authority to promulgate the proposed rules.

5. A statement describing the manner in which interested persons may present their views and advising persons that

the proposed rule may be modified as a result of the hearing process.

6. A statement advising interested persons that lobbyists must register with the State Ethical Practices Board, which statement shall contain a summary of the statutory definition of a lobbyist and indicate that questions should be directed to the board, giving the address and telephone number thereof.

7. A statement that written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, ~~or for~~ and a statement that the comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner at the hearing.

8. A separate paragraph which shall read as follows:

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

9. A separate paragraph which will read as follows:

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of ~~Hearing Examiners~~ Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence and argument which is anticipated to ~~will~~ be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of ~~Hearing Examiners~~ Administrative Hearings at a minimal charge.

10. If required by Minn. Stat. § 15.0412, subd. 7, a statement relating to the expenditure of public monies by local public bodies.

11. A statement that the rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules) and a statement that questions about procedure may be directed to the hearing examiner.

D. A statement by the agency of the number of persons expected to attend the hearing and the estimated length of time that will be necessary for the agency to present its evidence at the hearing.

Within ten days of receipt of the aforementioned documents, the Chief Hearing Examiner shall appoint a hearing examiner to preside at the hearing and the hearing examiner shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests and shall advise the agency as to whether or not the proposed Notice of Hearing is proper as required by Minn. Stat. § 15.052, subd. 3.

9 MCAR § 2.104 Statement of Need and Reasonableness. Each agency desiring to adopt rules shall prepare a Statement of Need and Reasonableness which shall be prefiled pursuant to 9 MCAR § 2.105. The Statement of Need and Reasonableness shall be a document containing, at the minimum, a summary of all of the evidence and argument which is anticipated to be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules, including citations to any statutes or case law to be relied upon, citations to any economic, scientific or other manuals or treatises to be utilized at the hearing, and a list of any expert witnesses to be called to testify on behalf of the agency, together with a brief summary of the expert opinion to be elicited. The Statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public. To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

The Statement shall be prepared with sufficient specificity so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the rule/rules as proposed. Presentation of evidence or testimony (other than bona fide rebuttal) not summarized in the Statement of Need and Reasonableness may result in the hearing examiner, upon proper motion made at the hearing by any interested person, recessing the hearing to a future date in order to allow all interested persons an opportunity to prepare testimony or evidence in opposition to such newly presented evidence or testimony, which recessing shall be for a period not to exceed 25 calendar days, unless the 25th day is a Saturday, Sunday or legal holiday, in which case, the next succeeding working day shall be the maximum date for the resumed hearing.

If the agency so desires, the Statement of Need and Reasonableness may contain the verbatim affirmative presentation by the agency ~~which may then be either read at the hearing or, if all persons appearing at the hearing have had an opportunity to review the Statement,~~ and, provided that copies are available for review at the hearing, may be introduced as an exhibit into the record as though read. In such instance, agency personnel or other persons thoroughly familiar with the rules and the agency's Statement shall be available at the hearing for questioning by the hearing examiner and other interested persons or to

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briefly summarize all or a portion of the Statement of Need and Reasonableness if requested by the Hearing Examiner.

9 MCAR § 2.105 Documents to be filed before hearing. At least 25 days prior to the date and time of the hearing, the agency shall file with the ~~Chief~~ hearing examiner ~~or his designee~~ assigned to the hearing copies of the following documents:

~~A. The Order for Hearing.~~

A. ~~B.~~ The Notice of Hearing as mailed.

B. ~~C. The affidavit of receipt of the Secretary of State's list.~~ The agency's certification that the mailing list required by Minn. Stat. § 15.0412, subd. 4, which was used for this hearing, was accurate and complete.

C. ~~D.~~ An Affidavit of Mailing of the Notice to all persons on the ~~Secretary of State's~~ agency's list.

D. An Affidavit of Additional Notice if such discretionary notice was given pursuant to Minn. Stat. § 15.0412, subd. 4.

E. The Statement of Need and Reasonableness.

F. The petition requesting a rule hearing, if one has been filed pursuant to Minn. Stat. § 15.0415.

G. All materials received following a notice made pursuant to Minn. Stat. § 15.0412, subd. 6, together with a citation to said notice.

H. The names of agency personnel who will represent the agency at the hearing together with the names of any other witness solicited by the agency to appear on its behalf.

I. A copy of the *State Register* in which the notice and rules or rule amendments were published.

9 MCAR § 2.106 Disqualification. The hearing examiner shall withdraw from participation in a rulemaking proceeding to which he has been assigned if, at any time, he deems himself disqualified for any reason. Upon the filing in good faith by an affected person of an affidavit of prejudice against the hearing examiner, the Chief Hearing Examiner shall determine the matter as a part of the record provided that the affidavit shall be filed no later than five days prior to the date set for hearing.

9 MCAR § ~~2.186~~ 2.107 Conduct of hearings. All hearings held pursuant to Minn. Stat. § 15.0412 shall proceed substantially in the following manner:

A. All persons ~~intending to present evidence or questions, other than agency personnel previously disclosed to the Hearing Examiner under 9 MCAR § 2.105,~~ attending shall register with the hearing examiner prior to the presentation of evidence or questions by writing their names, addresses, telephone numbers and the names of any individuals or associations that the persons represent in connection with the hearing, on a register to be provided by the hearing examiner. The ~~Hearing Examiner shall keep a second~~ register ~~which~~ shall include a section where persons may indicate their desire to be informed of the date on which the hearing examiner's report will be available and the date on which the agency submits the record to the Attorney General.

B. The hearing examiner shall convene the hearing at the proper time and shall explain to all persons present the purpose of the hearing and the procedure to be followed at the hearing. The hearing examiner shall notify all persons present that the record will remain open for five working days following the hearing, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner, for the receipt of written statements concerning the proposed rule or rules.

C. The hearing examiner shall advise the persons present of the requirements of Minn. Stat. ch. 10A concerning the registration of lobbyists.

D. The agency representatives and any others who will be presenting the agency position at the hearing shall identify themselves for the record.

E. The agency shall make available copies of the proposed rule at the hearing.

F. The agency shall introduce its exhibits relevant to the proposed rule including written material received prior to the hearing.

G. The agency shall make its affirmative presentation of facts showing the need for and the reasonableness of the proposed rule and shall present any other evidence it deems necessary to fulfill all relevant, substantive and procedural, statutory or regulatory requirements.

H. Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses.

I. Interested persons shall be given an opportunity to be heard on the proposed rule and/or to present written evidence. All interested persons submitting oral statements are subject to questioning by representatives of the agency.

J. The hearing examiner may question all persons, including the agency representatives.

K. The agency may present any further evidence that it deems appropriate in response to statements made by interested persons. Upon such presentation by the agency, interested persons may respond thereto.

L. Consistent with law, the hearing examiner shall be authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness and economy, including but not limited to, the power to:

1. Preside at the hearing;

2. Administer oaths or affirmations when he deems it appropriate;

3. Hear and rule on objections and motions;

4. Question witnesses where he deems it necessary to make a complete record;

5. Rule on the admissibility of evidence and strike from the record objectionable evidence.

9 MCAR § ~~2.107~~ 2.108 The record. The record shall be closed upon the last date for receipt of written statements. The

record in each hearing shall include all of the documents enumerated in 9 MCAR § 2.105, all written comments or other evidence received prior to, during or subsequent to the hearing but prior to the close of the record, and a tape recording of the hearing itself, unless ~~the Chief Hearing Examiner has determined that the use of a reporter is more appropriate~~ a court reporter has taken the proceedings. In the event a transcript of the proceedings has been prepared, it shall be part of the record, and copies will be available to persons requesting them at a reasonable charge. The charge for transcripts shall be set by the Chief Hearing Examiner, and all monies received for transcripts shall be payable to the State Treasury and shall be deposited in the Office of ~~Hearing Examiners'~~ Administrative Hearings' account in the State Treasury. The agency and any other persons so requesting of the hearing examiner shall be notified of the date of the completion of the transcript.

9 MCAR § ~~2.108~~ 2.109 ~~Incorporation by reference.~~ ~~When an agency desires approval of the Chief Hearing Examiner to incorporate certain materials by reference in its rules, such approval must be obtained prior to the publication of the proposed rules in the *State Register*. The agency shall submit its request in writing and shall include with the request, the materials sought to be incorporated and shall further indicate to the Chief Hearing Examiner where the materials are conveniently available for viewing, copying and acquisition by interested persons. The Chief Hearing Examiner shall have ten working days to approve or disapprove the request.~~

(Repealed effective 7-1-81 provided that Minn. Laws 1980, ch. 615 § 43 is not repealed or substantially amended prior to that time.)

9 MCAR § ~~2.109~~ 2.110 Report of the hearing examiner. Subsequent to the close of the record ~~and the completion of the transcript of the hearing~~, the hearing examiner shall make his report pursuant to Minn. Stat. § 15.052, subd. 3, and unless the approval of the Chief Hearing Examiner is required pursuant to Minn. Stat. § 15.0412, subd. 4d, shall file the original of said report, together with the complete record of the proceedings, with the agency. Both the agency, if authorized by statute, and the Office of ~~Hearing Examiners~~ Administrative Hearings shall make a copy of said report available to any interested person upon request at a reasonable charge. The phrase "recommended by the Hearing Examiner" as used in Minn. Stat. § 15.0412, subd. 4e, shall mean those changes in the rule, if any, and based upon the record, which the hearing examiner concludes are required in order to make the rule needed and/or reasonable and which would not constitute a substantial change. Where the hearing examiner identifies more than one option from which the agency may choose, then each of the options is deemed to be "recommended by the Hearing Examiner" provided that the hearing examiner has found, based upon the record, that the option is needed and reasonable and that adoption of the option would not constitute a substantial change.

9 MCAR § ~~2.110~~ 2.111 Submission of rule to Chief Hearing Examiner.

A. If the Chief Hearing Examiner's approval of the hearing examiner's report is required pursuant to Minn. Stat. § 15.0412, subd. 4d, the hearing examiner shall submit the report and the record to the Chief Hearing Examiner prior to filing with the agency as required by 9 MCAR § 2.110.

B. Pursuant to Minn. Stat. § 15.0412, subd. 4e, ~~T~~the agency shall, if it proposes to adopt the rules with changes other than as recommended by the hearing examiner ~~as originally proposed or amended,~~ submit ~~a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed,~~ the complete hearing record and a copy of the rules as proposed to be adopted, showing the changes, to the Chief Hearing Examiner~~, for review pursuant to Minn. Stat. § 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General~~.

C. The Chief Hearing Examiner shall complete his review and submit his report, along with the complete record, to the agency ~~on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412, subd. 4,~~ within ten calendar days. ~~The agency will be responsible for filing the rules with the Attorney General.~~

9 MCAR § ~~2.111~~ 2.112 Substantial change. ~~Reconvened Hearings. Should the Chief Hearing Examiner find, after a review of the record, that the proposed final rule is substantially different from the rule which was proposed at the public hearing, or should the Chief Hearing Examiner find that the agency failed to meet the requirements of Minn. Stat. § 15.0412, subd. 4, or these rules, then the Chief Hearing Examiner shall forthwith notify the agency and the Attorney General of said Finding. The agency shall then either withdraw the proposed final rule or reconvene the rule hearing. The reconvening of the rule hearing shall comply with all statutory and regulatory requirements as if a new rule hearing were being held.~~ In determining whether the proposed final rule is substantially different, the hearing examiner and the Chief Hearing Examiner shall consider the degree to which it:

A. Affects classes of persons not represented at the previous hearing; or

B. Goes to a new subject matter of significant substantive effect; or

C. Makes a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing; or

D. Results in a rule fundamentally different from that contained in the Notice of Hearing.

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In making his substantial change determination pursuant to Minn. Stat. § 15.0412, subd. 4d, the hearing examiner shall compare the proposed rule or rule amendment as published in the *State Register* with the rule or rule amendment as last proposed by the agency prior to the close of the record. In making his substantial change determination pursuant to Minn. Stat. § 15.0412, subd. 4e, the Chief Hearing Examiner shall compare the rule or rule amendment as published in the *State* Register with the final rule or rule amendment as adopted by the agency.

9 MCAR § ~~2.112~~ 2.113 Effective date. These rules shall be effective for all rule proceedings initiated five working days after publication of these rules in the *State Register*.

9 MCAR §§ ~~2.113~~ 2.114-2.199 Reserved for future use.

9 MCAR § 2.201 Scope and purpose. The procedures contained herein shall govern all contested cases ~~held by any agency of state government as defined in Minn. Stat. § 15.0411, subd. 2.~~ required to be conducted by the Office of Administrative Hearings.

9 MCAR § 2.203 Hearing examiners.

A. Request for assignment. Any agency desiring to order a contested case hearing shall first file with the Chief Hearing Examiner a request for assignment of a hearing examiner together with the Notice of and Order for hearing proposed to be issued which shall include a proposed time, date and place for the hearing.

B. Assignment. Within ~~ten~~ 10 days of the receipt of a request pursuant to 9 MCAR § 2.203 A., the Chief Hearing Examiner shall assign a hearing examiner to hear the case, and the hearing examiner shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons.

C. Duties. Consistent with law, the hearing examiner shall perform the following duties:

1. Grant or deny a demand for a more definite statement of charges.

2. Grant or deny requests for discovery ~~or for~~ including the taking of depositions.

3. Receive and act upon requests for subpoenas where appropriate.

4. Hear and rule on motions.

5. Preside at the contested case hearing.

6. Administer oaths and affirmations.

7. Grant or deny continuances.

8. Examine witnesses where he deems it necessary to make a complete record.

9. Prepare findings of fact, conclusions and recommendations.

10. Make preliminary, interlocutory or other orders as he deems appropriate.

11. Recommend a summary disposition of the case where there is no genuine issue as to any material fact or recommend dismissal where the case has become moot or for other reasons.

12. Require that testimony be prefiled in while or in part.

13. ~~11.~~ Do all things necessary and proper to the performance of the foregoing.

14. ~~12.~~ In his discretion, perform such other duties as may be delegated to him by the agency ordering the hearing.

9 MCAR § 2.204 Commencement of a contested case. A contested case is commenced, subsequent to the assignment of a hearing examiner, by the service of a Notice of and Order for Hearing by the agency.

A. The Notice and Order. Unless otherwise provided by law, a Notice of and Order for Hearing, which shall be a single document, shall be served upon all parties and shall contain, among other things, the following:

1. The time, date and place for the hearing.

2. Name and address and telephone number of the hearing examiner.

3. A citation to the agency's statutory authority to hold the hearing and to take the action proposed.

4. A statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules.

5. Notification of the right of the parties to be represented by legal counsel, by a person of their choice, or by themselves if not otherwise prohibited as the unauthorized practice of law.

6. A citation to these rules, ~~and~~ to any applicable procedural rules of the agency, and to the contested case provisions of Minn. Stat. ch. 15.

7. A statement advising the parties of the name of the agency official or member of the Attorney General's staff to be contacted to discuss informal disposition pursuant to 9 MCAR § 2.207 or discovery pursuant to 9 MCAR § 2.214.

8. ~~In cases wherein the agency is a party, a~~ A statement advising the parties that a Notice of Appearance must be filed with the Hearing Examiner within 20 days of the date of service of the Notice of and Order for Hearing if a party intends to appear at the hearing unless the hearing date is less than 20 days from the issuance of the Notice of and Order for Hearing.

9. A statement advising existing parties that failure to appear at the hearing may result in the allegations of the Notice of and Order for Hearing being taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues proved.

B. Service. Unless otherwise provided by law, the Notice of and Order for Hearing shall be served not less than 30 days prior to the hearing. Provided, however, that a shorter time may be allowed, where it can be shown to the Chief Hearing Examiner that a shorter time is ~~required~~ in the public interest and that ~~no~~

interested ~~person will be adversely affected~~ persons are not likely to be prejudiced.

C. Publication. Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the Notice of and Order for Hearing shall be published as required by law or as ordered by the agency, and copies of the Notice of and Order for Hearing may be mailed by the agency to persons known to have a direct interest.

D. Amendments. At any time prior to the close of the hearing, the agency may file and serve an amended Notice of and Order for Hearing, provided that, should the amended Notice and Order raise new issues or allegations, the parties shall have a reasonable time to prepare to meet the new issues or allegations if requested.

E. Alternative. With the prior written concurrence of the Chief Hearing Examiner, an agency may substitute other documents and procedures for the Notice of and Order for Hearing provided that the documents and procedures inform actual and potential parties of the information contained in 9 MCAR § 2.204 A.1.-9. above.

9 MCAR § 2.205 Notice of Appearance. Each party intending to appear at a contested case hearing ~~wherein the agency is a party~~ shall file with the hearing examiner and serve upon all other known parties a Notice of Appearance which shall advise the hearing examiner of the party's intent to appear and shall indicate the title of the case, the agency ordering the hearing, the party's current address and telephone number, and the name, office address, and telephone number of the party's attorney or other representative. The Notice of Appearance shall be filed with the hearing examiner within 20 days of the date of service of the Notice of and Order for Hearing, except that, where the hearing date is less than 20 days from the commencement of the contested case, the Notice of Appearance shall not be necessary. The failure to file a Notice may, in the discretion of the hearing examiner, result in a continuance of the hearing if the party failing to file appears at the hearing. ~~The~~ A Notice of Appearance form shall be included with the Notice of and Order for Hearing ~~in all applicable cases~~ for use by the party served.

9 MCAR § 2.208 Default. The agency may dispose of a contested case adverse to a party which defaults. Upon default, the allegations of or the issues set out in the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further ~~proof~~ evidence. A default occurs when a party fails to appear at a hearing or fails to comply with any interlocutory orders of the hearing examiner.

9 MCAR § 2.213 Preharing procedures.

A. Prehearing conference.

1. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined, to consider amendment of the agency's order if necessary, to obtain stipulations in regard to foundation for testimony or exhibits, to consider the proposed witnesses for each party, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

2. Procedure. Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference prior to each contested case hearing. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing examiner.

B. Motions. Any application to the hearing examiner for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions provided for in these rules require a written notice, to all parties and to the agency, to be served five days prior to ~~their~~ the submission of the motion to the hearing examiner, except where impractical. The hearing examiner may, at his ~~discretion.~~ discretion, require a hearing before an order on the motion will be issued. All orders on such motions, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the agency if it is not a party. In ruling on motions where these rules are silent, the hearing examiner may consider the Rules of Civil Procedure for the District Courts of the State of Minnesota to the extent that it is appropriate to do so.

9 MCAR § 2.217 The hearing.

A. Rights of parties. All parties shall have the right to present evidence, rebuttal testimony and argument with respect to the issues and to cross-examine witnesses.

B. 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, the hearing examiner may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

C. Rules of evidence.

1. General rules. The hearing examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable prudent persons

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are accustomed to rely in the conduct of their serious affairs. The hearing examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or unduly repetitious may be excluded.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents ~~(except tax returns and tax reports)~~ in the possession of the agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence ~~(except tax returns and tax reports)~~ shall be considered in the determination of the case.

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

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

5. The burden of and standard of proof. The party ~~initiating the contested case~~ proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.

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

D. The record.

1. The hearing examiner shall ~~prepare and~~ maintain the official record in each contested case until the issuance of his final report, at which time the record shall be sent to the agency.

2. What the record shall contain. The record in a contested case shall contain:

a. All pleadings, motions and orders;

b. Evidence received or considered;

c. Offers of proof, objections and rulings thereon;

d. The hearing examiner's findings of fact, conclusions and recommendations;

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

f. The transcript of the hearing, if one was prepared.

3. The transcript. The verbatim record shall be transcribed if requested by ~~any person~~ the agency, a party or in the discretion of the Chief Hearing Examiner. If a transcription is made, the Chief Hearing Examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the Chief Hearing Examiner and all monies received for transcripts shall be payable to the State Treasurer and shall be deposited in the State Office of ~~Hearing Examiners~~ Administrative Hearings' Account in the State Treasury.

E. Continuances. A request for continuance shall be made in writing to the hearing examiner and shall be served upon all parties of record and the agency if it is not a party.

1. A request for continuance filed not less than five days prior to the hearing may, in the discretion of the hearing examiner, be granted upon a showing of good cause. Due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

2. A request for a continuance filed within five days of the hearing shall be denied unless good cause exists and the reason for the request could not have been earlier ascertained.

3. During a hearing, if it appears in the interest of justice that further testimony should be received, the hearing examiner, in his discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient.

F. Motions to the agency. No motions shall be made directly to or be decided by the agency subsequent to the assignment of a hearing examiner and prior to the completion and filing of the hearing examiner's report unless the motion is certified to the agency by the hearing examiner. Uncertified motions shall be made to the hearing examiner and considered by the agency in its consideration of the record as a whole subsequent to the filing of the hearing examiner's report.

Any party may request that a pending motion or a motion decided adversely to that party by the hearing examiner before or during the course of the hearing be certified by the hearing examiner to the agency. In deciding what motions should be certified, the examiner shall consider the following:

1. Whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or

2. Whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or

3. Whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or

4. Whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or

5. Whether it is necessary to promote the development of the full record and avoid remanding.

G. Hearing procedure.

1. Hearing examiner conduct. The hearing examiner shall not communicate, directly or indirectly, in connection with

any issue of fact or law with any person or party including the agency concerning any pending case, except upon notice and opportunity for all parties to participate.

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

a. After opening the hearing, the hearing examiner shall ~~indicate~~ ensure that the parties are aware of the procedural rules for the hearing including the following:

(1) All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the attorney for the party whose witness is being cross-examined, the hearing examiner may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with disclosure of all relevant testimony and information.

(2) All parties have a right to be represented by an attorney at the hearing.

(3) The rules of evidence as set forth in 9 MCAR § 2.217 C.1.

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. The party with the burden of proof may make an opening statement. All other parties may make such statements in a sequence determined by the hearing examiner.

d. After any opening statement, the party with the burden of proof shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing examiner.

e. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing examiner.

f. When all parties and witnesses have been heard, opportunity shall be offered to present final argument, in a sequence determined by the hearing examiner. Such final argument may, in the discretion of the hearing examiner, be in the form of written memoranda or oral argument, or both. Final argument need not be recorded, in the discretion of the hearing examiner. Written memoranda may, in the discretion of the hearing examiner, be submitted simultaneously or sequentially and within such time periods as the hearing examiner may prescribe.

g. After final argument, the hearing shall be closed or continued at the discretion of the hearing examiner. If continued, it shall be either (a) continued to a certain time and day, announced at the time of the hearing and made a part of the record, or (b) continued to a date to be determined later, which must be upon not less than five days' written notice to the parties.

h. The record of the ~~hearing~~ contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits ~~(if requested by the examiner)~~ which the parties and the hearing examiner have agreed should be received into the record, whichever occurs latest.

3. Participation by agency head. An agency which is a party to a contested case may only participate in the hearing ~~by the giving of testimony and~~ through its designated representative or counsel. Where the agency is not a party and participates in the hearing in a neutral or quasi-judicial capacity, the agency head or a member of the governing body of the agency or his delegate may engage in such examination of witnesses as the hearing examiner deems appropriate.

H. 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 ~~Hearing Examiners~~ Administrative Hearings or at its discretion, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the hearing examiner prior to the opening of the hearing and then subject to such conditions as the hearing examiner 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 such interference or disruption or threat thereof, the hearing examiner shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

9 MCAR § 2.218 The hearing examiner report and the agency decision.

A. Basis for the report and the decision.

1. The record. No factual information or evidence ~~, except tax returns and tax reports,~~ which is not a part of the record shall be considered by the hearing examiner or the agency in the determination of a contested case.

2. Administrative notice. The hearing examiner and agency may take administrative notice of general, technical or scientific facts within their specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4.

B. Hearing examiner's report. Following the close of the record, the hearing examiner shall make his report pursuant to

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Minn. Stat. §§ 15.0412, subd. 4d, and 15.052, subd. 3, and, upon completion, a copy of said report shall be served upon all parties by personal service, by First Class mail or by depositing it with the Central Mailing Section, Publications Division, Department of Administration.

C. Agency decision. Following receipt of the hearing examiner's report, the agency shall proceed to make it final decision in accordance with Minn. Stat. §§ 15.0421 and 15.0422, and shall ~~send~~ serve a copy of ~~such~~ its final order ~~to the Office of Hearing Examiners~~ upon the hearing examiner by First Class mail.

9 MCAR § 2.219 Rehearing. An agency Notice of and Order for Rehearing shall be served on all parties in the same manner prescribed for the Notice of and ~~t~~Order for ~~h~~Hearing provided that the hearing examiner may permit service of the Notice and Order for Rehearing less than 30 days prior to rehearing. The rehearing shall be conducted in the same manner prescribed for a hearing.

ADOPTED RULES

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

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

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

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

Department of Labor and Industry
Occupational Safety and Health Division

Adoption by Reference of Federal OSHA Standards

Pursuant to Minn. Stat. § 182.655 (1978), notice was duly published at *State Register*, Volume 4, Number 38, page 1530 (4 S.R. 1530), dated March 24, 1980, specifying the establishment and modification of certain Occupational Safety and Health Standards. No written comments or requests for hearing on objections have been received concerning the adoption of said standards.

Therefore, those occupational safety and health standards are hereby adopted and are identical in every respect to their proposed form.

Harry D. Peterson
Commissioner

Department of Labor and Industry
Prevailing Wage Division

Adopted Rules Governing Prevailing Wage Determinations as Amended

The rules proposed and published at *State Register*, Volume 4, Number 24, pp. 977-990, December 17, 1979 (4 S.R. 977) are now adopted with the following amendments.

Please note: 8 MCAR § 1.8016, although published at the proposed stage, was not amended, nor was it amended when this set of rules was adopted. It is reprinted here for clarity, and is designated "no change."

Rules As Amended

8 MCAR § 1.8001 Authority, scope and purpose.

~~A.~~ These rules are promulgated pursuant to the authority provided to the Minnesota Department of Labor and Industry by the provisions of Minn. Stat. § 175.171, subd. 2 ~~(1974)~~ and the requisites of Minn. Stat. § 15.0412, subd. 3 ~~(Supp. 1975)~~. Their

purpose is to provide procedures for prevailing wage determinations.

~~B. Minn. Stat. § 177.43 (Supp. 1975) requires the Department of Labor and Industry to ascertain the prevailing wage rates for all trades and occupations required in any contemplated state project. Thereafter, the state agency contemplating the project must include these rates in their proposed contracts.~~

~~Minn. Stat. § 177.44 (1974) requires the Department of Labor and Industry to conduct investigations and hold public hearings necessary to define classes of laborers and mechanics, and to inform itself as to the wage rates prevailing in all areas of the state for all classes of laborers, workmen and mechanics commonly employed in highway construction. The Commissioner must determine and certify these prevailing wage rates at least once a year and these rates must be contained in all highway construction contracts to which the state is a party.~~

~~These rules and regulations apply to all wage rate determinations made pursuant to Minn. Stat. §§ 177.43 and 177.44.~~

~~Minn. Laws 1976, Chapter 331, §§ 37 and 38 (1976) provide that an aggrieved party may request a reconsideration of any wage rate determination. These rules are intended to implement these provisions and shall apply to all future requests for wage rate reconsiderations.~~

~~C. These rules implement and make specific the procedures to be utilized in determining prevailing wage rates for each "area" as that term is defined in Minn. Stat. § 177.42 (1974). Their purpose is to provide consistent guidelines in making these determinations and to assure that the wages of laborers, workmen and mechanics engaged in state projects are comparable to wages paid for similar work in the community as a whole, consistent with the purpose and intent of the prevailing wage law.~~

~~D. These rules may be cited as the Rules and Regulations of the Prevailing Wage Division, § 1.8001 through § 1.8016.~~

8 MCAR § 1.8002 Definitions. For purposes of all wage rate determinations, the following definitions shall apply:

~~A. Area means the county or other locality from which labor for any project would normally be secured. (Minn. Stat. § 177.42, subd. 3 (1974)).~~

~~B. Wage rate means the basic hourly rate of pay plus any contribution for health and welfare benefits, vacation benefits, pension benefits or any other economic benefit paid for work done.~~

~~C. Prevailing wage rate means the wage rates paid to the largest number of workmen within a given class of labor.~~

~~D. Largest number of workmen means the largest number of workmen engaged in the same class of labor within the area considered as determined in accordance with these rules.~~

~~E. Project means erection, construction, remodeling or repairing any public building or other public work financed in whole or part by state funds.~~

A. Highway and heavy construction. All construction projects which are similar in nature to those projects based upon bids as provided under Minn. Stat § 161.32 for the construction or maintenance of highways or other public works and includes roads, highways, streets, airport runways, bridges, power plants, dams and utilities.

B. Commercial construction. All building construction projects exclusive of residential construction.

C. Residential construction/agricultural construction. All construction, remodeling or repairing of single or two family homes and structures appurtenant thereto including agricultural or farming buildings appurtenant to private farm residences when utilized to carry on primary farming operations.

D. As utilized in these rules the term "project" means the erection, construction, remodeling or repairing of commercial, residential or public buildings or any highway and heavy construction.

E. State project. Those projects which are subject to the requirements of Minn. Stat. § 177.41-44.

~~8 MCAR § 1.8003 Classes of Labor.~~

~~A. In each area to be considered, a prevailing wage rate shall be determined for each individual class of labor within the following general classifications.~~

~~1. Laborers: each class of labor customarily used on highway and other construction projects within this general classification shall constitute a separate class of labor.~~

~~2. Power equipment operators: each class of power equipment operators customarily used on highway and other construction projects within this general classification shall constitute a separate class of labor.~~

~~3. Truck drivers: each class of driver based upon the nature of the vehicle driven shall constitute a separate class of labor.~~

~~4. Special crafts: the following crafts shall constitute separate classes of labor; Bricklayers, Carpenters, Cement Masons, Linemen, Electricians, Iron Workers, Painters, Pipefitters, Plumbers, Plasterers, Roofers, Sheet Metal Workers, and other labor or work which is customarily considered as an individual trade or craft based upon its character and skills required.~~

~~B. The classifications and classes of labor described herein are for illustrative and guidance purposes only and are not~~

~~intended to limit or extend the number of classes requiring wage rates in a particular area.~~

8 MCAR § 1.8003 Prevailing wage determinations.

A. The department shall, at least once each calendar year, determine and certify prevailing wage rates applicable to state projects which are similar in nature to highway and heavy construction projects.

B. The department shall, upon the request of any state agency that is contemplating the advertisement for bids on a state project which is similar in nature to commercial construction projects, determine and certify prevailing wage rates applicable to said state project if a certification has not been made within the twelve-month period prior to the request.

C. Prevailing wage rates applicable to state projects which are similar in nature to residential construction projects will be made upon request of a governmental official involved in the bidding process for a state project who desires such rates for insertion in a specific contract proposal.

D. Each wage survey shall be based upon work performed in the preceding calendar year and the resulting wage determinations will be certified following the close of the survey.

E. Except as provided in subpart F. herein, all prevailing wage determinations shall be based upon the survey procedures contained in these rules.

F. The department shall, pursuant to Minn. Stat. §§ 177.43, subd. 4, and 177.44, subd. 3, conduct public hearings when necessary to determine county wage rate determinations. Such hearings shall be conducted within the county for which wage rates are being determined and shall be conducted as contested cases by a hearing examiner from the State Office of Hearing Examiners.

~~**8 MCAR § 1.8004 General guidelines for all determinations.**~~

~~A. Each prevailing wage rate shall be determined at least once a year and shall be based upon work performed within the preceding one year period. If in the opinion of the commissioner, a change in the certified prevailing wage rate is required, the commissioner may at any time certify that change in accordance with the requisites of these rules.~~

~~B. For purposes of determining individual prevailing wage rates, each county shall comprise a separate "area" and each prevailing wage rate shall be based solely upon work done in that county except as provided under subparts 1 and 2 herein.~~

~~1. Where the work done or wage rates paid in a given county are insufficient to determine the prevailing wage rate or where an individual classification is insufficient, the prevailing wage rate(s) for that county shall be based upon wage rates paid within the adjacent counties.~~

~~2. Data shall be considered insufficient where the work done in a county for the prior year consists of less than $25,000 in total project cost.~~

~~C. All individual prevailing wage rates shall be based solely upon work performed within the corresponding class of labor.~~

~~D. All prevailing wage rates for each class of law shall reflect the wage rate paid to the largest number of workers.~~

~~1. The largest number of workers shall be determined for each class of labor within each county or area under consideration. Thus where the same worker performs work on more than one project or in more than one classification within the area, he shall be counted only once.~~

~~2. Where a project involves work in more than one county, the county where the greater part of the work was performed shall be determined. The project shall only be utilized in determining wage rates for the county where the greatest part of the work was performed.~~

~~E. All initial determinations made in accordance with these rules shall be based upon a physical survey of the county or area under consideration except for those determinations which may be made in accordance with § 1.8008. Thereafter, additional wage determinations may be made in accordance with § 1.8008.~~

8 MCAR § 1.8004 Basis for each determination.

A. Individual prevailing wage rates shall be made on a county by county basis and each prevailing wage rate shall be based upon work performed solely within the applicable class of labor.

B. For each county survey, the department shall issue wage determinations for all classes of labor commonly or customarily used in similar construction projects.

1. Where work has been performed in a class of labor in the county during the time period of the survey, the wage determination for that class of labor shall be based solely upon that work.

2. Where work was performed in any other classes of labor in two or more of the Minnesota counties physically adjacent to the county being surveyed, the department shall consider those classes of labor as ones which are customarily or commonly used in construction projects and determine wage rates for those classes in accordance with paragraphs 4. and 5. herein.

3. Where no work was performed in a class of labor either in the county being surveyed or in two or more of the adjacent Minnesota counties, no wage rate will be determined for that class of labor.

4. In looking to adjacent counties for determining additional classes of labor for which prevailing wage rates should be made, only those adjacent Minnesota counties for which surveys are either in progress or for which wage rates have been determined by survey within the preceding 12 months shall be utilized.

5. In determining a wage rate for a class of labor based upon work performed in adjacent counties, all workers in the class of labor in all the adjacent counties shall be totaled and the wage rate shall be based upon the wage rate paid to the largest number as determined in accordance with these rules.

C. Following certification of wage rates for a county, no wage rates for additional classifications of labor shall be made for that

county until such time that a subsequent survey of the county demonstrates utilization of those additional classes of labor.

~~**8 MCAR § 1.8005 Determinations based upon physical surveys.**~~

~~Where the prevailing wage rates are based upon a physical survey of the county, that survey shall include the following procedures:~~

~~A. Contacting county, state district, and city engineers for information pertaining to projects upon which work was performed in the county and the names of contractors who performed work on these projects.~~

~~B. Contacting each accessible contractor who performed work in the county and auditing his payroll records relating to that work.~~

~~C. Collecting and retaining verified "Project Worksheets" for each project.~~

8 MCAR § 1.8005 Classes of labor. Each class of labor shall be based upon the particular nature of the work performed with consideration given to those trades, occupations, skills or work generally considered within the construction industry as constituting distinct classes of labor. Wage determinations will be issued for those separate classes of labor which fall under the following general classes.

1. Laborers.

2. Power equipment operators.

3. Truck drivers.

4. Special crafts. The following crafts shall constitute separate classes of labor: bricklayers, carpenters, cement masions, linemen, electricians, iron workers, painters, pipefitters, plumbers, plasterers, roofers, and sheet metal workers, and other labor or work which is customarily considered as an individual trade or craft based upon its character and skills required. Workers reported as helpers shall be considered to be skilled laborers when making determinations.

5. In determining particular classes of labor, the department shall consider work classifications contained in collective bargaining agreements, apprenticeship agreements on file with the department and customs and usage applicable to the construction industry.

6. Primary responsibility for classifying individual workers shall be upon the contractor.

7. Where a worker performs work in more than one class of labor, he shall be counted only once and placed in the class in which he worked the greatest number of hours.

8. The contractor reporting shall have the responsibility to determine the class in which the worker has worked the greatest number of hours on each project reported.

9. Workers employed within a class of labor as apprentices or trainees at reduced wage rates will not be included or counted within that class of labor.

~~**8 MCAR § 1.8006 Specific procedures for survey determinations.**~~

~~A. The labor investigator shall contact each contractor believed to have performed work within the county and shall request identification of all projects on which work was performed and the payroll records relating thereto.~~

~~1. Where a particular contractor having worked in the county during the applicable time period cannot be located or where his records are not available for inspection, a certified form approved by the department shall be left at his main office or shall be sent by certified mail. The form shall contain appropriate instructions to be completed by the contractor or his representative and returned to the department via certified mail.~~

~~2. Where forms so left by the department are not returned within 30 days, the work or projects for which they were intended to document wage rates shall not be considered in that current determination for that area.~~

~~B. A "Project Worksheet" shall be compiled for each project upon which work was performed.~~

~~1. The worksheet shall identify the contractor and the project, its location, the dates of the project and its total dollar cost.~~

~~2. Based on the payroll records for the project, the worksheet shall list each class of labor within which work was performed, the names of all workers who worked on that project within that class of labor and the wage rates paid to those workers.~~

~~3. On each project, the department shall determine the number of workers who were subject to collective bargaining agreements and so designate on its worksheet for that project.~~

~~4. The worksheet shall contain appropriate language for the contractor or its representative to sign and acknowledge indicating that he has reviewed the contents of the worksheet and that to the best of his knowledge and belief, its contents are true and correct. The project worksheet shall be signed by the contractor and a copy left with him.~~

~~5. All completed worksheets shall be separated into two categories one representing work performed on highway and heavy construction and one representing work performed on other projects. Wage determinations for one category shall not be based upon projects performed within the other category.~~ .

~~C. The number of workers in each class of labor and their respective wage rates shall be determined from all project worksheets and reflected on a "County Survey Report."~~

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~~D. Except as provided in F through G herein, the prevailing wage rate shall be based upon the wage rate paid to the largest number of workers in each class of labor.~~

~~E. Where an equal number of workers worked at different wage rates, the prevailing wage rate shall be based upon the highest wage rate paid.~~

~~F. In each survey conducted pursuant to § 1.8005, where it appears that the largest number of workers in a given class of labor are subject to a collective bargaining agreement which provides for a different rate of pay than that required to be paid under the previously determined prevailing wage rate, and which would have been paid in the absence of the previously determined wage rate, the new prevailing wage rates determined for that county or area under these rules shall be based upon their agreed to collective bargaining rates. Collective bargaining agreements or written understandings between employers and bona fide organizations of labor currently in force may be utilized in determining the hourly rates of pay.~~

~~G. In each survey conducted pursuant to § 1.8005, where it appears that the largest number of workers in a given class of labor are non union employees not subject to collective bargaining agreements whose wages would have been at a different rate in the absence of the previously determined prevailing wage rate, the new prevailing wage rate determined for that county or area under these rules shall be determined based upon the most current rate paid to these workers. In addition where the largest number of workers within a given class of labor are non union workers, the prevailing wage rate shall be based upon the highest wage rate paid to these non union workers.~~

8 MCAR §1.8006 Survey procedures. The purpose of each county survey is to develop a data base upon which to determine prevailing wage rates which are reasonably comparable to those wage rates paid on similar projects in the area. The following procedural steps shall be taken in each wage survey:

1. For each survey, the department shall identify contractors who performed projects during the previous calendar year.

2. For the purpose of identifying contractors who performed work on projects in each county, the department shall keep and maintain a mailing list of governmental officials, district, county and city engineers, city clerks, administrators and zoning officials and those contractor associations and labor organizations who have requested to be on the mailing list.

3. The department shall also keep and maintain lists of contractors for each county which lists shall be kept updated through applicable telephone directories, trade publications and through previous wage survey contacts. Any contractor may request that its name be added to any county list.

4. Upon initiation of a wage survey the department will issue a form request for project identification to those entities referred to in paragraph 2. above. The request shall indicate the nature of the projects and the time period for which information is requested, and shall request the government official to identify contractors and their addresses who performed work during the survey time period. Such forms shall be completed and returned to the department within 33 days.

5. The department shall send to all those contractors identified as having performed work in the county through the forms returned from those entities referred to in paragraph 2, above, and to all those contractors whose names appear on the applicable county lists compiled under paragraph 3, above, a request for project information and a request for the identification of sub-contractors who worked on those projects. Enclosed with the request shall be copies of the department's Contractor Reporting Form.

a. For each project upon which the contractor performed work within the county during the time period of the survey, the contractor shall complete a separate Contractor Reporting Form and provide the following information:

(1) description of project;

(2) dollar cost of the project;

(3) list of the employees who worked on the project;

(4) class of labor for each employee;

(5) wage rate paid each employee on the project and the hourly cost of fringe benefit for H & W, Pension, Vacation, Training for each employee.

b. All Contractor Reporting Forms and forms identifying sub-contractors who worked on the projects shall be signed and dated by the contractor or its representative attesting that the information provided is a true and correct summary of the information contained in the contractor's payroll and business records.

c. The Contractor Reporting Forms and forms identifying sub-contractors shall be returned to the department within 30 days following the receipt of the request for information.

d. Information which is not received by the department within 33 days following the date upon which the request was mailed by the department shall not be used in making determinations.

e. Contractor Reporting Forms which do not report the names of workers, classes of labor, wage rates paid, description of project, type of construction and location of project will not be utilized in making wage determinations. Any unsigned or incomplete forms which are received within the 33-day time period shall be returned to the contractor with a request that the form be properly completed. If that form is not returned to the department within 15 days from the date of mailing, it shall be excluded from the survey. In no event shall information on unsigned Contractor Reporting Forms be utilized in making determinations.

6. Upon learning the identification of sub-contractors who performed work on projects within the county, the department shall proceed with the procedures provided in paragraph 5, above, and the sub-contractors so contacted shall be subject to the same requirements provided under paragraph 5.

7. In addition to the mail procedures described in paragraph 5, above, the department shall make on-site visits to the offices of contractors or governmental representatives for the purposes of collecting project data and for auditing payrolls when necessary for the determination of prevailing wage rates.

a. Information so collected, either through a review of the contractor's payrolls or copies of payrolls provided by contractors to government offices, will be utilized in making determinations provided that such information is compiled on an Investigator's Project Worksheet and is signed by the investigator who compiled the information.

8. The number of workers in each class of labor and their respective wage rates shall be determined and reflected on a "County Abstract."

~~8 MCAR § 1.8007 Contractor's duties.~~

~~A. Each contractor in the course of a survey, shall be prepared to present copies of all payroll records representing work done on projects in the county or area for the preceding twelve months.~~

~~B. For each worker, the contractor shall document for the investigator, his name, class of labor and rate of pay.~~

~~1. Contractors must utilize the Master Job Classifications specified in § 1.8014 in documenting classes of labor;~~

~~2. The contractor shall document the employee's basic hourly wage rate and where fringe benefits are paid, the amount of each such fringe benefit payment and the name and address of the fund, plan or program to which each such payment was made;~~

~~3. The contractor shall document each employee's daily and weekly hours worked in each classification and net wages paid;~~

~~4. Where the investigator is unable to determine the class of labor for a particular employee, he is authorized to determine from the information available, an appropriate classification for that employee.~~

~~5. Where a payroll record describes a particular worker as performing work within several different classes of labor and the contractor does not indicate a specific class of labor for that worker, the investigator may classify him in the class of labor which he deems appropriate.~~

8 MCAR § 1.8007 Determining the largest number of workers and Prevailing Wage Rate.

A. Each wage rate determination shall be based upon the actual wage rates paid to the largest number of workers within each labor classification reported in the survey.

B. For purposes of determining the largest number of workers, each worker within a class of labor and his total hourly rate paid shall be tabulated.

1. Total hourly rate includes the hourly rate plus the hourly contribution for all wage and fringe benefits.

2. The largest number of workers with identical rates of pay within each classification shall determine the specific prevailing wage rate.

3. When determining the prevailing wage rate and there is an equal number of workers (which represent the greatest number of workers) with differing hourly wage rates, the prevailing wage rate shall be the highest wage rate paid to those workers.

Example:
4 workers @ $7.00 per hour
4 workers @ $8.00 per hour
2 workers @ $8.50 per hour

The prevailing wage rate will be determined as $8.00 per hour.

4. Where a worker performs work on more than one project within the county, he shall be counted only once in the class of labor and at the wage rate paid on the most recent project within the time period of the survey.

~~8 MCAR § 1.8008 Determinations without survey.~~

~~A. Where it appears to the Department, based upon the information compiled under this rule and the information compiled under PWD 11, that in a given county or area the number of AFL-CIO represented workers or the number of independent union represented workers comprised more than 50% of the total number of workers in that county or area, the prevailing wage rates for all classification of laborers in that county need not be based upon a physical survey but may be based upon the rates contained in the applicable current collective bargaining agreement provided that:~~

~~1. Nothing contained herein shall preclude an aggrieved person from petitioning for a redetermination under Minn. Stat. §§ 177.43-177.44;~~

~~2. In any case where an employer operating under a collective bargaining agreement or written understanding with a bona fide organization of labor is paying his employees at a rate less than that called for in the collective bargaining agreement or written understanding, the wage rate to be utilized for the purpose of calculating the prevailing wage rate for those employees shall be the wage rate set forth in the collective bargaining agreement or written understanding.~~

~~B. For purposes of this rule, it shall be the duty of every contractor performing work within the State of Minnesota to furnish the department upon its request, with copies of all payroll records relating to each project. Records so requested shall contain the information listed under § 1.8007.~~

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~~1. All payroll records shall be signed by the contractor or his representative and shall certify that the contractor has reviewed their contents and that they are accurate and correct.~~

~~2. All payroll records submitted to the Department shall be date stamped on the day of their receipt and filed in accordance with the county within which the work was performed.~~

~~C. The Department shall periodically request from the Minnesota Department of Transportation all data indicating state projects let by that department, the counties in which work will be performed, the contractors awarded the contracts and their costs. This data shall be kept on file and may be utilized in making wage determinations under this rule.~~

8 MCAR § 1.8008 Apprentices.

A. Apprentices working on state projects are not subject to the prevailing wage rate determinations, except as they may be affected by registered apprenticeship agreements. The hourly rates of pay for such workers are established by the particular program to which the apprentice or trainee is subject.

B. The term apprentice means (a) a person employed and registered in a bona fide apprenticeship program registered with the U.S. Department of Labor or with a state apprenticeship agency and (b) a person in his first 90 days of probationary employment as an apprentice who is not registered in the program but who has been certified by the U.S. Bureau of Apprenticeship and Training or a State Apprenticeship agency or council to be eligible for probationary employment as an apprentice.

C. Any employee listed on a payroll for a state project who does not fall within the term "apprentice" contained in subpart (B) shall be paid the prevailing wage rate for the classification of work performed.

~~8 MCAR § 1.8009 Multi-county projects.~~

~~Where a state project will extend into more than one county, the prevailing wage rate to be certified and utilized on that project shall be based upon the prevailing wage rate for the county within which the greatest volume of work will be performed.~~

8 MCAR § 1.8009 Reserved for future use.

8 MCAR § 1.8010 Notice of wage determinations.

A. Upon certification of wage rates for a given county, the department shall publish notice of such certification in the *State Register* but need not publish the individual rates so certified. The certification date shall coincide with the date published in the *State Register*.

B. The notice published in the *State Register* shall indicate where copies of the determined rates may be obtained upon request.

C. The department shall maintain a list of all persons who request that copies of wage rate determinations be sent to them.

D. Copies of wage rate determinations shall be mailed within 5 days of their certification to those persons who have requested such notice and whose names appear on the list maintained by the department. The department may charge a reasonable fee for the copying and mailing of these notices as allowed under Minn. Stat. § 15.17, subd. 4 (1974).

~~8 MCAR § 1.8011 Utilization of additional information.~~

~~A. In addition to such information requested by the department under § 1.8008, voluntary information received by the Prevailing Wage Division from contractors or their representatives, contractors associations, labor organizations, public officials, individual laborers and other interested parties shall be kept on file by the department and may be utilized in making wage determinations under § 1.8008.~~

~~B. Illustrative of the type of information which will be kept on file if submitted are:~~

~~1. Notarized statements showing wage rates and hours worked on projects (such statements should indicate the names and addresses of contractors, including subcontractors, the location, approximate cost, dates of construction and types of projects, the number of workers employed in each class of labor on each project, and the respective wage rates paid to each worker.~~

~~2. Signed collective bargaining agreements or understandings between an employer or a group of employers and bona fide organizations of labor.~~

~~3. Wage rate determinations and other information furnished by federal agencies.~~

~~4. Contract and bidding information submitted by the Department of Transportation or other state agencies.~~

~~5. Reports or records of county or city engineering offices.~~

~~6. Other information pertinent to the determination of prevailing wage rates.~~

~~8 MCAR § 1.8012 Apprentices and trainees.~~

~~A. Apprentices, under programs approved by the U.S. Department of Labor, will be permitted to work as such only when they are registered, with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph b of this paragraph or is not registered as above, shall be paid the wage rate determined by the Commissioner of the Department of Labor and Industry, State of Minnesota, for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the Department of Labor and Industry written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any~~

~~apprentices on the contract work. The term "apprentice" means (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or (2) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or a State Apprenticeship Council (where appropriate) to be eligible for probationary employment as an apprentice.~~

~~B. Trainees: Trainees will be permitted to work as such if they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training.~~

~~C. Apprentices and Trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal aid highway construction programs are not subject to the wage determinations made herein. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.~~

8 MCAR §§ 1.8011-1.8012 Reserved for future use.

8 MCAR § 1.8013 Petition for reconsideration of prevailing wage rates.

A. Any person including contractor associations or labor organizations aggrieved by a final determination of a prevailing wage rate may petition the Commissioner for reconsideration of that wage rate within 30 days following its certification. The petitioner shall indicate the county and class(es) of labor contested, the reason the petitioner believes the rate to be inaccurate, and the rates the petitioner believes to be correct.

B. Within 10 days following receipt of a Petition for Reconsideration, the Department shall informally meet with the Petitioner and any other interested person, associations or labor organizations to review the contested wage determination(s).

1. The petitioner shall be prepared to support his contentions with any documents or data he deems necesssary.

2 .The department shall be prepared to produce and review the data, summary sheets and other documents upon which its determinations were based, and shall produce for the petitioner's inspection, all such documents.

C. Following the informal conference, the Department shall, within 10 days, notify the petitioner of any decision modifying, changing, or reaffirming the contested wage rate or indicate to the petitioner that a survey will be necessary to resolve the contested wage rate(s).

1. Where the department determines that a new survey is necessary, such survey shall be conducted within 30 days. Thereafter, the department shall inform the petitioner by certified mail of its final decision based on that survey.

D. No prevailing wage rate will be deemed to be vacated or suspended pending the resolution of a Petition for Reconsideration nor will the department request any state agency contemplating a state project to suspend, delay or otherwise change its contract and bidding schedules due to any pending procedures resulting from a Petition for Reconsideration.

E. Any person aggrieved by a final decision following reconsideration of a prevailing wage rate may, within 20 days after the decision, petition the Commissioner for a public hearing in the manner of a contested case under the administrative procedures act, Minn. Stat. §§15.0418 to 15.0421.

1. Upon receipt of a petition for a public hearing the commissioner shall order the initiation of a contested case in accordance with Minn. Stat. § 15.052.

2. All contested case hearings initiated herein shall be conducted in accordance with the rules of Operation of the Office of Hearing Examiners.

~~**8 MCAR § 1.8014 Application.**~~

~~These rules shall apply to all prevailing wage determinations certified subsequent to the effective date of these rules.~~

8 MCAR § 1.8014 Reserved for future use.

~~**8 MCAR § 1.8015 Master job classifications.**~~

~~For purposes of these rules, the following code numbers shall be utilized to describe the applicable classes of labor.~~

~~Highway Laborers~~
~~(In Mpls.-St. Paul Metropolitan Wage Areas)~~

~~CODE NO.~~	~~POSITION TITLE~~
~~103~~	~~Bituminous batcherman (Stationary plant)~~
~~105~~	~~Bituminous raker, floater and utility man~~
~~107~~	~~Bituminous tamper~~
~~113~~	~~Blacksmith helper~~
~~116~~	~~Bottom man (sewer, water or gas trench)~~
~~117~~	~~Bottom man (sewer, water or gas trench) (more than 8' below starting level of manual work)~~
~~123~~	~~Brick or block paving setter~~
~~125~~	~~Bricklayer tender~~
~~132~~	~~Cement coverman (batch trucks)~~
~~134~~	~~Cement gun operator (1½" and over)~~
~~136~~	~~Cement handler (bulk or bag)~~
~~138~~	~~Chain Saw Operator~~
~~140~~	~~Chipping hammer operator~~
~~141~~	~~Concrete batcherman (proportioning plant)~~
~~143~~	~~Concrete longitudinal floatman (manual bull float on paving)~~
~~145~~	~~Concrete mixer operator (1 bag capacity)~~

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CODE NO.	POSITION TITLE
147	Concrete shoveler, tamper and puddler (paving)
149	Concrete vibrator operator
153	Conduit layers (without wiring)
156	Curb setter (stone or precast concrete)
163	Dumper (wagon, truck, etc.)
165	Dumpman
167	Dumpman (paver) (dumper batch trucks at mixer)
173	Drill runner (blasting)
175	Drill runner (heavy, including churn drill)
181	Flagman
185	Formsetter (municipal type curb and sidewalk)
186	Formsetter (pavement)
192	Hydrant and valve setter
194	Jackhammer man and paving buster
196	Joint filler (concrete pavement)
203	Kettleman (bituminous or lead)
207	Mortar mixers
213	Pipe derrickman (tripod, manual)
215	Pipe handler (water, gas, cast iron)
217	Pipe layer (sewer, water or gas)
223	Powderman
224	Powder monkey
225	Power buggey operator
227	Pump Operator (3" and under, semi skilled)
233	Reinforced steel labor
235	Reinforced steel setter (pavement)
241	Sand cushion and bed maker
243	Service connection maker (water or gas)
245	Squeegee man (bituminous brick or block pavement)
247	Stabilizing batcherman (Stationary plant)
249	Stone mason tender
253	Tunnel laborer (atmospheric pressure)
255	Tunnel men (air pressure)
257	Tunnel miner
263	Unskilled laborers
265	Watchmen
267	Winch handler (manual)
273	Caisson work
275	Cofferdam work
277	Open ditch work
279	Tunnel work
281	Underground laborers
283	Underpinning work
285	Other work more than 8' below starting level of manual work
286	Water well driller helper
287	Nozzelman (gunite)
288	Joint sawer
289	Carpenter tender
290	Wrecking and demolition

Highway Laborers
(Rural Wage Areas)

CODE NO.	POSITION TITLE
	Classification:
463	Laborer, highway & heavy, unskilled
	Pavement:
336	Cement handler
367	Dumper
353	Conduit layer
347	Concrete shoveler, tamper and puddler
384	Formsetter, curb, walk and pavement
394	Jackhammer
338	Chain saw operator
397	Joint sawer
349	Concrete vibrator operator
423	Powderman
435	Reinforced steel setter (pavement)
334	Cement coverman
335	Sack Shaker
	Blacktop:
305	Bituminous, raker, floater and utility man
363	Dumper
308	Tamper operator
381	Flagman
465	Watchman
	Sewer, Water and Tunnel:
417	Pipelayer
403	Kettleman, bituminous or lead
453	Tunnel laborer—atmospheric pressure
452	Tunnel laborer—air pressure
456	Tunnel miner—atmospheric pressure
454	Tunnel miner—air pressure
315	Bottom man or ditchman
418	Pipe handler
	Miscellaneous:
372	Drill runner
374	Drill runner wagon drill or churn drill
376	Drill runner helper
475	Cofferdam work
473	Caisson work
345	Concrete mixer operator (1 bag capacity)
346	Nozzelman (gunite)
427	Pump operator—3 inches and under
486	Work 8 feet or more below adjoining ground where excavation is not more than 8 feet wide
426	Power Buggy Operator
430	Bricklayer tender
431	Carpenter tender
432	Mortar mixer
433	Stone mason tender
464	Wrecking and demolition laborer

Power Equipment Operators
(Statewide)

CODE NO.	POSITION TITLE
501	Air compressor operator
502	Crane Operator with 135' Boom, excluding jib
503	Asphalt, bituminous stabilizer plant operator
504	Dragline and/or other similar equipment with shovel type controls up to 3 cu. yds. mfg. rated capacity
505	Backfiller operator
506	Batch Plant (concrete)
507	Bituminous spreader & finishing operator (power) (Adnum or Jaeger)
508	Bituminous spreader & bituminous finishing machine operator (helper) (power) (Adnum or Jaeger)
509	Brakeman or switchman
510	Boom Truck (power operated boom)
511	Cableway operator
512	Conveyor operator
513	Concrete distributor & spreader operator, finishing machine, longitudinal float operator, joint machine operator & spray operator

CODE NO.	POSITION TITLE
514	Concrete mixer operator, on job site over 14S
515	Concrete mixer operator, on job site 14S and under
516	Concrete mixer, stationary plant operator, over 34E
517	Dragline and/or other similar equipment with shovel type controls 3 cu. yds. and over mfg. rated capacity
518	Concrete saw operator (multiple blade) (power operated)
519	Crushing plant operator (gravel & stone) or gravel washing, crushing & screening plant operator
520	Curb Machine
521	Derrick (Guy or stiffleg) (power) (skids or stationary)
522	Dope Machine (pipeline)
523	Dredge deck hand
524	Dredge operator or engineer, dredge operator (power) & engineer
525	Elevating Grader Operator
526	Drill rigs, heavy duty rotary or churn drill
527	Drilling machine
528	Euclid loader operator
529	Engineer in charge of plant requiring first class license
530	Front End Loader Operator up to and including 1 cu. yd.
531	Fine grade operator —
532	Helicopter Pilot
533	Fireman or tank car heater operator
534	Fork lift or lumber stacker (for construction job site)
535	Fork lift or straddle carrier operator
536	Form trench digger (power)
537	Mechanic Helper
538	Front end loader operator (under 30 h.p. rubber tired)
539	Front end loader operator, all types 30 h.p. and over
540	Automatic Road Machine Operator (GMI or similar)
541	Grader or motor patrol, finishing, earthwork and bituminous
542	Grader operator (motor patrol)
543	Power Actuated Horizontal boring machine over 6"
544	Gravel screening plant operator (portable not crushing or washing)
545	Lead greaser on grease truck (where no mechanic is employed)
546	Greaser (truck and tractor)
547	Gunite operator gunall
548	Hoist engineer (power)
549	Self propelled chip spreader (Flaherty or similar)
550	Self propelled soil stabilizer
551	Launchman (tankerman or pilot license)
552	Leverman
553	Loader Operator (Barber Green or similar type)
554	Locomotive, all types
555	Locomotive crane operator
556	Master Mechanic
557	Mechanic or Welder
558	Mechanical space heater (temporary heat)
559	Mixer (paving) Concrete Paving Operator, road
560	Pipeline Wrapping Cleaning or Bending Machine
561	Oilers (power shovel, crane, dragline)

CODE NO.	POSITION TITLE
562	Paving breaker or tamping machine operator (power driven) (Mighty Mite or similar type)
563	Pick up Sweeper, not including Tennant or similar types
564	Power shovels and/or other equipment with shovel type controls, 3½ cu. yds. & over
565	Power shovels and/or other equipment with shovel type controls, up to 3½ cu. yds.
566	Power plant engineer, 100 K.W.H. and over
567	Pugmill operator
568	Pump operator
569	Pumpcrete operator
570	Mucking machine
571	Refrigeration plant engineer
572	Mole operator including power supply
573	Roller operator, self propelled roller for compaction, including stabilized base
574	Roller operator, self propelled, rubber tired for compaction including stabilized base
575	Roller operator, up to & including 6 tons for bituminous finishing and/or wearing courses
576	Roller operator, over 6 tons for bituminous finishing and/or wearing courses
577	Scraper, 32 cu. yds. and over
578	Self propelled vibrating packing operator (pad type)
579	Rubber tired farm tractor, back hoe attachment
580	Sheet foot roller (self propelled) (3 drum and over)
581	Shouldering machine operator (power) (Apsco or similar type)
582	Slip Form (power driven) (paving)
583	Tie tamper & ballast machine operator
584	Stump chipper
585	Turnapull operator (or similar type)
586	Tandem scraper
587	Tractor operator — boom type
588	Tractor operator, D2, TD6 or similar h.p. with power take off
589	Tractor operator, over D2, TD6, or similar h.p. with power take off
590	Tractor operator, 50 h.p. or less without power take off
591	Tractor operator, over 50 h.p. without power takeoff
592	Trenching machine operator (sewer, water, gas)
593	Power Actuated Augers & Boring Machine
594	Truck crane operator
595	Truck crane oiler
596	Tugboat (100 h.p. and over)
597	Well point installation, dismantling or repair mechanic
598	Two or more pumps, compressors or welding machines
599	Power Actuated Jacks

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~~Truck Drivers (Statewide)~~

~~CODE NO.~~	~~POSITION TITLE~~
~~601~~	~~Bituminous Distributor Driver~~
~~602~~	~~Bituminous Distributor Spray Operator (Rear end oiler)~~
~~603~~	~~Bituminous Distributor Driver (one man operation)~~
~~605~~	~~Boom and "A" frame driver~~
~~606~~	~~Dumpman~~
~~608~~	~~Dumpster Operator (no h.p. limit)~~
~~611~~	~~Greaser and truck serviceman~~
~~615~~	~~Mechanical Broom Driver~~
~~617~~	~~Pilot Car Driver~~
~~621~~	~~Ready Mix Driver (mixer capacity up to and including 4 cu. yds.)~~
~~622~~	~~Ready Mix Driver (mixer capacity over 4 cu. yds. up to and including 6 cu. yds.)~~
~~623~~	~~Ready Mix Driver (Mixer capacity over 6 cu. yds.)~~
~~626~~	~~Self propelled Packer Operator~~
~~629~~	~~Tank truck helper (gas, oil, road oil and water)~~
~~631~~	~~Teamster or stableman~~
~~633~~	~~Tractor Operator (wheel type used for any purpose)~~
~~641~~	~~Truck Driver (up to and including 6 cu. yds. box water level)~~
~~642~~	~~Truck Driver (over 6 cu. yds. up to and including 8 cu. yds. box water level)~~
~~643~~	~~Truck Driver (over 8 cu. yds. up to and including 12 cu. yds. box water level)~~
~~644~~	~~Truck Driver (over 12 cu. yds. up to and including 16 cu. yds. box water level)~~
~~645~~	~~Truck Driver (over 16 cu. yds. box water level)~~
~~648~~	~~Truck Driver (hauling machinery for contractors own use including operation of hand or power operated winches)~~
~~650~~	~~Truck Mechanic (in cases where an operating engineer mechanic is not employed)~~
~~651~~	~~Truck Welder~~
	~~Truck Driver:~~
~~662~~	~~Single axle or 2 axle unit~~
~~663~~	~~Tandem axle or 3 axle unit~~
~~664~~	~~Four axle unit~~
~~665~~	~~Five axle unit~~
	~~For each additional axle, 10 cents additional per hour~~
~~666~~	~~Slurry Driver~~
~~667~~	~~Slurry operator~~

~~Special Crafts (Statewide)~~

~~CODE NO.~~	~~POSITION TITLE~~
~~711~~	~~Bricklayers~~
~~712~~	~~Bricklayers Apprentice (6 mos. interval)~~
~~721~~	~~Carpenters~~
~~722~~	~~Carpenters apprentice (1000 hr. interval)~~
~~731~~	~~Cement Masons~~
~~732~~	~~Cement Masons (6 mos. interval)~~
~~733~~	~~Cement Masons (1 year intervals)~~
~~740~~	~~Cable Splicer~~
~~741~~	~~Electricians~~
~~742~~	~~Electricians Apprentice~~
~~743~~	~~Electricians (on work up to $4,000)~~
~~744~~	~~Electricians on work over $4,000~~
~~745~~	~~Electricians Apprentice (3 mos. interval)~~
~~746~~	~~Electricians Apprentice (6 mos. interval)~~
~~747~~	~~Electricians Apprentice (years intervals)~~
~~748~~	~~Lineman~~
~~749~~	~~Groundman (1st year, 2nd year, 3rd year)~~
~~751~~	~~Ironworkers, ornamental~~
~~752~~	~~Ironworkers, reinforcing~~
~~753~~	~~Ironworkers, structural~~
~~754~~	~~Ironworkers Apprentice (1000 hrs. interval)~~
~~755~~	~~Ironworkers (6 mos. intervals)~~
~~761~~	~~Painters~~
~~762~~	~~Painters: brush~~
~~763~~	~~Painters, structural steel and bridge~~
~~764~~	~~Painters Apprentice (1000 hrs. interval)~~
~~765~~	~~Painters (6 mos. intervals)~~
~~766~~	~~Painters, spray~~
~~771~~	~~Piledriverman~~
~~773~~	~~Plumbers~~
~~775~~	~~Plumbers Apprentice (928 hours)~~
~~781~~	~~Stone Masons~~
~~791~~	~~Sheet metal workers~~
~~784~~	~~Stone Masons (6 mos. interval)~~

8 MCAR § 1.8015 Master job classifications. For purposes of these rules, contractors must use the following codes and classifications in documenting classes of labor.

Laborers

CODE NO.	POSITION TITLE
101	Laborer, common (general labor work)
102	Laborer, skilled (assisting skilled craft journeyman)
103	Laborer, Landscaping (gardener, sod layer and nurseryman)
104	Flagperson
105	Watchperson
106	Powderman
107	Pipelayer (water, sewer & gas)
108	Tunnel miner
109	Underground and open ditch laborer (8 feet below starting grade level)

Power Equipment Operators

CODE NO.	POSITION TITLE
201	Air compressor operator
202	Asphalt, bituminous stabilizer plant operator
203	Dragline and/or other similar equipment with shovel type controls
204	Bituminous spreader and finishing operator
205	Bituminous spreader and bituminous finishing machine operator (helper)
206	Conveyor operator
207	Concrete distributor and spreader operator, finishing machine, longitudinal float operator, joint machine or spray operator
208	Concrete saw operator (multiple blade) (power operated)
209	Crushing plant operator (gravel and stone) or gravel washing, crushing and screening plant operators
210	Curb machine
211	Front end loader operator up to and including 1 cu. yd.
212	Fine grade operator
213	Fork lift operator
214	Front end loader operator
215	Helicopter pilot
216	Fireman or tank car heater operator

CODE NO.	POSITION TITLE
217	Grader or motor patrol, finishing, earthwork and bituminous
218	Grader operator (motor patrol)
219	Greaser (truck and tractor)
220	Hoist engineer
221	Self propelled chip spreader
222	Mechanic or welder
223	Oilers (power shovel, crane, dragline)
224	Pick up sweeper
225	Pugmill operator
226	Roller operator, self propelled roller for compaction
227	Roller operator, up to and including 6 tons for bituminous finishing and/or wearing courses
228	Roller operator, over 6 tons for bituminous finishing and/or wearing courses
229	Scraper, 32 cu. yds. and over
230	Self propelled vibrating packing operator (pad type)
231	Rubber tired tractor, back hoe attachment
232	Shouldering machine operator (power) (apsco or similar type)
233	Slip form (power-driven) (paving)
234	Turnapull operator (or similar type)
235	Tractor operator, D2, TD6 or similar h.p. with power take-off
236	Tractor operator, over D2, TD6 or similar h.p. with power take-off
237	Power actuated augers and boring machine
238	Truck crane oiler

Truck Drivers

CODE NO.	POSITION TITLE
301	Bituminous Distributor driver
302	Dumpman
303	Greaser and truck serviceman
304	Self propelled packer operator
305	Truck driver (hauling machinery for contractors own use including operation of hand or power operator winches)
306	Single axle or 2 axle unit
307	Tandem axle or 3 axle unit
308	Four axle unit
309	Five axle unit

Special Crafts

CODE NO.	POSITION TITLE
401	Asbestos workers
402	Boilermakers
403	Bricklayers
404	Carpenters
405	Carpet Layers (linoleum)
406	Cement Masons
407	Electricians
408	Elevator Constructors
409	Glaziers
410	Lathers
411	Groundman
412	Ironworkers
413	Lineman
414	Millwright
415	Painters
416	Piledriverman
417	Pipefitters—steamfitters
418	Plasterers
419	Plumbers
420	Roofer
421	Sheet metal workers
422	Sprinkler fitters
423	Terrazzo workers
424	Tile setters

Wage determinations may be made for other classifications not listed if such other classifications are in general use in the area being surveyed.

8 MCAR § 1.8016 Posting of wage rates. [No change.]

Each contractor and subcontractor performing work on a public project shall post on the project the applicable prevailing wage rates and hourly basic rates of pay for the county or area within which the project is being performed, including the effective date of any changes thereof, in at least one conspicuous place for the information of the employees working on the project. (Minn. Stat. § 177.43, subd. 4 and Minn. Stat. § 177.44, subd. 5 (1974)). The information so posted shall include a breakdown of contributions for health and welfare benefits, vacation benefits, pension benefits and any othe economic benefit required to be paid.

8 MCAR § 1.8017 Wage rate determinations previously certified by the department shall, subject to the review procedures contained in § 1.8013, remain in effect until such time that new wage rates are determined in accordance with the provisions of these rules as amended.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **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."

SUPREME COURT

Decisions Filed Friday, May 9, 1980

Compiled by John McCarthy, Clerk

49466, 49761/496 Carlyle Pederson, Respondent (49466), Appellant (49761), vs. All Nation Insurance Company, defendant and third party plaintiff, Appellant (49466), Respondent (49761), vs. State Automobile and Casualty Underwriters, third party defendant. Olmsted County.

In this action to recover basic economic loss benefits pursuant to the Minnesota No-Fault Automobile Insurance Act, whether plaintiff was insured under Minn. Stat. § 65B.43, subd. 5 (1978) as a relative residing in the same household with the named insured was a question of fact. The finding that he was not has sufficient evidentiary support.

The finding of the trial court relative to the extent of plaintiff's wage loss has sufficient evidentiary support.

Plaintiff is entitled to interest on the award of basic economic loss benefits pursuant to Minn. Stat. § 65B.54, subds. 1 and 2 (1978).

Affirmed in part, reversed in part, and remanded. Kelly, J. Took no part. Otis, J.

50294/150 Margaret Krug, Appellant, vs. Independent School District No. 16, Spring Lake Park, Minnesota. Anoka County.

Where a strict application of the rule concerning appeals from amended orders would bar an appeal, the appeal may be entertained if the interests of justice are served by doing so.

Since a public health nurse in the school system is required to hold a professional license from the State Board of Education, a public health nurse is a teacher for the purposes of Minn. Stat. § 125.12, subd. 1 (1978).

Teachers, as defined by Minn. Stat. § 125.12, subd. 1 (1978), acquire tenure and seniority rights if the services they render in their position as teacher are full-time professional activities.

Under the regulations contained in 5 MCAR § 3.106, the position of school nurse consists of three levels, one of which is public health nurse. A public health nurse is not a separate position from that of school nurse.

The decision of the trial court is reversed, the writ of certiorari is reinstated, and the matter is remanded to the district court for further proceedings consistent with this opinion. Todd, J.

50597/160 In the Matter of the Welfare of S. R. J. vs. State of Minnesota, Appellant. Ramsey County.

Police reports evidencing the alleged offenses and their underlying circumstances are relevant to and admissible in a reference hearing for the purpose of determining whether the juvenile is amenable to treatment or is a threat to the public safety.

A juvenile court has the discretionary power, pursuant to Minn. Stat. § 260.151, subd. 1 (1978), to order a psychiatric or psychological examination of a juvenile by a court-appointed expert in the context of a reference hearing. The report of such an examination shall be considered by the court and, at the reference hearing, either party may examine the court-appointed expert regarding the report.

On remand, the state has the right to request that the matter be assigned to a juvenile judge other than the one who originally heard this matter.

The order of dismissal is vacated and the matter is remanded for further proceedings consistent with this opinion. Todd, J.

50199/245 State of Minnesota vs. Rodney Allen Neville, Appellant. Ramsey County.

Mere observation by police of defendant entering and leaving residence which police had probable cause to believe was at that moment being used as a wholesale LSD outlet did not give the police probable cause to arrest defendant; however, officers also had reliable information, which they obtained from a fellow officer, that an undercover LSD "buy" had been made at defendant's own residence within the previous 2 weeks, and under all these circumstances the officers had probable cause to arrest defendant after he left the supplier's residence.

Affirmed. Todd, J.

49389/45 Allen Leskey vs. Heath Engineering Company, defendant and third party plaintiff, Appellant, vs. Zalk-Josephs Company. St. Louis County.

Jury findings that a product was not defective when manufactured but that the manufacturer was negligent are not inconsistent where the manufacturer could have been found negligent for failure to warn of potential hazards from the use of the product.

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

49907/139 Patrick J. Murphy, et al., vs. City of Minneapolis, et al., Appellants. Hennepin County.

The trial court did not err in instructing the jury that the Minneapolis Police Department order governing the use of firearms was evidence of what constituted reasonable care under the circumstances.

The trial court did not err in instructing the jury on the statutory privilege of a police officer to use deadly force as a defense to a battery charge but not to negligence.

The trial court erred in preventing the testimony of two witnesses for failure to disclose a note where the note was not a statement of the witnesses.

Reversed and remanded for a new trial. Yetka, J.

49763/96 Emil Olson, Inc., Relator, vs. The Commissioner of Revenue. Tax Court.

Where the relator excavated virgin rock, crushed, screened, sized and stockpiled the resulting gravel, and then transferred the gravel for money consideration to roadbuilding contractors who used it for a roadbed in the construction of an interstate highway, there was a "sale" within the meaning of Minn. Stat. Ch. 297A (1978).

The exemption provided for in Minn. Stat. § 297A.25, subd. 1(h), is not applicable to such sales because the gravel is not used or consumed in the "industrial production of personal property intended to be sold ultimately at retail." Further, since the contractors used the gravel for the purpose of constructing an interstate highway, Minn. Stat. § 297A.25, subd. 4, precludes the utilization of an exemption which might otherwise be available under § 297A.25, subd. 1.

Affirmed. Scott, J.

Decisions Filed Friday, May 2, 1980

50755/311 State of Minnesota, Appellant, vs. Patricia Mae Hall. Washington County.

Prison officers had probable cause to believe that defendant, who was a visitor, was guilty of introducing contraband into prison and therefore were justified in arresting her and conducting a custodial search of her person as an incident thereto; district court erred in holding that arrest was illegal and we therefore reverse order which suppressed evidence on this ground and dismissed prosecution.

Reversed and remanded. Sheran, C. J.

50906/314 State of Minnesota vs. Scott Nils Nystrom, Appellant. Ramsey County.

Juvenile court did not clearly err in its findings or abuse its discretion in determining that public safety would be endangered by keeping juvenile in the juvenile court system, and therefore juvenile court's decision to grant reference motion pursuant to Minn. Stat. § 260.125 (1978) is affirmed.

Affirmed. Sheran, C. J.

STATE CONTRACTS

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

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

Department of Administration

Notice of Request for Proposals to Provide Diagnostic and Referral Services for the State Employee Assistance Program

Notice is hereby given that the Department of Administration intends to engage the services of a contractor in each of the following areas to provide diagnostic and referral services for state employees: Winona, Owatonna, Cambridge, Rochester, Mankato, Marshall, Willmar, Fergus Falls, Crookston, Bemidji, Brainerd, St. Cloud, Virginia and Duluth.

The estimated amount of the contract in each of these areas will not exceed $4,000. Responses must be received by June 16, 1980.

Direct inquiries to:

Warren Gahlon
Director
State Employee Assistance Program
Suite 101
2301 Woodbridge Avenue
Roseville, Minnesota 55113
(612) 296-0765

Department of Economic Security
Program and Management Support Division
Office of Statewide CETA Coordination

Notice of Request for Proposals for Professional and Technical Auditing Services for CETA Title V Older Americans Act Programs

1. Agency name and address: MN Department of Economic Security, Office of Statewide CETA Coordination, 690 American Building, 160 E. Kellogg Blvd., St. Paul, MN 55101.

2. Contact person: Persons or Certified Public Accounting firms wishing to receive this request for proposals package, or who would like additional information may call the Contracting Officers, Marv McNeff, (612) 296-6069, or Jim Markoe, (612) 296-4983, or write them at the following address: Office of Audit Coordination, MN Department of Economic Security, Room 200, 390 North Robert Street, St. Paul, MN 55101.

3. Description: An RFP will be issued on or about May 12, 1980, calling for the performance of Financial and Compliance audits at 12 CETA Title V (formerly Title IX) Older Americans Act subgrantees, located in the Twin Cities Metropolitan area and throughout the State of Minnesota.

4. Cost: One or more audit contract awards will be made at an estimated $8,400.00 in total costs.

5. Final proposal submission date: Proposals must be received by 4 p.m., Tuesday, May 27, 1980.

6. Bidder's Conference: A Bidder's Conference to answer questions from interested CPA firms is scheduled for 10 a.m., on May 16, 1980.

7. Ending date for completion of audit work: The audit reports resulting from the audit work should be completed within sixty (60) days of June 30, 1980.

Department of Economic Security
Office of Weatherization

Notice of Request for Proposals for Training of Residential Energy Auditors and Community Action Agency Weatherization Outreach Personnel

The Minnesota Department of Economic Security, Office of Weatherization, is requesting proposals from qualified bidders to conduct a series of training sessions for residential energy auditors and Community Action Agency Weatherization Outreach personnel. Training sessions are to be conducted for the period of July 1, 1980 through August 1, 1980.

Estimate fee range: $18,000-$21,000.

Firms/individuals desiring consideration should send their response to:

Donald Foley
Training Coordinator
Department of Economic Security
Office of Weatherization
690 American Center Building
St. Paul, MN 55101
(612) 296-4658

Request for Proposal is available upon request.

All responses should be sent in no later than 5:00 p.m., June 2, 1980. Late responses will not be accepted.

Department of Education Special Services Division

Notice of Requests for Proposals for the Narration of Master Tapes Utilized in Assessment Test Administration

A contractor is needed by the Department of Education to narrate and produce approximately 20 reel-to-reel masters which can be duplicated.

The anticipated contract in this regard will be approximately $3,000 and all responses to RFPs should be received no later than June 27, 1980.

Interested persons are invited to seek further information from the department by contacting:

Dr. William B. McMillan, Director of Assessment Section
Division of Special Services
State Department of Education
Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Notice of Requests for Proposals for Receipt Control, Scanning, and Computer Reporting of Assessment Results

A contractor is needed by the Department of Education to essentially provide scoring, reporting and related services in conjunction with Department assessment functions. Services are required for: 1) an Arts test at grades 4, 8, and 11, and 2) a Reading Literacy test at grades 7 through 12.

In addition, similar services are required in conjunction with the "piggyback" option portion of the Assessment Program.

The estimated contract will be approximately $35,000 and responses to RFP's should be received no later than June 27, 1980.

Interested persons are invited to seek further information from the department by contacting:

Dr. William B. McMillan, Director of Assessment Section
Division of Special Services
State Department of Education
Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

OFFICIAL NOTICES

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

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

Department of Commerce Banking Division

Bulletin No. 2237: Maximum Lawful Rate of Interest for Mortgages for May 1980

Notice is hereby given that pursuant to Minn. Stat. § 47.20, subd. 4a, the maximum lawful rate of interest for conventional home mortgages for the month of May, 1980, is fifteen and three-quarters (15.75) percentage points.

April 29, 1980

Michael J. Pint
Commissioner of Banks

Maximum Lawful Rate of Interest for Contracts for Deed for May 1980

Pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended Minn. Stat. § 47.20, effective May 1, 1980, the maximum lawful rate of interest for contracts for deed is based on the Federal National Mortgage Association conventional loan auction yield for April 29, 1980. The 15.665 percent average yield results, when rounded up to the next highest one-quarter percent, produces a 15.75 percent maximum interest rate for the month of May, 1980.

May 1, 1980

Michael J. Pint
Commissioner of Banks

Department of Education Instruction Division

Notice of Availability of Basic Skills Improvement Grants

Under Section 222 of Public Law 95-561, the state of Minnesota is pleased to invite competitive applications for the $48,900 of federal funds which it has available for Basic Skills in School Projects and Basic Skills Parent Involvement Projects.

Applications will be approved in amounts ranging from $1,000 to $15,000, with the lower end of that range being emphasized. It is anticipated that 10-20 proposals will be funded.

School Projects must:

1. Identify the population to be served.

2. Identify needs of the population.

3. Address either development of goals and objectives, in-service training, getting support of parents, evaluation procedures or dissemination activities.

Parent Involvement Projects may do one, some or all of the following:

1. Develop and disseminate materials for home use.

2. Coordinate between learning experiences in the home and those in the schools.

3. Plan for, develop and improve centers accessible to parents to private information to help them work with their children.

4. Demonstrate training programs for parents who desire new skills to complement the instruction their children receive in schools.

Because of the relatively small sums of money available, proposal forms will be quite brief, a maximum of three pages.

For further information and/or application packet, contact Patricia Moran, Supervisor of the Basic Skills Unit (telephone (612) 297-2657) or Alton Greenfield, Supervisor of the Reading Unit (telephone (612) 296-6998).

Department of Education Special and Compensatory Education Division

Notice of Public Hearing on the Minnesota State Plan for Fiscal Years 1981 through 1983 for Meeting the Requirements of Public Law 94-142, the Education of All Handicapped Children Act (45 C.F.R. 121a.)

Three public hearings on the proposed Minnesota State Plan for Fiscal Years 1981 through 1983 will be conducted on Friday, June 13, 1980. Each hearing will begin at 9:00 a.m. The hearings will be held in the following three locations: (1) Metro: St. Paul Schools Administration Building, 300 Colborne, Auditorium A, St. Paul, MN; (2) Mankato: Mankato State University, Centennial Student Union, Rooms 101 & 102, Mankato, MN (Parking in yellow lots and Ramp Lot #4); and (3) Bemidji: J. W. Smith Elementary School, J. W. Smith Auditorium, 17th-18th St. and Minnesota Avenue, Bemidji, MN.

The State Plan may be modified as a result of the hearing process. Therefore, if you are affected by the activities included in the proposed State Plan, you are urged to participate in the hearing process. An interpreter for the hearing impaired will be present at the Metro hearing and upon request in Bemidji and Mankato.

Following the agency's brief overview of the plan, all interested persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing written comments may be submitted to Dr. Jeanne E. Dorle, State Department of Education, Division of Special and Compensatory Education, Special Education Section, 550 Cedar Street, St. Paul, MN 55101, before June 18, 1980.

Copies of the plan will be available upon request from the Special Education Section by June 2, 1980. Additional copies will be available at the hearings. If you have any questions on the content of the plan contact Jeanne Dorle, Ph.D. (296-1793).

Department of Employee Relations

Notice of Meeting

The Department of Employee Relations wishes to meet with home office representatives of insurance companies interested in presenting a proposal to provide basic hospital and medical benefits to state employees. This information meeting will be held on Friday, May 30, 1980 at 9:00 a.m. in the offices of the Department of Employee Relations, 3rd floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Chapter 617, Laws of 1980 directs that where feasible an insurance company licensed under Section 62A of the Minnesota Statutes shall be selected as one of the carriers providing the above benefit to state employees. Coverage would be effective October 1, 1980. However, proposals will be required on August 1, 1980 so that the contract can be awarded prior to an open enrollment period which begins on August 15, 1980. Specifications based on the present health insurance coverage provided in labor agreements and state law will be available at the meeting.

Please notify the Employee Benefits Division, Department of Employee Relations (telephone 296-2457, area code 612) on or before May 28, 1980 if you plan to attend.

Environmental Quality Board

Notice of Intent to Solicit Outside Opinions or Information Concerning Revision of Rules Relating to Power Plant Siting Program

Pursuant to Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Minnesota Environmental Quality Board is soliciting information and opinions from sources outside the agency for the purpose of developing rules for determining an Inventory of Power Plant Study Areas and revising the existing rules on Siting Large Electric Power Generating Plants, 6 MCAR § 3.071. Such rules are required by Minn. Stat. § 116C.55.

Any persons desiring to submit information or comments on the subject may do so either orally or in writing. All statements of information and comment must be received by June 9, 1980. Any written material received by this date will become part of the record of any rules hearing held on this subject. Public hearings on these rules will be held at a date yet to be determined.

Written or oral information and comment should be addressed to:

Sheldon Mains
Power Plant Siting Program
Environmental Quality Board
Room 15
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2757 (collect calls accepted)

May 9, 1980

Arthur E. Sidner, Chairman
Environmental Quality Board

Ethical Practices Board

Meeting Notice

The Ethical Practices Board will meet Friday, May 30, 1980 in Room 51, State Office Building, at 9:30 a.m.

Preliminary Agenda

1. Minutes (April 21, 1980)
2. Chairman's Report
3. Legal Counsel Report
4. Advisory Opinion #63—Americans For Democratic Action—(Independent Expenditures)
5. Advisory Opinion #64—Senator Wayne Olhoft—(Purchase of Capital Equipment)
6. Advisory Opinion #65—Representative Jerry Knickerbocker—(Candidate Spending on Behalf of Ballot Questions)
7. Executive Director's Report
   a) Financial Report
   b) Late Filing Waiver Requests
8. Other Business
9. Executive Session pursuant to Minn. Stat. § 10A.02, subd. 11.

Department of Health Community Development Office

Notice of Availability of Home Care Demonstration Grants

Amount, Purpose and Eligibility

$500,000 of state funds are available for special grants to develop programs to assist the elderly and physically disabled to reside in a family setting or home community. The range of services and programs established by these special grants shall be designed to:

A. Avoid premature or inappropriate admission to an institutional care setting;

B. Provide respite for families and responsible caretakers from continuous care, and assist them in providing appropriate services;

C. Maintain or restore elderly and adult physically impaired persons to optimal functional potential and retard physical/emotional deterioration;

D. Provide support and follow-up services to persons residing in their own or a family members home; and

E. Facilitate appropriate release of elderly and adult physically impaired persons from acute and long-term care facilities to family care or to other community based programs.

Special grant funds may *not* be used to replace or substitute for services or programs otherwise funded from other local, state or federal sources, but shall be used to expand health and health related supportive social service programs existing as of July 1, 1980, or to add programs.

Effect of Grant Rules

These grants are subject to the provisions of 7 MCAR §§ 1.451-1.455.

How to Apply for Funds

Letter of Intent—Letters of intent to apply for special grant funds must be submitted to the Commissioner of Health, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, by May 26, 1980, and must identify the amount of funds to be requested and the general programmatic focus of the application.

Application Process

A. Applications for special grant funds may be made by Boards of Health as a revision to the approved 1980/81 CHS Plan, according to CHS Policy #4. The revision should include a project description and budget for the activity as stated in Parts III, IV and V of the Instructions and Forms for CHS Plans for Calendar Years 1980 and 1981.

B. County Commissioners not organized under Minn. Stat. §§ 145.911 to 145.922 shall submit a Letter of Intent to Apply for Funds and appropriate application materials will be forwarded to them.

C. Five copies of the completed applications for these special grants must be submitted to the Commissioner of Health, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, by June 6, 1980. Regional review requirements apply as stated in 7 MCAR § 1.453. The commissioner will act on these applications by June 30, 1980.

Funding Criteria and Duration

Funds for these purposes are available from July 1, 1980 to June 30, 1981. To ensure adequate geographic representation an effort will be made to fund at least one project from each of the eight MDH geographic Districts.

As with the CHS Plan review process, special attention will be given to both demonstrated and planned local coordination of services to enhance home care system development.

Minnesota Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association, will hold a meeting on Wednesday, June 18, 1980, at 9 a.m. in the office of the association, 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, to consider matters which may properly come before the board.

Pollution Control Agency Solid Waste Division

Notice of Intent to Solicit Outside Opinion in the Development of a State Solid Waste Management Plan Pursuant to the Federal Resource Conservation and Recovery Act

The Minnesota Pollution Control Agency is presently preparing a draft plan for managing and regulating all major forms of solid wastes including mixed municipal solid wastes, hazardous wastes, residual wastes from pollution control devices, industrial wastes, agricultural wastes (animal wastes), mining wastes, and automobile-related wastes (tires, oil, and car bodies). The plan is directed primarily at solid waste management in geographical areas outside of the Twin Cities metropolitan area and outside of the Western Lake Superior Sanitary District.

U.S. Environmental Protection Agency has issued guidelines under authority of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (RCRA) which require all states to prepare a plan by January 31, 1981. The guidelines were published on July 31, 1979, in the *Federal Register*. Copies of the guidelines are available for inspection at the Minnesota Pollution Control Agency and at many public libraries. The plan must discuss provisions for systematic management and regulation of solid wastes in order to protect the public health and the environment and to conserve valuable material and energy resources.

At this time Minnesota Pollution Control Agency is soliciting opinions concerning matters which should be addressed in the plan. Minnesota Pollution Control Agency is particularly interested in obtaining views about objectives, policies, issues, or problems, recommendations, and immediate and long-term goals which relate to the following:

1. Measures to reduce amounts of wastes generated;

2. Measures to encourage the separation of reusable materials;

3. Measures to promote the construction of facilities to recover energy and usable materials from wastes; and

4. Measures to assure safe siting, design, and operation of disposal facilities.

Any interested person may submit views or information in writing or orally to:

Gregg Downing
Resource Planning Section
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Phone: 612-297-2702

Comments should be submitted on or before June 18, 1980, to be considered in preparation of the draft plan. Written statements will become part of the public comment record.

Upon completion of a draft plan, Minnesota Pollution Control Agency will provide notice of its availability for review and of public meetings at which time the plan will be discussed. Interested persons who desire to examine a copy of the draft plan when available or notice of any scheduled meetings may contact Mr. Downing at the above address or phone number.

Department of Public Welfare
Bureau of Income Maintenance

Notice of Intent to Solicit Outside Opinion Concerning Medical Transportation Covered by Title XIX (Medical Assistance)

Notice is hereby given that the Minnesota Department of Public Welfare is considering amending a permanent rule, 12 MCAR § 2.047, paragraphs D.11. and E.2.r.(1) (DPW Rule 47, Medical Transportation sections). This notice is to request comments and opinions which will be considered when determining definitions and rates for Medical Transportation to be included in rule 47.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Bradley J. Stoneking
P.O. Box 43170
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-2846. All statements and comments must be received by August 1, 1980. Any written material received by the Department shall become part of the hearing record.

Notice of Intent to Solicit Outside Opinion Concerning Pre-admission Screening for Nursing Home Care

Notice is hereby given that the Minnesota Department of Public Welfare is drafting a temporary rule, 12 MCAR § 2.065 (DPW Rule 65), and, subsequently, a permanent rule, 12 MCAR § 2.065, governing pre-admission screening for nursing home care. This notice is to request comments and opinions for the permanent rule. A separate notice will be published in the *State Register* requesting comments when the proposed temporary rule is published.

Authority for the rule is contained in Laws of Minnesota, ch. 575 (1980), codified as Minn. Stat. § 256B.091.

The rule will govern the establishment of local nursing home pre-admission screening teams, prescribe the duties of the teams and the Commissioner of Public Welfare, and provide for a sliding fee scale for interested persons desiring screening who are not Medical Assistance recipients or who would be eligible for Medical Assistance within 90 days of admission. This rule will affect admission of Medical Assistance recipients, those who would be eligible for Medical Assistance within 90 days, or those desiring the screening service only if the admission is not from an acute care facility or a transfer from another nursing home.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Charlene Seavey, Supervisor
Utilization Control Unit
444 Lafayette Road, Box 43208
St. Paul, Minnesota 55101

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-6963.

All statements and comment must be received by June 20, 1980. Any written material received by the department shall become part of the hearing record.

Department of Public Welfare
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Concerning Rule Relating to the Licensure and Operation of Residential Programs for Adult Mentally Ill Persons

Notice is hereby given that the Minnesota Department of Public Welfare is considering draft amendments to 12 MCAR § 2.036 (DPW 36). This rule governs licensure and operation of all residential programs for adult mentally ill persons.

The proposed changes are to 1.) refine the levels of care so that each level accurately describes the standard of care and treatment needed by each client category. 2.) develop a funding proposal for each level according to the services needed to adequately provide the appropriate standard of care and treatment.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to: Jay Bambery, Minnesota Department of Public Welfare, Mental Health Program Division, 4th Floor Centennial Building, St. Paul, MN 55155.

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3923. All statements of information and comment must be received by July 1, 1980.

Any written material received by the department shall become part of the hearing record.

Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-2805. **Application deadline is Tuesday, June 10, 1980.**

Council on the Economic Status of Women has 11 vacancies open June 30, 1980. Council studies the economic status of women and makes recommendations to the governor and the legislature; monthly meetings; members are appointed by the governor and receive $35 per diem plus expenses. For specific information, call or write Council on the Economic Status of Women, 400 S.W. State Office Building, St. Paul, MN 55155; (612) 296-8590.

Employment Agency Advisory Council has a vacancy open immediately for a public member. Council advises the Department of Labor and Industry on the licensing and supervising of employment agencies; members are appointed by the Commissioner of Labor and Industry and receive $35 per diem plus expenses. For specific information, call or write Employment Agency Advisory Council, 444 Lafayette Road, St. Paul, MN 55101; (612) 296-2125.

Ethical Practices Board has 2 vacancies open immediately. Board administers campaign financing for state candidates; economic interest disclosure for state and metropolitan public officials; lobbyist registration and reporting; monthly meetings; members are appointed by the Governor and confirmed by the House and Senate, and receive $35 per diem plus expenses. For specific information, write or call Ethical Practices Board, 41 State Office Bldg., St. Paul, MN 55155; (612) 296-5148.

Soil and Water Conservation Board has one vacancy open immediately for a soil and water conservation district supervisor from natural resources administrative district 3 (includes Benton, Cass, Chisago, Crow Wing, Isanti, Kanabec, Mille Lacs, Morrison, Pine, Sherburne, Stearns, Todd, Wadena and Wright counties). Board coordinates programs of the 92 soil and water conservation districts; monthly meetings; members are appointed by the Governor and confirmed by the Senate, and receive $35 per diem plus expenses. For specific information, call or write Soil and Water Conservation Board, 2nd Floor, Space Center Building, 444 Lafayette Road, St. Paul, MN 55101; (612) 296-3767.

Advisory Council on Workers' Compensation has one vacancy open immediately for an employer representative. Council studies workers compensation law and recommends changes; monthly meetings; members are appointed by the Commissioner of Labor and Industry, and receive $35 per diem plus expenses. For specific information, call or write Advisory Council on Workers' Compensation, 444 Lafayette Road, St. Paul, MN 55101; (612) 296-6490.

Minnesota Conference on Small Business has 3 positions open immediately. Conference will establish procedures for regional meetings of small business owners, and report proposals for small business development aids to the Governor and the Legislature; members are appointed by the Governor and receive $35 per diem. For specific information, call or write Patricia Jensen, Governor's Special Assistant for Appointments to Boards and Committees, 130 State Capitol, St. Paul, MN 55155; (612) 296-6614.

Council on Black Minnesotans has 7 positions open immediately, to include at least 3 men and at least 3 women, broadly representative of the Black community. Council advises the Governor and the Legislature and recommends steps to improve the economic and social condition of Blacks in the state; members are appointed by the Governor and receive $35 per diem. For specific information, call or write Patricia Jensen, Governor's Special Assistant for Appointments to Boards and Committees, 130 State Capitol, St. Paul, MN 55155; (612) 296-6614.

Governor's Task Force on Ridesharing has 15 positions open immediately, to be filled by: 1 state department commissioner, 2 elected officials from outside the 7 county metro area, 2 elected officials from within the metro area, up to 5 chief executive officers (or their designees) from outside of the metro area, and up to 10 chief executive officers (or designees) from within the metro area. Task force will make recommendations to encourage wider use of car and van pools in the private and public sector; members are appointed by the Governor, and are compensated for expenses. For specific information, call or write Robert Benke, B-26A Transportation Building, St. Paul 55155; (612) 297-2069.

Governor's Task Force on Juvenile Justice has 15 positions open immediately, to be filled by: 4 elected officials, 1 juvenile court judge, 1 county attorney, 1 public defender, 1 juvenile officer, 1 law enforcement official, 1 educator, 1 member of court services, 1 senior citizen, 1 school administrator, and 2 public members. Task force will provide the Governor and the Legislature with an objective analysis of the state juvenile justice system from a statewide and system-wide perspective; members are appointed by the Governor, and compensated for expenses. For specific information, call or write Robert Griesgraber, 444 Lafayette Road, St. Paul, MN 55101; (612) 296-3052.

State Ceremonial Building Council has 7 positions open immediately, to be filled by: 1 member in the field of higher education, 1 member of the American Society of Interior Designers, 1 member of the American Institute of Architects, 1 member of the American Society of Landscape Architects, one member of the family that donated the building to the state, and 4 public members. The council develops an overall restoration plan for the Governor's mansion; members are appointed by the Governor, and receive no compensation. For specific information, call or write Patricia Jensen, Governor's Special Assistant for Appointments to Boards and Committees, 130 State Capitol, St. Paul, MN 55155; (612) 296-6614.

Elementary-Secondary-Vocational (ESV) Computer Council has 11 positions open immediately, to be filled by: 4 representatives of school districts, 2 representatives of regional management information center governing boards, 4 management representatives (2 private sector and 2 public sector) including 2 data processing managers, and 1 public member. Council advises the Commissioner of Education regarding ESV-IS (Elementary, secondary and vocational education management information systems) and SDE-IS (State Department of Education information system); members are appointed by the Governor and receive $35 per diem. For specific information, call or write Ron Lalibergter, Board of Education, Capitol Square Building, St. Paul, MN 55101; (612) 296-8420.

Governor's Task Force on Highways for Economic Vitality has 15 positions open immediately, to be filled by: 2 labor representatives, 2 business representatives, 2 persons involved in agricultural production, 2 persons involved in recreational enterprise, 3 public members, and 4 legislators (2 DFL, 2 IR). Task force will determine long range (6-10 year) highway needs and make recommendations to the governor and the Legislature; members are appointed by the Governor. For specific information, call or write Kent Eklund, Department of Economic Development, 480 Cedar St., St. Paul, MN 55101; (612) 296-3924.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

ORDER FORM

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

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Please enclose full amount for items ordered. Make check or money order payable to "Office of the State Register."

Name_____

Attention of: _____

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FOR LEGISLATIVE NEWS

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

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

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

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of
Rules of the State of Minnesota Governing
the Siting of Large Electric Power Generating
Plants

ORDER FOR HEARING

IT IS ORDERED this 22nd day of May, 1981, that public hearings on the proposed rules captioned above be held commencing at the following times and locations:

July 20, 1981, 1PM & 7PM, Granite Falls Technical Vocational Institute-Cafeteria, Granite Falls, MN; July 22, 1981, 1PM & 7PM, St. Cloud Public Library, 405 West St. Germain, St. Cloud, MN; July 27, 1981, 1PM & 7PM, Holiday Inn, Grand Rapids, MN; July 29, 1981, 1PM & 7PM, YWCA, 208 N.W. 4th Avenue, Austin, MN; August 31, 1981, 1PM & 7PM, Little Theater, Granite Falls High School, Granite Falls, MN; September 2, 1981, 1PM & 7PM, St. Cloud Public Library, 405 West St. Germain, St. Cloud, MN;

and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearings be given to all persons who have registered their names with the Environmental Quality Board for that purpose and be published in the State Register.

ENVIRONMENTAL QUALITY BOARD

Arthur E. Sidner

Arthur E.Sidner, Chairman

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Arthur E. Sidner, do hereby certify that I am a member and the Chairman of the Environmental Quality Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Environmental Quality Board duly and properly called and held on the 19th day of March, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

NOW, THEREFORE, BE IT RESOLVED, by the Minnesota Environmental Quality Board, that:

1. Public hearings on the proposed amendments to the power plant siting rules relating to establishment of criteria and standards for the inventory of power plant study areas, revisions to site selection criteria and addition of avoidance area criteria on limits on use of prime farmland for power plant sites are endorsed.

2. Public hearings be held pursuant to the Administrative Procedures Act (Minn. Stat. Ch. 15).

3. Arthur E. Sidner, Chairman of the Environmental Quality Board, is authorized to perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing.

4. Board member agencies and citizen members of the Board reserve the right to testify to specific conditions of the proposed rules at public hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 19th day of March, 1981.

Arthur E. Sidner
Chairman of the Board

Allen E. Mullin
Attest by one other Board member

March 19,1981

MINNESOTA ENVIRONMENTAL QUALITY BOARD
RESOLUTION ON THE PROPOSED
RULES AND AMENDMENTS RELATING TO
POWER PLANT SITING RULES

WHEREAS, the Power Plant Siting Act of 1973 As Amended through 1980 (Minn. Stat. 116C.55 Subd. 2) directs the Board to develop criteria and standards to be used in preparing an inventory of large electric power generating plant study areas; and

WHEREAS, Minn. Stat. 116C.66 authorizes the Board to promulgate site and route designation criteria consistent with Minn. Stat. 116C.51 to 116C.69; and,

WHEREAS, the proposed rules address the inventory of study areas for large electric power generating plants, changes in the power plant site evaluation criteria, and use of prime farmland for power plant sites; and,

WHEREAS, the proposed rules have been developed over two years after extensive review and comment by Board member agencies, utilities, power plant siting advisory committees, interested citizens and agencies; and,

WHEREAS, Minn. Stat. 116C.55 Subd. 2. and Minn. Stat. 116C.66 requires that rules or changes to the rules be subject to hearings conducted pursuant to the rulemaking provisions of the Administrative Procedures Act (Minn. Stat. Ch. 15);

NOW, THEREFORE, BE IT RESOLVED, by the Minnesota Environmental Quality Board, that:

1. Public hearings on the proposed amendments to the power plant siting rules relating to establishment of criteria and standards for the inventory of power plant study areas, revisions to site selection criteria and addition of avoidance area criteria on limits on use of prime farmland for power plant sites are endorsed.

2. Public hearings be held pursuant to the Administrative Procedure Act (Minn. Stat. Ch.15).

3. Arthur E. Sidner, Chairman of the Environmental Quality Board, is authorized to perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing.

4. Board member agencies and citizen members of the Board reserve the right to testify to specific conditions of the proposed rules at public hearings.

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

MEQB EXHIBIT 4

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO RULES RELATING TO SITING LARGE ELECTRIC POWER GENERATING PLANTS

Note: The proposed amendments establish criteria and standards for preparation of an inventory of power plant study areas, revise the site selection criteria used by the Environmental Quality Board (hereinafter "Board" or "EQB") to select power plant sites and establish an avoidance area criterion that places limits on the use of prime farmland for power plant sites. This notice lists dates, times and places for public hearings and explains the requirements of rule hearing procedures. The notice also identifies the locations where the proposed amendments, Statement of Need and Reasonableness and other related materials are available for review. If you have an interest in this matter, please read the notice and contact the persons identified in this notice (addresses below) if you have any questions.

3a

HEARING SCHEDULE

Notice is hereby given that public hearings in the above entitled matter will be held pursuant to Minn. Stat. §§ 15.0411 to 15.0417 (1980) at the following times and locations:

Stage I Hearings

July 20, 1981	1:00 p.m., 7:00 p.m.	Granite Falls Technical Vocational Institute-Cafeteria Granite Falls, MN
July 22, 1981	1:00 p.m., 7:00 p.m.	St. Cloud Public Library 405 West St. Germain St. Cloud, MN
July 27, 1981	1:00 p.m., 7:00 p.m.	Holiday Inn Grand Rapids, MN
July 29, 1981	1:00 p.m., 7:00 p.m.	YWCA 208 NW 4th Avenue Austin, MN

(1)

Stage II Hearings

August 31, 1981	1:00 p.m., 7:00 p.m.	Little Theater Granite Falls High School Granite Falls, MN
September 2, 1981	1:00 p.m., 7:00 p.m.	St. Cloud Public Library 405 West St. Germain St. Cloud, MN

PLEASE NOTE THAT INDIVIDUAL HEARING SESSIONS MAY BE CONTINUED ON SUBSEQUENT DAYS AT A TIME AND PLACE TO BE ANNOUNCED AT THE HEARINGS.

Background Information

The proposed amendments accompany this notice. Note that the proposed amendments address two separate topics: an inventory of power plant study areas (a planning document) and changes in the process by which an actual power plant site is selected.

The proposed amendments, if adopted, would:

A. Establish criteria, standards and administrative procedures to be used in preparing an inventory of large electric power generating plant study areas;

B. Revise the site selection criteria used to select plant sites by expanding the existing criterion preferring sites which maximize energy conservation, deleting the criterion preferring sites allowing for future expansion and adding a criterion preferring sites which maximize community benefits and economic development; and

C. Establish an avoidance area criterion that places limits on use of prime farmland for the developed portion of a power plant site and for the site of an associated water storage reservoir/cooling pond site. The Board has proposed a range of 0.25 through 0.75 acres of prime farmland per megawatt of net generating capacity for this limit. A range has been proposed to encourage the public to provide available information that will aid the Board in making a determination of appropriate final numbers. Ultimately, the Board will adopt one number for the acres of prime farmland per megawatt allowable for the developed portion of the plant site and one number for the associated reservoir/cooling pond. These numbers are likely to fall within the range of proposed numbers, but the Board urges interested persons to submit facts and opinions in support of any number including numbers not within the range. The Board's staff will make its recommendation concerning the appropriate final numbers before the Stage II hearings in August.

Adoption of the proposed rules will not result in the expenditures of public monies by local public bodies.

AMENDMENTS SUBJECT TO CHANGE AS A RESULT OF HEARING TESTIMONY

Please be advised that the proposed amendments are subject to change as a result of the rule hearing process. Any changes made could make the rules more stringent or less stringent. The Board urges those who are interested in the proposed amendments, including those who support the amendments as proposed, to participate in the rule hearing process. In particular, the Board is interested in receiving testimony on whether the proposed amendments should also contain a maximum acreage of prime farmland that can be used for the developed portion of a plant site and for an associated reservoir/cooling pond site, regardless of plant capacity; if you have any questions on this topic contact staff (address below) for more information.

AUTHORITY

The authority of the Board to promulgate amendments to rules governing the siting of large electric power generating plants is contained in Minn. Stat. § 116C.66 (1980). The authority of the Board to promulgate inventory criteria and standards is contained in Minn. Stat. § 116C.55, subd. 2 (1980).

HEARING EXAMINER

The public hearing will be presided over by an independent Hearing Examiner, Allan Klein, from the Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, (Telephone: 612/296-8104).

HEARING PROCEDURES

Rules. This hearing proceeding is governed by Minn. Stat. §§ 15.0411 to 15.0417 (1980) and by the rules of the Office of Administrative Hearings, 9 MCAR § 2.101-2.113. Any person who has questions relating to hearing procedures or availability of the hearing rules may direct them to Hearing Examiner Allan Klein (address above) or Public Advisor Jane Anderson (address below).

Statement of Need and Reasonableness. Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Board's office (copies available at no cost), distribution points as described below, and at the Office of Administrative Hearings (which by law must make a minimal charge for copying the Statement). The Statement of Need and Reasonableness will include a summary of all the evidence and argument which the Board staff anticipates presenting at the hearing to justify both the need for and the reasonableness of the proposed amendments to the existing rules.

Presentation at hearings. At the Stage I hearings in July, the Board's staff will explain the proposed amendments through written and oral testimony, the introduction of exhibits and the presentation of the Statement of Need and Reasonableness. The staff's recommendation on the final numbers for the limits on use of prime farmland will be presented and explained at the Stage II hearings in August and September; the staff's recommendation will be available before those hearings at the libraries listed below. Copies of the staff's written testimony and the Statement of Need and Reasonableness will be available at the hearing and as indicated below. Upon completion of its presentations at both sets of hearings, the Board's staff will be available for questioning by interested persons.

All interested persons will have an opportunity to participate by stating facts and opinions concerning the proposed amendments captioned above. They are encouraged to make recommendations on the limits on use of prime farmland during the Stage I hearings, so that the staff will have the benefit of their testimony in developing the staff

recommendations. The hearings will be conducted so all interested persons will have an opportunity to participate. Statements may be made orally and written material may be submitted. All persons submitting oral statements at the hearings are subject to questioning. 5a

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. To save time and duplication, it is suggested that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to the Hearing Examiner (address above), either before the hearing or within 20 calendar days after the close of the hearing. (For example, if the last day of the hearing is September 2, 1981, then comments must be received by the Hearing Examiner no later than 4:30 p.m. on Tuesday, September 22, 1981.) All such statements will be entered into and become part of the record. 7a/b

The hearing may be recessed and rescheduled by the hearing examiner.

HEARING EXAMINER RECOMMENDATION

After the record is closed, the Hearing Examiner will prepare a report for the Board, including a recommendation on whether the proposed amendments should be adopted, modified, or rejected.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Board may not take any final action on the rules for a period of five (5) working days. Any person may also request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Board. If you desire to be notified, indicate this at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Board (in the case of the Board's submission or resubmission to the Attorney General). 8

LOBBYISTS

Please be advised Minn. Stat. Ch. 10A (1980) requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as an 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 6

(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.

This statute provides certain exceptions. Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota, 55155, Telephone Number: 612/296-5148.

AVAILABILITY OF MATERIALS

Copies of the following materials will be available for review or distribution at the following places:

1. Statement of Need and Reasonableness: Hearing Examiner's office (nominal fee), EQB (address below), Depository Libraries identified below, and available at hearing.

2. Appendix to Statement of Need and Reasonableness containing information on the prime farmland range (available separately); EQB (address below), Depository Libraries identified below, and available at hearing.

3. The staff's recommendation on limits to use of prime farmland: available to requesters (address below), Depository Libraries identified below, and available at Stage II hearings.

INQUIRIES, PUBLIC ADVISOR, POWER PLANT SITING STAFF

The Board has designated one staff person as the public advisor. Her role is to assist and advise citizens on how to effectively participate in hearing proceedings. The public advisor can work with individuals or groups, telling them how to present testimony and where to go for information. However, the public advisor is not authorized to provide legal advice. The public advisor is Jane Anderson, Environmental Quality Board, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101, Telephone Number: 612/296-9923 (collect calls are accepted).

Questions about the substance of the proposed amendments and requests for materials should be directed to Nancy Onkka, Power Plant Siting Staff, Environmental Quality Board, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101, Telephone Number: 612/296-2169.

DEPOSITORY LIBRARIES

The Board's staff Statement of Need and Reasonableness and other written testimony will be available at the following libraries in Minnesota: Polk County-Crookston Library, Crookston; Bemidji Public Library, Bemidji; Duluth Public Library, Duluth; Fergus Falls Public Library, Fergus Falls; Kitchigami Regional Library, Pine River; Crow River

Regional Library, Willmar; Chippewa County Library, Montevideo; East Central Regional Library, Cambridge; Great River Regional Library, St. Cloud; Marshall-Lyon County Library, Marshall; Minnesota Valley Regional Library, Mankato; Rochester Public Library, Rochester; Environmental Conservation Library, 300 Nicollet Mall, Minneapolis; Public Library, Granite Falls; Public Library, Grand Rapids; and the Austin City Library, Austin.

May 28, 1981

Environmental Quality Board

Arthur E. Sidner

Arthur E. Sidner, Chairman

In the Matter of the Proposed Adoption of Amendments to Rules of the Environmental Quality Board of Minnesota Governing the Siting of Large Electric Power Generating Plants

AFFIDAVIT OF ADDITIONAL NOTICE

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Larry B. Hartman, being first duly sworn deposes and says:

That on the 15th day of June, 1981, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing, Proposed Amendments to Rules Relating to Siting Large Electric Power Generating Plants, Prime Farmland Definition and Summary of Proposed Rule Amendments by depositing in the State of Minnesota Inter-Office Mail System a copy thereof, properly enveloped, to the attached list of persons.

Larry B. Hartman

Subscribed and sworn to before me this 16th day of June, 1981.

Leonard O. Hislop

LEONARD O. HISLOP
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires March 18, 1983

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1981-82

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INTER-OFFICE

Rep. John Ainley
371 State Office Bldg.

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Rep. Gaylin DenOuden
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Rep. Phyllis Kahn
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STATE REGISTER

STATE OF MINNESOTA

VOLUME 5, NUMBER 50

June 15, 1981

Pages 1991-2018

STATE REGISTER

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 5		
51	Monday June 8	Monday June 15	Monday June 22
52	Monday June 15	Monday June 22	Monday June 29
	SCHEDULE FOR VOLUME 6		
1	Monday June 22	Monday June 29	Monday July 6
2	Friday June 26	Monday July 6	Monday July 13

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

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

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

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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

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

Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

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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 lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

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.

MCAR AMENDMENTS AND ADDITIONS

PROPOSED RULES

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

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

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

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

Environmental Quality Board

Proposed Amendments to Rules Relating to Siting Large Electric Power Generating Plants

Notice of Hearing

Note: The proposed amendments establish criteria and standards for preparation of an inventory of power plant study areas, revise the site selection criteria used by the Environmental Quality Board (hereinafter "board" or "EQB") to select power plant sites and establish an avoidance area criterion that places limits on the use of prime farmland for power plant sites. This notice lists dates, times and places for public hearings and explains the requirements of rule hearing procedures. The notice also

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.

identifies the locations where the proposed amendments, Statement of Need and Reasonableness and other related materials are available for review. If *you* have an interest in this matter, please read the notice and contact the persons identified in this notice (addresses below) if you have any questions.

Hearing Schedule

Notice is hereby given that public hearings in the above entitled matter will be held pursuant to Minn. Stat. §§ 15.0411 to 15.0417 (1980) at the following times and locations:

Stage I Hearings

July 20, 1981	1:00 p.m., 7:00 p.m.	Granite Falls Technical Vocational Institute-Cafeteria Granite Falls, MN
July 22, 1981	1:00 p.m., 7:00 p.m.	St. Cloud Public Library 405 West St. Germain St. Cloud, MN
July 27, 1981	1:00 p.m., 7:00 p.m.	Holiday Inn Grand Rapids, MN
July 29, 1981	1:00 p.m., 7:00 p.m.	YWCA 208 NW 4th Avenue Austin, MN

State II Hearings

August 31, 1981	1:00 p.m., 7:00 p.m.	Little Theater Granite Falls High School Granite Falls, MN
September 2, 1981	1:00 p.m., 7:00 p.m.	St. Cloud Public Library 405 West St. Germain St. Cloud, MN

Please note that individual hearing sessions may be continued on subsequent days at a time and place to be announced at the hearings.

Background Information

The proposed amendments accompany this notice. Note that the proposed amendments address two separate topics: an inventory of power plant study areas (a planning document) and changes in the process by which an actual power plant site is selected.

The proposed amendments, if adopted, would:

A. Establish criteria, standards and administrative procedures to be used in preparing an inventory of large electric power generating plant study areas;

B. Revise the site selection criteria used to select plant sites by expanding the existing criterion preferring sites which maximize energy conservation, deleting the criterion preferring sites allowing for future expansion and adding a criterion preferring sites which maximize community benefits and economic development; and

C. Establish an avoidance area criterion that places limits on use of prime farmland for the developed portion of a power plant site and for the site of an associated water storage reservoir/cooling pond site. The board has proposed a range of 0.25 through 0.75 acres of prime farmland per megawatt of net generating capacity for this limit. A range has been proposed to encourage the public to provide available information that will aid the board in making a determination of appropriate final numbers. Ultimately, the board will adopt one number for the acres of prime farmland per megawatt allowable for the developed portion of the plant site and one number for the associated reservoir/cooling pond. These numbers are likely to fall within the range of proposed numbers, but the board urges interested persons to submit facts and opinions in support of any number including numbers not within the range. The board's staff will make its recommendation concerning the appropriate final numbers before the Stage II hearings in August.

Adoption of the proposed rules will not result in the expenditures of public monies by local public bodies.

Amendments Subject to Change as a Result of Hearing Testimony

Please be advised that the proposed amendments are subject to change as a result of the rule hearing process. Any changes made could make the rules more stringent or less stringent. The board urges those who are interested in the proposed

amendments, including those who support the amendments as proposed, to participate in the rule hearing process. In particular, the board is interested in receiving testimony on whether the proposed amendments should also contain a maximum acreage of prime farmland that can be used for the developed portion of a plant site and for an associated reservoir/cooling pond site, regardless of plant capacity; if you have any questions on this topic, contact staff (address below) for more information.

Authority

The authority of the board to promulgate amendments to rules governing the siting of large electric power generating plants is contained in Minn. Stat. § 116C.66 (1980). The authority of the board to promulgate inventory criteria and standards is contained in Minn. Stat. § 116C.55, subd. 2 (1980).

Hearing Examiner

The public hearing will be presided over by an independent Hearing Examiner, Allan Klein, from the Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, (Telephone: 612/296-8104).

Hearing Procedures

Rules. This hearing proceeding is governed by Minn. Stat. §§ 15.0411 to 15.0417 (1980) and by the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.101-2.113. Any person who has questions relating to hearing procedures or availability of the hearing rules may direct them to Hearing Examiner Allan Klein (address above) or Public Advisor Jane Anderson (address below).

Statement of Need and Reasonableness. Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the board's office (copies available at no cost), distribution points as described below, and at the Office of Administrative Hearings (which by law must make a minimal charge for copying the Statement). The Statement of Need and Reasonableness will include a summary of all the evidence and argument which the board staff anticipates presenting at the hearing to justify both the need for and the reasonableness of the proposed amendments to the existing rules.

Presentation at hearings. At the Stage I hearings in July, the board's staff will explain the proposed amendments through written and oral testimony, the introduction of exhibits and the presentation of the Statement of Need and Reasonableness. The staff's recommendation on the final numbers for the limits on use of prime farmland will be presented and explained at the Stage II hearings in August and September; the staff's recommendation will be available before those hearings at the libraries listed below. Copies of the staff's written testimony and the Statement of Need and Reasonableness will be available at the hearing and as indicated below. Upon completion of its presentations at both sets of hearings, the Board's staff will be available for questioning by interested persons.

All interested persons will have an opportunity to participate by stating facts and opinions concerning the proposed amendments captioned above. They are encouraged to make recommendations on the limits on use of prime farmland during the Stage I hearings, so that the staff will have the benefit of their testimony in developing the staff recommendations. The hearings will be conducted so all interested persons will have an opportunity to participate. Statements may be made orally and written material may be submitted. All persons submitting oral statements at the hearings are subject to questioning.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. To save time and duplication, it is suggested that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to the Hearing Examiner (address above), either before the hearing or within 20 calendar days after the close of the hearing. (For example, if the last day of the hearing is September 2, 1981, then comments must be received by the Hearing Examiner no later than 4:30 p.m. on Tuesday, September 22, 1981). All such statements will be entered into and become part of the record.

The hearing may be recessed and rescheduled by the hearing examiner.

Hearing Examiner Recommendation

After the record is closed, the Hearing Examiner will prepare a report for the board, including a recommendation on whether the proposed amendments should be adopted, modified, or rejected.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after

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which date the board may not take any final action on the rules for a period of five (5) working days. Any person may also request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Board. If you desire to be notified, indicate this at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the board (in the case of the board's submission or resubmission to the Attorney General).

Lobbyists

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

This statute provides certain exceptions. Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota, 55155, Telephone Number: 612/296-5148.

Availability of Materials

Copies of the following materials will be available for review or distribution at the following places:

1. Statement of Need and Reasonableness: Hearing Examiner's office (nominal fee), EQB (address below), Depository Libraries identified below, and available at hearing.

2. Appendix to Statement of Need and Reasonableness containing information on the prime farmland range (available separately); EQB (address below), Depository Libraries identified below, and available at hearing.

3. The staff's recommendation on limits to use of prime farmland: available to requesters (address below), Depository Libraries identified below, and available at Stage II hearings.

Inquiries, Public Advisor, Power Plant Siting Staff

The board has designated one staff person as the public advisor. Her role is to assist and advise citizens on how to effectively participate in hearing proceedings. The public advisor can work with individuals or groups, telling them how to present testimony and where to go for information. However, the public advisor is not authorized to provide legal advice. The public advisor is Jane Anderson, Environmental Quality Board, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101, Telephone Number: 612/296-9923 (collect calls are accepted).

Questions about the substance of the proposed amendments and requests for materials should be directed to Nancy Onkka, Power Plant Siting Staff, Environmental Quality Board, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101, Telephone Number: 612/296-2169.

Depository Libraries

The board's staff Statement of Need and Reasonableness and other written testimony will be available at the following libraries in Minnesota: Polk County-Crookston Library, Crookston; Bemidji Public Library, Bemidji; Duluth Public Library, Duluth; Fergus Falls Public Library, Fergus Falls; Kitchigami Regional Library, Pine River; Crow River Regional Library, Willmar; Chippewa County Library, Montevideo; East Central Regional Library, Cambridge; Great River Regional Library, St. Cloud; Marshall-Lyon County Library, Marshall; Minnesota Valley Regional Library, Mankato; Rochester Public Library, Rochester; Environmental Conservation Library, 300 Nicollet Mall, Minneapolis; Public Library, Granite Falls; Public Library, Grand Rapids; and the Austin City Library, Austin.

May 28, 1981

Arthur E. Sidner, Chairman
Environmental Quality Board

Amendments as Proposed

6 MCAR § 3.072 Definitions.

H. "Large electric power generating plant study area" or "study area" means a ~~general~~ geographic area ~~of land designated by the board for purposes of planning for future sites~~ that meets inventory criteria and standards for a LEPGP of a specified capacity, fuel type and design.

P. "Developed portion of plant site" means the portion of the LEPGP site, exclusive of make-up water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.

Q. "Technical assumptions" means the assumptions necessary to evaluate resource requirements of a LEPGP of a specified capacity, fuel type and design and to evaluate the availability of resources to meet those requirements.

R. "Prime farmland" means those soils that meet the specifications of 7 C.F.R. § 657.5 (a) (1980).

S. "Community benefits" means those benefits to the local community, other than economic development, that result from power plant design or location. Examples include use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines and increased tax base.

6 MCAR § 3.074 H.1. Site selection criteria.

j. Preferred sites ~~permit~~ maximize opportunities for significant conservation of energy ~~or~~, utilization of by-products or biomass, cogeneration and development of waste-to-energy systems.

~~n. Preferred sites allow for future expansion.~~

6 MCAR § 3.074 H.1. o. and p. [Reletter as 6 MCAR § 3.074 H.1. n. and o.]

p. Preferred sites maximize the opportunities for community benefits and economic development.

6 MCAR § 3.074 H.3. Large electric power generating plant avoidance areas.

d. When there exists a feasible and prudent alternative with less adverse environmental and noncompensable human effects, no LEPGP site shall be selected where the developed portion of the plant site includes more than 0.25-0.75* acres of prime farmland per megawatt of net generating capacity, and no make-up water storage reservoir or cooling pond site shall be selected that includes more than 0.25-0.75* acres of prime farmland per megawatt of net generating capacity. These provisions shall not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second and third class; or areas designated for orderly annexation under Minn. Stat. § 414.0325.

6 MCAR § 3.083 Identification of large electric power generating plant study areas.

A. Inventory criteria and standards. The following criteria and standards shall be used by the Board to prepare an inventory of large electric power generating plant study areas and by the utility and the Board to evaluate any proposed site not located within the appropriate study area.

1. Exclusion areas.

a. Criterion. Study areas shall be compatible with Board rules on exlusion criteria for LEPGP site selection.

b. Standard. Geographic areas identified in 6 MCAR § 3.074 H.2.b. shall not be part of any study area.

2. Air quality.

a. Criterion. Study areas for LEPGPs shall be compatible with existing federal and state air quality regulations and rules.

b. Standard. Study areas shall not include those areas in which operation of a LEPGP would likely result in violation of primary or secondary standards or exceedence of prevention of significant deterioration increments for sulfur dioxide or particulate matter as established under 42 U.S.C. §§ 7401-7642 (1980), Minn. Stat. § 116.07 and Minn. Rule APC 1.

3. Transportation.

a. Criterion. Study areas for coal-fired LEPGPs shall have reasonable access to existing transportation systems which are or can be made capable of transporting the required quantities of coal.

*Note: A range of numbers has been proposed for the allowable amount of prime farmland per megawatt. Ultimately, one specific number will be adopted for the developed portion of the plant site and one specific number for the reservoir or cooling pond site.

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b. Standard. In identifying study areas for coal-fired LEPGPs, "reasonable access" shall mean no more than 12 miles distant from the existing transportation system.

4. Water.

a. Criterion. Study areas for LEPGPs using evaporative cooling systems shall have reasonable access to an adequate water source.

b. Standards.

(1) In identifying study areas for LEPGPs using evaporative cooling, rivers and lakes shall be considered potential water sources.

(2) In identifying study areas for LEPGPs using evaporative cooling, "reasonable access" shall mean no more than 25 miles distant from the water source.

(3) In identifying study areas for LEPGPs using evaporative cooling, a water source shall be considered adequate if it appears likely to allow LEPGP operation through periods of historic low flows or historic low elevations, either by direct withdrawal or by using supplemental stored water. This evaluation shall be based on historic stream flows, cooling water system technology and the environmental, economic and engineering constraints of reservoir design related to size.

B. Application of inventory criteria and standards. The board shall adopt an inventory of study areas for the LEPGP capacities, fuel types and designs reasonably anticipated to be subject to application for a certificate of site compatibility in the near future. The inventory shall consist of the maps of the study areas; discussion of specific inventory criteria and standards and technical assumptions used to develop the maps; and discussion of the LEPGP capacities, fuel types, and designs for which the maps are developed. The board shall consult with board member agencies, utilities and other agencies or persons with applicable information as it develops the technical assumptions necessary for application of inventory criteria and standards.

Small Business Finance Agency

Proposed Rules Relating to Amendment of the General Provisions Section of Existing Rules of the Agency and the Making of Business Loans

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Small Business Finance Agency proposed to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

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

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 15.0412, subdivisions 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:

M. Jean Laubach
Executive Director
Small Business Finance Agency
480 Cedar Street
St. Paul, Minnesota 55101
(612) 297-3547

Authority for the adoption of these rules is contained in Minn. Stat. § 362.53, subd. 4 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Ms. Laubach 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 be advised of the submission of these rules for approval, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Ms. Laubach.

A copy of the proposed rules is attached to this notice. Additional copies may be obtained by contacting Ms. Laubach.

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 $250.00, 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 $250.00, 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.

Kent E. Ecklund, Vice Chairman
Small Business Finance Agency

Amendment as Proposed

4 MCAR § 14.001 Scope. These rules are made pursuant to Minn. Stat. § 362.53, subd. 4 (1980) to implement and make specific the provisions of the Act and relate to the providing of Pollution Control Loans and Business Loans.

Rules as Proposed (all new material)

4 MCAR § 14.005 Misrepresentation by applicant. The agency may forthwith reject any application, whether or not previously approved, may revoke any preliminary or final resolution prior to sale of the bonds approved thereby or may refuse to close any loan in the event that any information provided to the agency by the owner contains a material misrepresentation or omission. Each applicant shall have an affirmative duty and obligation to update and correct all information provided to the agency.

4 MCAR § 14.006 Severability. If any provision of these rules or the application thereof to any business or person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule and the various applications thereof are declared to be severable.

Chapter Three: Business Loans (4 MCAR §§ 14.020-14.029)

4 MCAR § 14.020 Overview of procedure for approval of business loans.

A. Submission of application. To be eligible for a business loan, an owner shall make an application for a business loan pursuant to 4 MCAR § 14.021 of this rule on approved application forms of the agency.

B. Approval of application by executive director. The executive director shall process the application in accordance with the procedures and limitations set out in 4 MCAR § 14.021. The criteria the executive director shall use in approving an application for processing are set out in 4 MCAR § 14.021.

C. Acceptance for processing. Upon the determination by the executive director that business loan requested meets the eligibility requirements of 4 MCAR § 14.021, the agency shall determine pursuant to 4 MCAR § 14.023 if the agency intends to fund the requested business loan subject to final authorization by the agency.

D. Final authorization of business loan. Upon the determination by the agency that the loan requested pursuant to an application which has been accepted for processing can and should be funded, the agency shall adopt a resolution approving such loan, which resolution shall include a provision that the obligation of the agency to make the loan is contingent on the ability of the agency to sell its bonds on terms which the agency, in its sole discretion, deems acceptable. In addition, any such resolution may contain such other provisions and conditions as the agency, in its sole discretion, deems advisable.

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4 MCAR § 14.021 Application procedures.

A. The owner shall submit to the agency copies of the completed application upon the forms provided by the agency.

B. Application shall be deemed to have been made upon receipt by the agency of a completed application with all required documentation and exhibits, together with the required fee specified in the application forms. In the event that an incomplete application is received, the executive director shall notify the applicant specifying the deficiencies. The applicant shall have 60 days from the date of the executive director's notification to complete such application. If the application is not completed within 60 days, the application shall be deemed to be rejected and the applicant must reapply to be further considered. In the event the executive director is able to determine from the information submitted on an incomplete application that the applicant is not an owner or the proceeds of the requested business loan are intended to finance expenditures not permitted under the Act, the executive director shall so notify the applicant.

C. Upon receiving a completed application, the executive director shall review the application and shall make a determination as to whether the applicant is an owner as defined in the Act or the proceeds of the requested business loan are intended to finance expenditures permitted under the Act.

D. Costs eligible for funding are the capital expenditures set forth in the Act, including the following:

1. Land and/or building acquisition costs,
2. Site preparation,
3. Construction costs,
4. Engineering costs,
5. Equipment and/or machinery,
6. Bond issuance costs,
7. Underwriting or placement fees,
8. Initial trustee's fee,
9. Initial fee of guarantor or insuror, if applicable,
10. Small Business Administration processing and administration fee, if applicable,
11. Minnesota Small Business Finance Agency fee,
12. Certain contingency costs,
13. Interest costs during construction, and
14. Legal fees, including those of agency's bond counsel.

The agency shall determine that an expenditure is not eligible for funding if in the opinion of the agency financing of such expenditure may adversely affect the exemption of the interest on the agency's evidences of indebtedness from federal income taxes.

E. After approving or disapproving an application, the executive director shall notify the applicant of the determination and the treatment of the application as follows:

1. If the executive director determines that the applicant is an owner as defined in the Act and that the costs specified in the application are eligible for funding, the application shall then be deemed accepted for processing and treated in accordance with the agency review provisions established in 4 MCAR § 14.023.

2. If the executive director determines that the applicant is not an owner as defined in the Act, the application shall be rejected and not further considered.

3. If the executive director determines that any of the costs described in the application are not eligible for funding, the executive director shall note the deficiencies in the application and shall so notify the owner. The owner shall have 30 days from the date of the executive director's notification to amend the application. In the event the application is amended in a timely fashion to include only eligible costs, it shall be treated in accordance with the agency review provisions established in 4 MCAR § 14.021 F. If the application is not properly amended within 30 days, the application shall be deemed rejected and not further considered.

F. In the event that an application is rejected for processing pursuant to 4 MCAR § 14.021 E.2. or 3., the applicant may, within 30 days after date of the notification by the executive director, request the executive director to submit the determination to the agency for review at the next regularly scheduled meeting of the agency for which the agenda has not been established. If the agency approves the application, the application shall be treated in accordance with 4 MCAR § 14.023.

4 MCAR § 14.022 Application content. Applications shall be on forms of the agency and shall include such information as the agency reasonably deems necessary.

4 MCAR § 14.023 Evaluation procedure. Applications approved for processing by the executive director shall be presented to the agency for approval or disapproval. If the agency disapproves the application, the executive director shall so notify the applicant. If the agency approves the business loan for funding it shall forthwith pass a preliminary resolution giving preliminary approval to the project to be financed from the loan proceeds and stating the name of the owner, a brief description of the project, and the amount of the loan. Such a resolution shall not obligate the agency to issue bonds or to fund any loan, but shall only constitute an expression of current intention of the agency to issue such bonds or to fund such a loan. The preliminary resolution may contain a time limit with respect to the issuance of the bonds, may be revoked or amended by the agency at any time prior to the final resolution of the agency without liability to the agency and may impose any conditions or requirements which the agency deems desirable. The executive director shall forthwith notify the applicant of the agency's approval and furnish the applicant a copy of the preliminary resolution.

The agency shall review and consider approval of an application for a business loan, on the basis of effectuating the purposes of the Act, including determinations regarding the following:

A. That the applicant is an owner as defined in the Act,

B. That the small business reasonably can be expected to maintain a sound financial condition and to retire the principal and pay the interest on the loan made or guaranteed in accordance with the terms of the loan agreement,

C. That the project is economically feasible with a reasonable expectation that the life of its economic feasibility will exceed the maturity of the loan,

D. That the project will create or maintain a sufficient number and type of jobs to justify agency participation in its financing,

E. That the project feasibility is sufficient to allow the agency to sell the bonds required for its financing,

F. That the project and its development is economically advantageous to the state, that the provision to meet increased demand upon public facilities as a result of the project is reasonably assured, and that energy sources to support the successful operation of the project are adequate,

G. That if the project shall have the effect of a transfer of employment from one area of this state to another the agency determines that the project is economically advantageous to the state or that the project is necessary to the continued operation of the business enterprise within the state,

H. That other criteria have been met which the agency has determined will effectuate the purposes of the Act.

4 MCAR §§ 14.024-14.029 [Reserved for future use.]

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ADOPTED RULES

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

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

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

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

Department of Commerce Insurance Division

Adopted Rules Governing Group Insurance Coverage Replacement

The rules proposed and published at *State Register*, Volume 5, Number 31, pp. 1215-1217, February 9, 1981 (5 S.R. 1215) are adopted with the following amendments:

Amendments as Adopted

4 MCAR § 1.9251 Authority and scope. Rules 4 MCAR §§ 1.9251 ~~and~~ through 1.9252~~3~~ apply to all policies and subscriber contracts issued or provided by an insurance company, non-profit service plan corporation or health maintenance organization on a group basis, and are promulgated pursuant to the authority of Minn. Stat. § 60A.082.

4 MCAR § 1.9252 Definitions. For purposes of these rules "carrier" shall mean any insurance company as defined in Minn. Stat. § 60A.032, subd. 4; any service plan corporation as defined in Minn. Stat. § 62C.02, subd. 6; and any health maintenance organization as defined in Minn. Stat. § 62D.02, subd. 4.

4 MCAR § 1.92523 Continuation of coverage in situations involving replacement of one ~~insurer~~ carrier by another.

A. Purpose. The purpose of this rule is to indicate which ~~insurer~~ carrier is responsible for coverage in those cases where one ~~insurer's~~ carrier's plan of benefits replaces a prior plan which offered similar benefits.

B. Liability of the prior ~~insurer~~ carrier. The prior ~~insurer~~ carrier remains liable to the extent of its accrued liability and extension of benefits pursuant to its existing contractual liability at the time of replacement.

C. Liability of the succeeding ~~insurer~~ carrier.

1. Each individual who is eligible under the succeeding ~~insurer's~~ carrier's plan, with respect to provisions regarding class eligibility, activity at work, and non-confinement, shall be covered by the succeeding ~~insurer's~~ carrier's plan of benefits as of the effective date of that plan.

2. Each individual who is not eligible for coverage in accordance with 4 MCAR § 1.9252 C.1. shall nevertheless be covered by the succeeding ~~insurer~~ carrier in accordance with the following rules, provided that such individual (including an individual who has exercised the option for extension of benefits pursuant to Minn. Stat. §§ 62A.148 and 62A.17) was validly covered under the prior plan on the date it was discontinued and such individual is a member of a class of individuals otherwise eligible for coverage under the succeeding ~~insurer's~~ carrier's plan.

a. The minimum level of benefits which shall be provided by the succeeding ~~insurer~~ carrier shall be the lesser of:

(1) The benefits available under the prior ~~insurer's~~ carrier's plan reduced by any benefits payable by the prior ~~insurer~~ carrier; or

(2) The benefits available under the succeeding ~~insurer's~~ carrier's plan.

b. Coverage shall be provided by the succeeding ~~insurer~~ carrier pursuant to 4 MCAR § 1.9252 C.2. at least until the earlier of the following dates:

(1) The date the individual becomes eligible under the terms of the succeeding ~~insurer's~~ carrier's plan; or

(2) The date the individual's coverage would otherwise terminate, for each type of coverage, in accordance with the individual termination of coverage provisions of the succeeding ~~insurer's~~ carrier's plan.

3. Each individual subject to a pre-existing condition limitation contained in the succeeding ~~insurer's~~ carrier's plan shall nevertheless be covered by the succeeding ~~insurer~~ carrier, provided that such individual was validly covered under the prior

plan on the date it was discontinued. The minimum level of benefits which shall be provided by the succeeding ~~insurer~~ carrier for a pre-existing condition shall be the lesser of:

a. The benefits of the new plan determined without regard to the pre-existing condition limitation; or

b. The benefits of the prior plan.

4. In applying any deductible or waiting period in its plan, the succeeding ~~insurer~~ carrier shall give credit for the full or partial satisfaction of the same or similar provisions under the prior plan. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods, to the extent the same expenses are recognized under the terms of the succeeding ~~insurer's~~ carrier's plan and are subject to a similar deductible provision.

5. In any situation where a determination of the prior ~~insurer's~~ carrier's benefits is required by the succeeding ~~insurer~~ carrier, at the succeeding ~~insurer's~~ carrier's request the prior ~~insurer~~ carrier shall furnish a statement of the benefits available and other pertinent information sufficient to permit the succeeding ~~insurer~~ carrier to verify or determine benefits.

6. Benefits of the prior plan shall be determined in accordance with the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan.

4 MCAR § ~~1.9253~~ § 1.9254 Reserved for future use.

Department of Economic Security
Training and Community Services Division

Notice of Extension of Adopted Temporary Rules Governing Weatherization Assistance for Low-income People

The temporary rule proposed and published at *State Register*, Vol. 5, No. 33, pp. 1258-1262, February 16, 1981, (5 S.R. 1258), subsequently adopted, is now extended for 90 days.

Energy Agency
Data & Analysis Division

Adopted Amendment to Rule Governing Permissible Quantity of Outdoor Display Lighting

The proposed amendment published at *State Register*, Volume 5, Number 28, p. 1111, January 12, 1981 (5 S.R. 1111), is adopted as of March 27, 1981. The adopted rule is identical to its proposed form.

Department of Revenue

Adopted Rules Governing the Apportionment of Railroad Operating Property to Counties and Taxing Districts (13 MCAR §§ 1.0022 and 1.0027)

The rules proposed and published at *State Register*, Volume 5, Number 38, pp. 1482-1487, March 23, 1981 (5 S.R. 1482) and Volume 5, Number 40, pp. 1572-1582, April 6, 1981 (5 S.R. 1572) are now adopted as proposed. There were no amendments.

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Small Business Finance Agency

Adopted Rules Relating to the General Operating Procedures of the Agency and the Making of Pollution Control Loans

The rules as published at *State Register*, Volume 5, Number 33, pp. 1253-1255, February 16, 1981, (4 S.R. 1253) were adopted on April 22, 1981, approved by the Office of the Attorney General on May 21, 1981, and filed with the Office of the Secretary of State on May 21, 1981.

M. Jean Laubach
Executive Director

SUPREME COURT

Decisions Filed Friday, June 5, 1981

51128/Sp. John Grouse, Appellant, v. Group Health Plan, Inc. Hennepin County.

A prospective employer who revokes an offer of employment, after a prospective employee has terminated his employment elsewhere in reliance on such offer, is liable for any damages the prospective employee thereby sustained as a result of losing his previous employment.

Reversed and remanded. Otis, J.

51370/Sp. State of Minnesota v. William Nathaniel Upton, Appellant. St. Louis County.

Evidence of defendant's guilt of assault with a dangerous weapon was sufficient.

Trial court did not clearly abuse its discretion in permitting use of prior conviction to impeach defendant's credibility as a witness.

Affirmed. Todd, J.

51197/390 Harvey Patzwald, petitioner, v. Public Employment Relations Board, Appellant, and Independent School District No. 197, Appellant. Ramsey County.

A determination by the Director of the Bureau of Mediation Services that substitute drivers are not members of the bargaining unit is proper under the facts of this case.

We reverse the trial court's decision and reinstate the decision of the Director of the Bureau of Mediation Services as affirmed by the Public Employment Relations Board. Todd, J. Dissenting, Yetka, J.

51454/Sp. State of Minnesota v. William Earl Gorham, Appellant. St. Louis County.

Evidence was sufficient to establish that crime of aggravated robbery was committed.

Trial court did not prejudicially err in refusing to order pretrial psychiatric examination to determine defendant's competency for trial.

Trial court did not prejudicially err in (a) denying a defense request to prohibit the use of certain prior convictions for impeachment purposes or (b) refusing to submit theft as a necessarily included lesser offense justified by the evidence; defendant, by failing to request specified instruction on defense of claim of right, forfeited his right to have this court decide whether the trial court should have given such an instruction.

Affirmed. Yetka, J.

51487/Sp. Diane Brenner, Appellant, v. Dawn Fayette Nordby, Don Fields, etc. Nicollet County.

When genuine issues of material fact exist as to the contents of communications between the parties, and as to the reasonableness of plaintiff's reliance upon those communications, it was error to grant defendant's motion for summary judgment.

Reversed and remanded. Yetka, J.

51557/21 Lucille Buhs, petitioner, v. State of Minnesota, Department of Public Welfare, Appellant, Benton County Welfare Agency. Benton County.

Medicaid does not prohibit payment for chiropractic X rays.

DPW Rule 47, insofar as it prohibits medical assistance payments for chiropractic X rays, is invalid under both state and federal law.

Affirmed. Yetka, J.

51558/Sp. State of Minnesota v. Thomas Jay Kline, Appellant. Chisago County.

Evidence was sufficient to support conviction for aggravated robbery.

Defendant, by failing to object or seek curative instructions, is deemed to have forfeited his right to have this court consider his contention that the prosecutor's closing argument was improper and unfair.

Affirmed. Wahl, J.

51373/2 Paul C. Voight, Relator, v. Rettinger Transportation, Inc., *et al*, and Hennepin County Welfare Department, Relator, Workers' Compensation Court of Appeals.

The exclusionary clause contained in Minn. Stat. § 176.011, subd. 16 (1988) is inapplicable to this case as the shooting was neither intentional nor motivated by reasons personal to the employee.

A traveling employee is entitled to workers' compensation coverage while engaged in reasonable relaxation or recreational activities. Reasonable activities are those which may normally be expected of a traveling employee as opposed to those which are clearly unanticipated, unforeseeable and extraordinary.

Reversed and remanded. Amdahl, J. Dissenting, Peterson, J., and Otis, J. Took no part, Sheran, C. J., and Scott, J.

51253/Sp. State of Minnesota v. Thomas Charles Galde, Appellant. Houston County.

Trial court did not err in refusing to suppress (a) evidence seized in warranted search of defendant's apartment or (b) statements made by defendant to arresting officers at time of execution of search warrant.

Trial court did not abuse its discretion in refusing to impose sanctions for prosecutor's unintentional, nonprejudicial failure to comply with pretrial discovery order.

Trial court properly denied motion to compel disclosure of identity of informant.

Affirmed. Simonett, J.

51689/Sp. Bruce Williams v. Russell Boyer, *et al*, Appellants. Dakota County.

Reversed. Simonett, J.

51719/Sp. In re Marriage of: Marilyn J. Castonguay, petitioner, v. Paul R. Castonguay, *et al*, Appellants. Hennepin County.

Corporate restrictions on the sale or transfer of stock do not apply to involuntary transfers, such as a transfer ordered in a marriage dissolution proceeding, unless the restriction specifically refers to involuntary transfers.

In this case, where the trial court has transferred stock held by the husband in a closely held corporation to the wife as part of a marriage dissolution proceeding, it is appropriate to impose a voting trust in such shares, and the case is remanded for that purpose.

The trial court's finding as to valuation of shares of stock in a corporation solely owned by the husband has adequate evidentiary support.

Reversed and remanded in part, and affirmed in part. Simonett, J.

Decision Filed Tuesday, June 2, 1981

81-364/Sp. State of Minnesota, Appellant, v. Henry John Ludtke. Otter Tail County.

Limited protective weapons search of defendant was proper. Intrusion into defendant's pocket to seize soft package—which officer under the circumstances was justified in assuming was a plastic bag containing a controlled substance—was also proper.

Warrantless search of satchel found in lawful search of motor vehicle was proper, even if satchel was functional equivalent of a closed suitcase. Before search was conducted defendant volunteered that satchel contained contraband, therefore signaling that he no longer had expectation of privacy as to the contents of satchel.

Reversed and remanded for trial. Sheran, C. J.

STATE CONTRACTS

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

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

Department of Administration Intergovernmental Information Systems Advisory Council (IISAC)

Notice of Request for Proposals for the Development, Publication, and Distribution of Public Information

The Intergovernmental Information Systems Advisory Council is issuing a request for proposal (RFP) which delineates the requirements for the development, publication, and distribution of articles which describe significant aspects of the state of automation within Minnesota local government.

The RFP may be obtained between June 15 and June 19, 1981, from:

Roger Sell
Executive Director
IISAC
245 East Sixth Street (Room 429)
St. Paul, MN 55101
Telephone: 612-297-2172

The deadline for submission of proposals is June 26, 1981, 5:00 p.m. The maximum amount of funds available for this effort is $11,835.00.

Department of Administration Office of State Building Construction

Notice of Availability of Contracts for Registered Professional Testing Services

The Department of Administration (DOA) intends to retain the services of qualified professionally registered individuals to conduct site and aerial surveys, materials testing, and soil borings and tests during the year commencing July 1, 1981. The fees associated with these projects will generally be less than $2,000 although the fees for some projects will exceed this amount.

As projects arise, it is the intention of DOA to contact firms who have expressed an interest in providing such services to the state. The final selection will be made on the basis of the background and experience of the firm, the geographic proximity of the firm to the project site, and an estimate of the fees to be charged for the specific project. Such estimates will be requested when a specific project exists.

Firms wishing to be considered for these projects are asked to submit a short brochure or resume consisting of no more than 10 pages outlining their background, qualifications, and fields of expertise to the Office of State Building Construction, Room G-10, State Administration Building, St. Paul, Minnesota 55155, Attention: George Iwan. Qualified applicants will be contacted as the need arises and may be requested to appear in St. Paul for an interview. Firms which responded during the past year need not respond again.

The names of firms responding may be provided to other state agencies having a need for the services described herein.

Names of qualified firms will be retained on file with DOA until June 30, 1982.

Department of Administration Office of State Building Construction

Notice of Availability of Contracts for Architects, Engineers, and Landscape Architects

The Department of Administration (DOA) intends to retain the services of qualified professionally registered architects,

engineers, and landscape architects to design, prepare construction drawings, and monitor construction of a number of projects during the year commencing July 1, 1981. These projects will be varied in nature and scope and will involve new construction, remodeling projects and facility studies. The cost of construction or remodeling projects will be less than $400,000 and the fees associated with facility studies will be less than $35,000. Particular emphasis will be placed on the background and experience of the firm on similar projects as well as the firm's geographic proximity to the project.

Firms wishing to be considered for these projects are asked to submit a short brochure or resume consisting of no more than 10 pages giving qualifications and experience of the firm to the Office of State Building Construction, Room G-10, State Administration Building, St. Paul, Minnesota 55155, Attention: George Iwan. Qualified applicants will be contacted as the need arises and may be requested to appear in St. Paul for an interview. Firms which responded during the past year need not respond again.

In submitting their brochures or resumes, firms shall indicate the area or areas of the list shown below in which they feel qualified.

1) Research and Programming
2) Educational
3) Health and Medical
4) Correctional
5) Restoration
6) Office and Administration
7) Recreational
8) Service and Industrial
9) Arts, including Performing Arts
10) Exhibition and Display
11) Landscape and Site Planning
12) Interiors
13) Water and Waste Facilities
14) Energy Supply and Distribution
15) Pollution Control
16) Acoustics

The name of firms responding may be provided to other state agencies having a need for the services described herein.

Names of qualified firms will be retained on file with DOA until June 30, 1982.

Designers for projects with estimated costs or fees in excess of those shown above will be selected by the State Designer Selection Board. Projects referred to the board will be advertised through board issued requests for proposal.

Department of Corrections
Minnesota Correctional Facility—Red Wing

Notice of Availability of Contract for Psychological Evaluation Services

The program at the Minnesota Correctional Facility—Red Wing requires the services of a licensed psychologist. This person will provide the written psychological evaluation—through testing, interviews, etc.—on up to a twice-weekly basis for all new admissions to the institution, to re-test selected youths based upon specific staff referral, plus limited staff training in the area of his/her expertise. Payment is $200.00 per 8-hour day. Annual cost is limited to $19,000.00.

Notice of Availability of Contract for Volunteer Services Coordinator

The program at the Minnesota Correctional Facility—Red Wing requires the services of a volunteer coordinator. Position requires up to 50 hours per week for 10 months (September-June), and up to 15 hours per week for the two months of July and August. Responsibilities include the providing of professional volunteer services for juvenile clients at the institution through the recruiting and training of volunteers, plus the development of a coordinated scheduling of the volunteers to augment on-going programs. Payment is $1,360.00 per month from September-June, and $400.00 per month in July and August. Annual cost is limited to $14,400.00.

For further information on either contract, contact:

Thomas P. Kernan, Assistant Superintendent
Minnesota Correctional Facility—Red Wing
Box 45
Red Wing, Minnesota 55066
Telephone: (612) 388-7154, ext. 227

The final submission date for either contract is June 30, 1981.

Department of Corrections
Minnesota Correctional Facility—Shakopee

Notice of Availability of Contract for Food Service Activity

Notice is hereby given to request proposals for the professional management of our food service activity at an annual cost not to exceed $44,000. This proposal shall include all civilian personnel to operate the service. These proposals must be submitted by 4:00 P.M. June 26, 1981 to Will Dague, Business Manager.

Please contact Will Dague at 445-3717 if interested.

Department of Economic Security
Program and Management Support Division

Notice of Request for Proposals for Review of Cost Accounting System

The Minnesota Department of Economic Security, Program and Management Support Division is seeking proposals for the review of its Cost Accounting System, and to prepare a report on its method of operation. This analysis will become the basis for a detailed Internal Procedures Manual.

Copies of the request for proposal (RFP), questions regarding the RFP and responses are to be addressed to:

State of Minnesota
Department of Economic Security
390 North Robert Street
St. Paul, Minnesota 55101
Attention: John Burns, Director
Financial Services
(612) 296-3965

Responses will be accepted until close of business July 6, 1981. Project to be completed within 90 days of contract date. The state has estimated that the cost will not exceed $12,000.

Department of Health
Community Services Division

Notice of Request for Proposals for Educational Services Related to Child Abuse and Neglect

The Minnesota Department of Health is requesting proposals from interested agencies and persons to assist in development of the capacity of Minnesota health care professionals to use parent education effectively as a tool in the prevention of abuse and neglect of young children. Specifically, it requests proposals for:

1. Developing curriculum guidelines for health professionals to use in the development and delivery of educational services for parents and caregivers of infants and toddlers.

2. Building the capacity of health professionals to use the guidelines effectively through workshops and technical assistance.

3. Assisting health professionals to develop educational programs for parents in cooperation with other community-based resources.

Interested persons may obtain a Request For Proposal and further information by submitting a written request to:

Ronald G. Campbell, M.D., Chief
Section of Maternal and Child Health
Minnesota Department of Health
717 Delaware Street SE
Minneapolis, Minnesota 55440

It is anticipated that the activities to accomplish this goal will not exceed a total cost to the state of $15,000.00. The deadline for the submission of completed proposals will be the close of the working day July 6, 1981.

Minnesota Community College System

Notice of Request for Proposals for Auditing Service

The Minnesota Community College System is requesting proposals for auditing service. The project will include an audit of the National Direct Student Loan Program, College Work-Study Program, Basic Educational Opportunity Grants Program, and will be performed in accordance with the financial and compliance elements as prescribed by the Federal Department of Education. The requested services are outlined in the Request for Proposals statement of work. The formal request for proposals may be requested and inquiries should be directed to:

Jerry Jarosch
Internal Auditor
Minnesota Community College System
550 Cedar St., 301 Capitol Square
St. Paul, Minnesota 55101
Phone No. 612-296-3935

It is anticipated that the activities to accomplish this audit will not exceed a total cost to the state of $90,000. The deadline for submission of completed proposals will be the close of the working day of June 29, 1981.

Department of Public Service Utilities Division

Notice of Request for Proposal for Consultant Services Related to Electrical Rates

The Department of Public Service of the State of Minnesota is soliciting proposals from qualified consultants to assist it in performing work to be conducted in connection with the anticipated petition to be filed around July 1, 1981 from Northern States Power Company for an increase in electric rates.

The consultant will be expected to perform the following tasks:

A. Aid and assist the department staff in preparation for cross-examination of witnesses for the utility and other intervenors who are testifying regarding costs of capital, capital structure, coverage requirements and other financial issues.

B. As a member of the department staff assigned to this case, develop and deliver direct testimony in response to the Northern States Power's proposal on each issue and present the department's recommendation on the issue.

C. Be prepared to develop and deliver rebuttal and/or surrebuttal testimony on the same issues, as required.

The estimated cost of this contract is $25,000.

The due date for proposals is July 1, 1981.

Direct inquiries to:

Ms. Linda Anthony
Contract Coordinator
Minnesota Department of Public Service
790 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101
612/297-2596

OFFICIAL NOTICES

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

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

Department of Commerce Insurance Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Medical Fee Review for Workers' Compensation

Notice is hereby given that the Insurance Division is seeking information or opinion from sources outside the agency in preparing to promulgate new rules governing medical fee review for workers' compensation. The promulgation of these rules is authorized by Laws of Minnesota 1981, Chapter 346, § 87. This section requires this agency to establish by rule procedures to "limit the charges allowable for medical, chiropractic, podiatric, surgical, hospital and other health care provider treatment or services, as defined and compensable under section 176.135, to the 75th percentile of usual and customary fees or charges based upon billings for each class of health care provider during all of the calendar year preceding the year in which the determination is made of the amount to be paid the health care provider for the billing."

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

William R. Howard
Assistant Commissioner of Insurance
500 Metro Square Building
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at 297-2852 and in person at the above address.

All statements of information and comment shall be accepted until July 15, 1981. Any written material received by the Insurance Division shall become part of the record in the event that the rules are promulgated.

June 5, 1981

William R. Howard
Assistant Commissioner of Insurance

Department of Commerce Insurance Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Exempting Insurers from Certain Filing Requirements for Commercial Lines of Insurance

Notice is hereby given that the Insurance Division is seeking information or opinion from sources outside the agency in preparing to promulgate new rules exempting insurers and rate service organizations from certain filing requirements for commercial lines of insurance. The promulgation of these rules is authorized by Minn. Stat. § 70A.02, subd. 3. This subdivision permits the Commissioner of Insurance to exempt specific kinds of insurance from any of the provisions of Chapter 70A if he finds the application of those provisions unnecessary to achieve the purposes of that chapter.

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

Matthew Glover
Insurance Division
500 Metro Square Building
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at 297-2854 and in person at the above address.

Any written material received by the Insurance Division shall become part of the record in the event that the rules are promulgated.

June 8, 1981

William R. Howard
Assistant Commissioner of Insurance

Energy Agency
Alternative Energy Development Division

Notice of Intent to Solicit Outside Opinion Concerning Rules Relating to the District Heating Bonding Act

Notice is hereby given that the Minnesota Energy Agency (hereinafter "agency") is soliciting information and opinions from sources outside the agency for the purpose of making rules authorized under the District Heating Bonding Act, Chapter 334, Laws of Minnesota 1981 (hereinafter "act").

The agency is considering promulgating rules covering three related but separate areas of district heating financing: 1) design loans; 2) planning grants; 3) design and construction loans. The first mentioned area will be subject to temporary rules until permanent rules can be prepared and adopted. The latter two areas will be subject only to permanent rules. Data and opinions in all areas are invited.

Temporary rules will be promulgated for the purpose of allowing those projects that have already completed comprehensive engineering, economic and design studies to quickly make proper application for, and in due course receive design loans. The temporary rules may differ substantially from the permanent rules. Information the agency is considering to require in the rule includes but is not limited to, the following:

A. The method and procedure by which a municipality makes application for financial aid under the act. Applicants may be required to provide, for example, a comprehensive business plan that contains no less than:

1. A preliminary engineering design of the heat source, distribution and transmission system, and customer conversions of selected major loads;

2. A market study that includes detailed information of fuel consumption and building heating system for 90% of the proposed thermal load;

3. A preliminary plan that shows how the system might be expanded to serve other parts of the community;

4. An economic analysis that includes: cash flow, income and balance sheet for a 20-year planning period;

5. Letters of intent from major customers (representing 50% of thermal load), to the owner of the heat source or the proposed system owner/operator;

6. An opinion by a registered professional engineer that the system described by the preliminary designs is technically feasible and that the preliminary engineering design and cost estimate is within standard engineering practice;

7. An opinion by a Certified Management Consultant that based on the assumptions in the preliminary economic analysis proceeding with the final planning phase of the projects is justified;

8. A resolution in support of the project from the governing body of the municipality;

9. A Negative Declaration from an Environmental Assessment Worksheet.

B. The criteria by which an application for financial aid under this act is reviewed. Priority may be given, for example, to those applications that:

1. Utilize coal or presently wasted heat,

2. Use hot water as a transfer medium.

All persons desiring to submit information or views on these or related subjects may do so either orally or in writing. Written or oral comment should be addressed to:

Mr. Ronald Sundberg
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone (612) 296-9096

All statements of information and comments on the subjects of the temporary rules must be received by June 29, 1981. Opinions and views on the other areas will be received until further notice. Any written material received by this date will become part of the record of any rules bearing on these subjects.

Minnesota State Agricultural Society Minnesota State Fair

Meeting Notice

The board of managers of the Minnesota State Agricultural Society, governing body of the Minnesota State Fair, will conduct a business meeting at 10 a.m. Friday, July 10, at the Administration Building on the fairgrounds, Falcon Heights. Preceding the general meeting will be a meeting of the board's space rental committee at 9 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, June 19, 1981, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Pollution Control Agency

Application by the City of Worthington for a National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Permit for its Wastewater Treatment Facility

Notice of Continuance of Hearing

Notice is hereby given that, pursuant to an order of the hearing examiner, the hearing in the above-entitled matter, originally scheduled to commence June 8, 1981, has been continued. The hearing will now be held on Monday, September 21, 1981, at the Farmers Room, Nobles County Courthouse, 315 Tenth Street, Worthington, Minnesota at 1:00 p.m.

It is anticipated that the hearing will be continued at 9:00 a.m. on Tuesday, September 22, 1981, at the same location and thereafter until adjournment. In addition, evening sessions will be held on both Tuesday, September 22, 1981, and Wednesday, September 23, 1981, commencing at 7:00 p.m. at the same location in order to provide an opportunity to participate to those who cannot attend the day session.

A second prehearing conference is scheduled for September 9, 1981, at 10:30 a.m., at the 4th Floor Conference Room, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113.

May 26, 1981

Louis J. Breimhurst
Executive Director

Pollution Control Agency Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinions and Information Concerning Revisions to the Minnesota Hazardous Waste Rules

Notice is hereby given that the Minnesota Pollution Control Agency (agency), is seeking opinions and information from

sources outside the agency for the purpose of revising the state's hazardous waste rules in order to gain interim authorization and to lead towards final authorization from the United States Environmental Protection Agency (EPA), pursuant to 40 CFR, Part 123, of the federal hazardous waste program.

On June 18, 1979, the state's hazardous waste rules became effective which define hazardous waste and establishes requirements governing hazardous waste storage, transport, treatment and disposal. The EPA promulgated the federal hazardous waste regulations on May 19, 1980. In part, these regulations provide a method by which a state may obtain authorization from the EPA to operate its program in lieu of the federal program. In order for the state to obtain interim authorization, it must have a program "substantially equivalent" to the federal program. Therefore, rule revisions will be necessary to obtain this goal. These revisions would affect the general areas of hazardous waste identification, generator, transporter and facility standards.

All interested or affected persons or groups may submit information or comments on this subject of the proposed rule revisions either orally or in writing. All comments should be addressed to:

Minnesota Pollution Control Agency
Attention: Larry Christensen
1935 West County Road B-2
Roseville, Minnesota 55113
(612) 297-2705

Any written material received by this office will become part of the record of any rules hearing on this subject.

The proposed rule revisions will be written in at least three (3) segments; identification, generator and transporter standards, and facility standards. When a segment is completed, the agency will publish a notice stating that the completed portion is available for review and requesting public comment. All comments received will be considered for incorporation into the rules.

June 3, 1981

Louis J. Breimhurst
Executive Director

STATE OF MINNESOTA

OFFICE OF THE STATE REGISTER

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

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FOR LEGISLATIVE NEWS

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

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

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

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

MEQB EXHIBIT 6

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Amendments to Rules of the Environmental Quality Board of Minnesota Governing the Siting of Large Electric Power Generating Plants

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Environmental Quality Board and State Planning Agency, for the purpose of receiving notice of the proposed adoption of rules by the Environmental Quality Board is accurate and complete as of 8:00 A.M., this 15th day of June, 1981.

Karen Wittenberg

MEQB EXHIBIT 8

In the Matter of the Proposed Adoption of Amendments to Rules of the Environmental Quality Board of Minnesota Governing the Siting of Large Electric Power Generating Plants

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Larry B. Hartman, being first duly sworn deposes and says:

That on the 15th day of June, 1981, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing, Proposed Amendments to Rules Relating to Siting Large Electric Power Generating Plants, Prime Farmland Definition and Summary of Proposed Rule Amendments by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Environmental Quality Board and State Planning Agency for the purpose of receiving notice of hearing on the proposed adoption of rules by the Environmental Quality Board.

Larry B. Hartman

Subscribed and sworn to before me
this 16th day of June, 1981.

Leonard O. Hislop

LEONARD O. HISLOP
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires March 18, 1983

MEQB EXHIBIT 9

RECEIVED

JUN 25 1981

ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Amendments to Rules of the Environmental Quality Board of Minnesota Governing the Siting of Large Electric Power Generating Plants

AFFIDAVIT OF ADDITIONAL MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Larry B. Hartman, being first duly sworn deposes and says:

That on the 15th day of June, 1981, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing, Proposed Amendments to Rules Relating to Siting Large Electric Power Generating Plants, Prime Farmland Definition and Summary of Proposed Rule Amendments by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to the attached list of persons.

Larry B Hartman

Subscribed and sworn to before me this 15th day of JUNE, 1981.

LEO M. STEINER
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

LEO M. STEINER
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone (612) 296-2723

February, 1981

EQB MEMBERS

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Arthur E. Sidner, Director
Rm. 101, Capitol Square Bldg.
550 Cedar Street
St. Paul, MN 55101
(612) 296-6662

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Joe Alexander, Commissioner
3rd Fl., Centennial Office Bldg.
658 Cedar Street
St. Paul, MN 55155
(612) 296-2549

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Richard Braun, Commissioner
Rm. 411, Transportation Bldg.
John Ireland Boulevard
St. Paul, MN 55155
(612) 296-3000

CITIZEN MEMBER
Dr. C. Edward Buchwald
Rural Route 4
Northfield, MN 55057
(507) 663-4403

POLLUTION CONTROL AGENCY
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1935 West County Road B2
Roseville, MN 55113
(612) 296-7301

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322 W. Michigan Street
Duluth, MN 55802
(218) 727-8446

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2211 Folwell Avenue
St. Paul, MN 55108
(612) 645-2625

ENERGY AGENCY
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980 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-6424

GOVERNOR'S REPRESENTATIVE
Gary Botzek
Room 130, State Capitol
St. Paul, MN 55155
(612) 296-2348

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Allan E. Mulligan
1500 Northwestern Financial Cntr.
7900 Xerxes Avenue South
Minneapolis, MN 55431
(612) 835-3800

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George Pettersen, Commissioner
State Health Building
717 Delaware Street SE
Minneapolis, MN 55440
(612) 296-5460

DEPARTMENT OF AGRICULTURE
Mark Seetin, Commissioner
90 West Plato Boulevard
St. Paul, MN 55107
(612) 297-2200

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone (612) 296-2723

February, 1981

TECHNICAL COMMITTEE

EQB ADMINISTRATOR

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Rm. 100, Capitol Square Bldg.
St. Paul, MN 55101
(612) 296-2723

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Roseville, MN 55113
(612) 296-7200

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St. Paul, MN 55101
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Rochester, MN 55901
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Roseville, Minnesota 55113

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Henry Quade
Professor of Biology
Biology Department
Mankato State University
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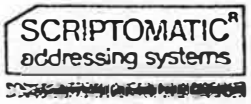

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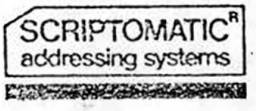

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STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik , being first duly sworn, deposes and says that on the 5th day of November , 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached ~~Report of~~ the Hearing Examiner, EQB-82-005-AK upon the Environmental Quality Board by handing to and leaving the same with Michael Sawyer, a graphic artist with the State Planning Board

Eileen A. Gaiovnik

Subscribed and sworn to before me
this 5th day of November , 1981.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

EQB-82-005-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Amendments to Rules Relating to Siting Large Electric Power Generating Plants.

REPORT OF THE HEARING EXAMINER

The above-entitled matter was heard by Hearing Examiner Allan W. Klein, commencing on July 20, 1981, in Granite Falls. The hearing continued on the following dates and places:

July 22, 1981	St. Cloud, Minnesota
July 27, 1981	Grand Rapids, Minnesota
July 29, 1981	Austin, Minnesota
August 31, 1981	Granite Falls, Minnesota
September 2, 1981	St. Cloud, Minnesota

This Report is part of a rulemaking proceeding pursuant to Minn. Stat. §§ 15.0411 through 15.0417, and 15.052, to determine whether the proposed rule amendments and new rules should be adopted by the Minnesota Environmental Quality Board (hereinafter "Board" or "Agency").

Members of the agency panel appearing at the hearing included: Nancy Onka, Environmental Planner on the Board's Power Plant Siting Staff (hereinafter "staff"); John Hynes, Research Scientist on the staff; Sheldon Mains, Acting Assistant Manager of the Power Plant Siting Program; and Lee Alnes, staff planner. Special Assistant Attorney General Christie B. Eller represented the Board.

Pursuant to Minn. Stat. § 15.0412, subd. 4d and 4e (1980), this Report shall be available for review to all affected individuals upon request for at least five working days. Thereafter, the Board shall, if it proposes to adopt the rule as recommended herein, submit the rule, together with the complete hearing record to the Attorney General and shall be responsible for notifying persons who have indicated that they wish to be notified of such filing. If the Board makes changes in the rule other than those recommended herein, it shall submit the rule with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to submitting it to the Attorney General for review.

Based upon all the testimony, exhibits, and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On May 22, 1981, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On June 15, 1981, a Notice of Hearing and a copy of the proposed rules were published at 5 State Register 1995.

3. On June 15, 1981, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice. In addition, the Board mailed to a supplemental group of persons identified as being interested in this matter.

4. On June 25, 1981, the Board filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Board personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) Two Affidavits of Additional Notice.
(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at 4 State Register 1832 (May 19, 1980).

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through September 22, 1981, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. For most of the rules under consideration, the procedures followed in this hearing were no different than the procedures followed at any other rule-making hearing. However, with respect to one of the new rules proposed for adoption, the procedure followed in this hearing was unusual (although not unprecedented). For that new rule, the hearings were divided into two stages.

The proposed rule would limit the amount of prime farmland which could be used for a power plant site. The Notice of Hearing announced that during the July hearing sessions, the Board was seeking testmony on the amount of prime farmland which ought to be allowed to be used for a power plant site, indicating a range of between .25 acres per megawatt and .75 acres per megawatt. Following the July hearings, the staff reviewed the testimony, and chose to recommend .5 acres per megawatt. The August hearings were held to receive comments on the staff's recommendation. It was this prime farmland rule which drew virtually all of the public comment. This Report will first discuss some of the other proposals, and then discuss the prime farmland rule.

7. The Board has proposed to amend existing rule 6 MCAR § 3.074 H.1.j. That is one of 16 site selection criteria which are to be employed by the Board to guide the site suitability, evaluation and selection process. These 16 criteria are worded in terms of preferences for certain site characteristics, for example "preferred sites require the minimum population displacement".

The criterion proposed for amendment presently states that: "Preferred sites permit significant conservation of energy or utilization of by-products." The Board proposes to amend this provision to read as follows:

> Preferred sites maximize opportunities for significant conservation of energy, utilization of by-products or biomass, cogeneration and development of waste-to-energy systems.

8. Essentially, this proposed amendment can be viewed as an expansion of the present rule by adding three new technologies. It grew out of a series of public meetings on the 1979 Draft Inventory (see, summaries contained in Exhibit 15) as well as the work of the 1979-80 Power Plant Siting Advisory Committee (see, Exhibit 118).

The record contains various exhibits dealing with the specific technologies proposed for inclusion herein. While these will not be discussed in detail in this Report, it is found that as new technologies emerge (or older technologies are re-evaluated in light of current conditions), it is entirely appropriate to amend the rules to reflect current thinking. While the application of any of these technologies must be considered on a case-by-case basis, and will not be applicable to every plant siting, that is no reason to ignore them. In fact, with regard to one of them (cogeneration), the legislature has specifically directed the agency to evaluate "the potential for beneficial uses of waste energy" from power plants. Minn. Stat. § 116C.57, subd. 4(4) (1980).

9. It is specifically found that the proposed change has been demonstrated to be both needed and reasonable.

10. Another proposed change also dealt with the existing site selection criteria, but in this case, the agency proposes to delete one of them. Presently, 6 MCAR § 3.074 H.1.n. provides that: "Preferred sites allow for future expansion."

The agency is concerned that the existing criterion reflects a bias in favor of large sites which, it fears, could well result in potentially desirable sites being overlooked or rejected in the site selection process because they did not meet this criterion. In addition, this criterion was orignally adopted (in different form) in 1974, and amended to its present form in 1978. Table 1 in the Statement of Need and Reasonableness points out that the most recent forecasts of anticipated new generating facilities are dramatically lower than they were either in 1974 or 1978.

11. Opposition to the deletion of this criterion centered around the idea that it would contradict the non-proliferation policy enunciated in the PEER decision (People for Environmental Enlightment and Responsibilities, Inc. v. Minnesota Environmental Quality Council, 226 N.W.2d 858 (Minn. 1978)) and could result in more adverse environmental impacts from the siting of future plants. However, another existing criterion (which is not proposed for deletion) provides that:

> Preferred sites maximize the use of already existing operating sites if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites.

While obviously this criterion cannot come into play if an existing site is not capable of future expansion, the need for future plants is far smaller today than it was in the past. Also, the deletion of the criterion does result in a policy which is "size neutral", and in no way prohibits the selection of a site which is capable of future expansion if that site is also the best possible one.

12. It is found that the proposed deletion has been justified as both needed and reasonable.

13. The third proposed change to the site selection criteria is the addition of a new criterion and a related definition. The new criterion would provide that:

> Preferred sites maximize the opportunities for community benefits and economic development.

The new definition is of the term "community benefits", which is defined to mean:

> Those benefits to the local community, other than economic development, that result from power plant design or location. Examples include the use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines and increased tax base.

14. It is argued that the implementation of this criterion will make future plant sitings more acceptable to the local area that bears the burden of a nearby power plant. With proper planning and site selection, the examples given in the definition could well mitigate some of the adverse consequences of plant sitings. In the 1979 Draft Inventory meetings, for example, the City of Austin was identified as having recently lost the use of its sanitary landfill. Some of the waste heat from one of the two existing plants was being used for a district heating system. A new meat packing plant was under construction. City residents who attended that meeting argued that any new plant in Austin should provide not only adequate electric power, but also (1) incineration of solid waste, and (2) waste heat for district heating. The 1979-1980 Power Plant Siting Advisory Committee devoted a major portion of its recommendations to co-location, cogeneration, and also advocated the use of wastes for fuels.

15. Opposition to the proposed additions centered around the concepts that (1) the criterion was not site differentiating and (2) that it was duplicative of other criteria. While, again, the application of this criterion will vary on a case-by-case basis, the Examiner finds that the record does demonstrate both the need for and the reasonableness of the proposed addition. Again, with sufficient planning, there is no reason why it should not be possible to increase the community benefits accruing from the location of a power plant. In light of the present climate of public opinion regarding both energy waste and the siting of facilities, it would appear to be in everyone's interest to maximize community benefits and community acceptance.

16. All of the proposed changes to the existing rules discussed above deal with site selection criteria. The existing rules contain two other sections designed to guide the location of plants. One of these sections sets forth "avoidance areas", and provides that:

> . . . the following land use areas shall not be approved for large electric power generating plant sites when feasible and prudent alternatives with lesser adverse human and enviromental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas.
> . . .

The Board proposes to add a new type of land use to the list of avoidance areas. This could briefly be summarized as the avoidance of excessive amounts of prime farmland.

17. The Board is proposing to add the following rule and associated definitions:

> When there exists a feasible and prudent alternative with less adverse environmental and noncompensable human affects, no . . . site shall be selected where the developed portion of the plant site includes more than [0.25-0.75] acres of prime farmland per

megawatt of net generating capacity, and no make-up water storage reservoir or cooling pond site shall be selected that includes more than [0.25-0.75] acres of prime farmland per megawatt of net generating capacity. These provisions shall not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second and third class; or areas designated for orderly annexation under Minn. Stat. § 414.0325.

An associated definition is that of "prime farmland", which is defined as:

> . . . those soils that meet the specifications of 7 C.F.R. § 657.5 (a) (1980).

The other related definition defines "developed portion of plant site" to mean:

> . . . the portion of the . . . site, exclusive of make-up water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.

18. The present rules do contain a site-selection criterion (which is not proposed for withdrawal) which provides as follows:

> Preferred sites minimize the removal of valuable and productive agricultural, forestry, or mineral land from their uses.

19. The supporters of the proposed avoidance area criterion argued that it was needed for the following reasons:

(a) Prime farmlands are being converted to non-agricultural uses at a rapid rate, mostly in a piecemeal fashion.

(b) Prime farmlands converted to other uses are not replaceable.

(c) There are high environmental consequences from using non-prime soils to replace prime soils.

(d) A large amount of cropland will be needed in the future.

(e) The current criterion does not provide sufficient guidance and protection.

20. Opponents of the proposed avoidance area criterion, while agreeing that valuable and productive agricultural lands should be protected from unnecessary loss, questioned whether the proposed criterion was an appropriate means to do so. In particular, they argued that the criterion was not needed because the loss of such lands to power plants had not been great in the past and, given the few plants forecast in the next 15 years, the loss would not be great in the future. Estimates of future loss were in the range of a maximum of 3,000 acres, or .01% of the current cropland base.

21. The National Agricultural Lands Study demonstrated that agricultural land losses to non-agricultural uses have been occurring at an extremely alarming rate. Coping with the problem of this conversion is especially difficult because of its incremental and piecemeal nature. The Executive Director of the Study described Minnesota as a key agricultural state, and described the loss of farmland as a "pivotal issue", with ramifications not only for the present, but growing more vital in the future.

Between 1967 and 1977, Minnesota lost almost 500,000 acres of agricultural land through conversion to non-agricultural uses. The Agricultural Census uses different definitions, but supports the trend noted in the previous statement. The Agricultural Census reports that between the years 1969 and 1978, Minnesota lost a little over one million acres of farmland. The difference between the two is that the agricultural census reports all acreage in a "farm", while the NALS looked only at agricultural land. Considering the fact that Minnesota

ranks fourth in the nation in terms of prime agricultural land, and that agriculture is a $6 billion industry in this state, one gets some flavor for the economic impacts. An example used at the hearing was that one million acres of prime agricultural land, producing corn at a rate of 140 bushels per acre, at a price of $3.50, represents a crop value worth of $490,000,000 every year. If corn is valued at $2.50 per bushel, the value is still $350,000,000 annually.

22. Although the aggregate losses for the state as a whole are large, the causes of those losses are less clearly identifiable and, perhaps most importantly, the National Agricultural Land Study concluded that they could best be described as "piecemeal". Housing, manufacturing, and numerous uses all contributed to the loss of prime agricultural land. The Executive Director of the NALS described it as follows:

> It was a few acres here, a few acres there, and that is what adds up. The accumulative incremental affect of conversion. That's why it's such a difficult thing, sometimes, to visualize it. You go into a county and you see a few acres taken along one section, and a few acres taken someplace else, and you think of the land base in that particular county and that amount that comes out seems relatively small, but it adds up and it adds up quickly. . . . (Granite Falls, Stage 1, p. 166).

23. It is extremely difficult to say at what point enough land has been taken (or is projected to be taken in the future) so that one could say that there is a "problem", so as to justify the need for a rule such as the Board's proposal. The utilities argued that .01% was not enough to justify need. The United States Supreme Court recently had to decide a similar question. In the case of Hodel v. State of Indiana, 49 U.S.L.W. 4667 (decided June 15, 1981), the Court was faced with arguments over the constitutionality of a federal statute known as the Surface Mining and Reclamation Control Act of 1977. The portions of the Act at issue related to certain restrictions on the strip mining of land which was both (a) prime farmland and (b) had historically been used as cropland. The restrictions included a requirement that a permit be obtained, and that the applicant demonstrate that the land could be restored to its pre-mining productivity level. To ensure that this restoration could be accomplished, applicants were required to post a bond, and agree to segregate and store topsoil from prime farmland which they proposed to mine. The State of Indiana, several coal mine operators, and others filed suit, alleging that the statute violated the Commerce Clause and other provisions of the Constitution. A Federal District Court decided in Plaintiffs' favor, holding that provisions of the Act did violate the Commerce Clause because there was an insufficient impact on interstate commerce to justify federal regulation. 501 F.Supp. 452 (S.D.Ind., 1980). The Supreme Court described the District Court's rationale as follows:

> The court reached this conclusion by examining statistics in the Report of the Interagency Task Force on the Issue of a Moratorium or a Ban on Mining in Prime Agricultural Lands (1977). These statistics compared the prime farmland acreage being disturbed annually by surface mining to the total prime farmland acreage in the United States. The Interagency Report stated that approximately 21,800 acres of prime farmland were being disturbed annually and that this acreage amounted to .006% of the total prime farmland acreage in the Nation. 501 F.Supp. at 459. This statistic and others derived from it, together with similar comparisons for Indiana, persuaded the [District] court that surface coal mining on prime farmland has "an infinitesimal effect or

trivial impact on interstate commerce". [footnotes and citations omitted].

The Supreme Court, however, described this rationale as "untenable", because it was not for the courts to nullify legislation based on their own judgments of what amount of prime farmland was significant; rather, the Supreme Court stated that the test was whether Congress had a rational basis for concluding that there was some interstate commerce involved.

The Examiner does not cite this case for the proposition that the taking of any amount of prime farmland -- even one acre -- would be an adequate showing of "need" under the Minnesota Administrative Procedure Act. However, he does believe that the case is of assistance in dealing with the fact that only a small percentage of Minnesota's prime farmland would be protected by the proposed rule. At some point -- a point which does not need to be precisely defined by this case -- the amount of land at risk does become adequate to support a rule such as this.

24. Plants will likely be proposed in the future. Loss of valuable agricultural lands is a problem of "nibbling away". The Board does have the authority to be concerned with such loss for power plant sites. While undoubtedly there are other uses (housing and manufacturing, to name but two) which do take larger amounts of prime farmland than power plants, the Board is not empowered to regulate those takings. What the Board is empowered to regulate is the siting of power plants. In addition, because the Board is made up of persons with a broad range of other responsibilities (including the Departments of Natural Resources, Agriculture, Health, Transportation, Energy, etc.), this action by the Board may serve as an example to other decision-makers. In some respects, it can be described as "symbolic", but in the minds of some of the people who testified at the hearings, such symbolism may be necessary to influence other decision-makers. (See, Memorandum).

25. It is found, based upon the record as a whole, that the Board has justified the need for a rule limiting the amount of prime farmland which may be taken for power plant sites.

26. Much discussion was also directed to the issue of the reasonableness of the Board's proposal. This was in part invited by the structure of the hearings, with a range of numbers initially proposed by the Board. Moreover, after describing the range, the procedures to be followed in selecting a final number, and inviting interested persons to submit facts and opinion in support of any number (including numbers not within the range), the notice went on to make the following statement:

> In particular, the Board is interested in receiving testimony on whether the proposed amendments should also contain a maximum acreage of prime farmland that can be used for the developed portion of a plant site and for an associated reservoir/cooling pond site, regardless of plant capacity. . . .

This was the "cap" concept which will be discussed in greater detail below.

27. Appended hereto, as Attachment 1, is a summary of most of the specific recommendations made. This summary was prepared by the staff, and the Examiner does not certify it as being totally accurate (in many cases, specific comments have been substantially abbreviated), but it should give the Board an idea of the recommendations received. Missing from that addendum are the recommendations of the affected utilities, who universally opposed the adoption of the

rule. These utiltities included NSP, UPA, and the "industry group" labeled the Minnesota/Wisconsin Power Suppliers.

28. In order to select a limitation which is reasonable, it is necessary to have some idea of the impact of that limitation upon siting opportunities. Given the fact that "need" has been established, one could ask, "Why allow any prime farmland to be used?" The answer is that if one were to have a total ban on the use of prime farmland, certain portions of the state would have few, if any, areas where plants could be sited. The prime farmland in the state is concentrated in an arc along the southern and western borders. It is likely that the need for future plants will be in agricultural, rather than urban, areas. The exact location of those areas is, however, not clear from this record. If one assumes that there must be some sites in the heavily prime areas, then the reasonableness of this rule may be analyzed by examining how many sites would be available in heavily prime areas, as that would be the "worst case" situation.

29. Studies of available sites in heavily prime areas were made by the staff, and used as the basis for argument by both the utilities (who claimed that they were unrealistic) and those favoring a strict rule (who claimed that they showed plenty of available sites even at the strictest limitation). While all participants admitted that these studies were not definitive, the Examiner accepts them (as amended) as a reasonable basis for testing the impact of various limitations on the use of prime farmland.

30. The Examiner adopts EQB Exhibit 143 as being reasonably accurate for the purposes of examining the reasonableness of various limitations. It will be found on the next page of this Report. However, The mere fact that the table indicates, for example, that there is one site for an 800 MW plant in Goodhue County, does not mean that that site has been identified as the best site in Goodhue County. In fact, there could be other sites which were not found by the staff which are better; on the other hand, that one site could have serious drawbacks in light of all of the factors which must be considered in attempting to arrive at the best possible site.

As can be seen from the figures, the number of available sites increases substantially as the acreage limitation is loosened.

31. The goal of any siting proceeding is to select the best possible site. There are numerous factors which enter into this determination. Not only are there exclusion areas (where a plant may not be sited), but there are also avoidance areas (where a plant should not be sited unless there is no feasible and prudent alternative). Finally, there are 16 different site selection criteria to be applied. While there is merit to limiting the amount of prime farmland which can be taken for a site, it is wholly improper to assume that protecting prime farmland is the only goal of site selection. Therefore, the limitation to be selected must permit enough sites so that the other factors can be taken into account. Based upon all of the testimony and argument in the record, the Examiner finds that .5 acres per megawatt is reasonable. He finds that .25 acres per megawatt is unreasonable, because of the small number of sites which it would allow. It is further found that these findings apply to both the developed portion of the plant site and the reservoir/cooling pond portion of a site.

32. The Board invited comment on whether or not there ought to be an absolute maximum acreage limitation (a "cap") in addition to an "acres per megawatt" limitation. This "cap" would further limit the amount of prime farmland that could be taken for a site. Caps of 80, 100, and 200 acres were suggested (see, Addendum).

33. The concept of a cap comes from the 1980-81 Power Plant Siting Advisory Committee, which unanimously approved a resolution urging a .5 acres per megawatt limitation and a 200 acre cap (MEQB Ex. 28). The impact of adding a 200 acre cap to the .5 acres per megawatt limitation would mean that for any plant size of 401 MW or greater, the 200 acre cap would be the limiting factor. For plant sizes of 399 MW or below, the .5 acres per megawatt limitation would be the limiting factor.

34. Although the information in the record regarding the number of sites that would be available if a cap were applied is not as thorough as the information regarding the number of sites available without a cap, some information was developed for a 200 acre cap. That information indicates that if the .5 acres per megawatt limitation were selected, and if a 200 acre cap were imposed, there would be a total of 17 sites in Blue Earth County; four sites in Goodhue County; three sites in Olmsted County; two sites in St. Louis County; five sites in Wabasha County; and two sites in Yellow Medicine County. That is a total of 33 sites. Without the cap, there would be a total of 57 sites. The figures are for plants of 400, 800, and 1600 MW combined.

If the cap were reduced to 100 acres, or 80 acres, obviously the number of sites would be further reduced. However, no data was developed regarding the exact number of sites that would remain under those more severe limitations.

35. For the very same reasons that led to the rejection of the .25 acre per megawatt limitation, the Examiner finds that a 200 acre cap is unreasonable because it goes too far in restricting the number of available sites. The same argument would, of course, lead to a finding that a smaller cap is also unreasonable.

36. One issue which was briefly raised, but did not receive much attention, was whether the imposition of a cap would constitute a "substantial change". In order to avoid any possible remand on this question, the Examiner believes it desirable to comment upon it. Based upon the explicit statement in the Notice of Hearing, and based upon the standards set forth in 9 MCAR § 2.111, the Examiner finds that if the Board were to adopt a cap, that adoption would not constitute a "substantial change".

37. Another issue which received some discussion was the definition of "prime farmland". Obviously, some definition is needed if the basic rule is to be adopted. The Agency has chosen to incorporate by reference a definition established by the U.S. Department of Agriculture, Soil Conservation Service. The reasonableness of selecting this particular definition, however, was questioned by the utilities for a number of reasons, the most important of which are (1) that the definition inconsistently reflects farmland productivity, and (2) it may bias siting toward counties which have been mapped.

There is some merit to the first of these arguments. In Public Ex. K, James Alders of Northern States Power Company points out a number of examples where the dividing line between "prime" and "non-prime" is inconsistent with crop productivity or at least only a "fuzzy" indicator of crop productivity.

As the Statement of Need and Reasonableness admits, there are other methods of defining the best land, and crop productivity would be one of them. After reviewing all of the testimony on this point, however, it is found that the SCS definition (the one adopted by the Board) is a reasonable one in terms of attempting to define a difficult line.

With regard to the second objection, it is true that the SCS has not published maps of soils in all counties as yet. Approximately 35 county maps have been published, and approximately 20 counties are presently either being surveyed or their maps are in the process of being published. In the remaining 25 counties, no work has yet been commenced. The SCS plans, however, to have surveyed the entire state by 1991. In addition, even for the presently unsurveyed counties, there is considerable information available to assist persons in identifying areas that would meet the SCS test. Finally, the SCS has done a specific site survey for a power plant (the Brookston site for Minnesota Power and Light: See, MEQB Ex. 131). If requested, either the SCS or any competant soil scientist, could identify prime soils using the SCS definition. Therefore, the Examiner does not believe that the fact that the SCS has not completed its work in all counties is a bar to adopting its definition.

38. Based on the foregoing, the Examiner finds that the Board's proposal to use the SCS definition of "prime farmland" has been demonstrated to be both needed and reasonable.

39. The final item to be considered in connection with the prime farmland rule is another related definition, that of "developed portion of the plant site". Based upon the discussion in the Statement of Need and Reasonableness, it is found that this definition has been justified as being both needed and reasonable.

40. The final set of amendments relate to the inventory process. The legislature has directed the Board to adopt an inventory of study areas where large electric power generating plants might be located (Minn.Stat. § 116C.55). The inventory is intended to be an advance planning tool to identify relatively large land areas where it may be possible to locate power plants which less adverse impacts than other areas. The inventory is intended as a guide for power plant siting, but it does not identify specific sites.

The proposed amendments are in the form of a completely new rule (proposed for codification as 6 MCAR § 3.083) and two related definitions.

41. Many of the objections to the amendments (all of which came from the utilities) were based on the facts that (1) it does not appear at the present time that new power plants will have to be sited, and (2) since the passage of time may result in different policies toward both conventional and alternative energy systems, it is not necessary to adopt any procedures relating to the inventory at this time. While both of the assumptions may be correct, the argument misses an important point: That the legislature has mandated that there be an inventory of study areas and that the Board "promptly initiate" a public planning process to develop criteria and standards to be used in preparing the inventory. (Minn. Stat. § 116C.55). Unless and until the legislature changes these directives, the Board has a responsibility to fulfill them, and that, alone, is enough to justify need. As if to underscore this point, the Chairman of the House Energy Committee, Representative Ken G. Nelson, submitted

a written statement which notes, in part, ". . . Revisions of the criteria . . . to evaluate . . . and develop an inventory of power plant study areas seem to be appropriate at this time."

42. The method proposed by the Board appears to follow the statutory directive. Minn. Stat. § 116C.55, subd. 3 provides as follows:

> On or before January 1, 1979, the Board shall adopt an inventory of large electric power generating plant study areas and publish an inventory report. The inventory report shall specify the planning policies, criteria and standards used in developing the inventory. After completion of its initial inventory, the Board shall have a continuing responsibility to evaluate, update and publish its inventory.

The proposed rule first adopts criteria and standards to both guide the Board in preparing the inventory and to guide the Board in evaluating any proposed site not located within a study area (a site may be considered even though it is not in the inventory). The criteria and standards set forth in the proposed rule deal with exclusion areas, air quality, transportation, and water.

The second part of the proposed rule then defines what shall be in the inventory (which is the same as the "inventory report" required by the above-quoted statute). Included shall be such things as maps, discussion of types of plants covered, and "discussion of specific inventory criteria and standards and technical assumptions used to develop the maps". One of the related definitions proposed for adoption now is of "technical assumptions". The proposed rule defines them to be "the assumptions necessary to evaluate resource requirements of a LEPGP of a specific capacity, fuel type and design and to evaluate the availability of resources to meet those requirements". Under the Board's proposed rule, these "technical assumptions" would not be adopted as rules, but the rule requires the Board to "consult" with Board member agencies, utilities, and other agencies or persons with applicable information during the course of their development. It was the fact that these would not be adopted as rules that gave rise to some comment.

Different types of generating plants and different sizes of generating plants require different kinds of resources. For example, the water requirements of a 200 MW coal-fired plant using wet cooling towers are substantially different from those of an 800 MW plant of similar type and design. Even if the size is held constant, but the type of cooling tower is changed, the water requirements also change. As is pointed out in great detail in the Statement of Need and Reasonableness, there are numerous combinations and permutations of factors which influence the requirements of a plant. It would be a Herculean effort to write a rule which would cover all those factors. Therefore, what the Board has done is to propose a rule which provides (using the same example, water) that in identifying study areas, water sources shall be considered adequate based on a number of enumerated factors, such as flow, cooling, technology and size constraints of reservoir design. What the rule omits (and leaves for more detailed treatment in the technical assumptions) are the actual numbers which would be used to decide whether or not a particular water source meets the needs of a particular type of plant.

The Examiner finds that the approach of using broad criteria in the rules and leaving detailed matters for technical assumptions outside of the rules is not a violation of the rulemaking provisions of Chapter 15. The situation here is not unlike the situation in Can Manufacturers Institute, Inc. v. State,

289 N.W.2d 416 (Minn. 1979) where the Court was faced with a vagueness challenge to certain proposed rules. The Court dismissed the challenge stating that under the circumstances that the rules were designed to cover, it was unlikely that the rules could have been more precise. The Examiner believes that the same kind of analysis applies to these assumptions, and it is not improper to omit them from the rule. The persons threatened by the omission, the utilities, are specifically listed as persons who must be consulted prior to their development, and the very fact that the assumptions are not adopted as rules means that the Board cannot apply them with the force and effect of law. It is found that the rule relating to the inventory process, as well as the two related definitions, have been demonstrated to be both needed and reasonable.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. The Board gave due, timely and adequate notice of the hearing.

2. All relevant procedural requirements of law or rule, including the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been fulfilled.

3. The Board has documented its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) 1980.

4. The Board has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980); with regard to the limitation on the use of prime farmland, the Board has documented the reasonableness of a limitation of .5 acres per megawatt.

5. That any Findings which might properly be deemed Conclusions, or any Conclusions which might properly be deemed Findings, are hereby adopted as such.

6. That a Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude, and should not discourage, the Board from further modification of the proposed rules based upon an examination of the public comments; provided however, that no substantial change is made from the proposed rules as originally published, and further provided that the rule as finally adopted be based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Minnesota Environmental Quality Board adopt the proposed rules consistent with the Findings and Conclusions above.

Dated: November 4, 1981.

Allan W. Klein

ALLAN W. KLEIN
Hearing Examiner

by JMS

MEMORANDUM

I.

There is one matter which does not appear in the Findings, but which the Examiner desires to bring to the attention of the Board. It is the strength of commitment demonstrated by most of the persons who testified in favor of a limitation on the use of prime farmland for plant sites. The transcripts of the hearings cannot adequately communicate the very strong feelings expressed by many of the people who attended the hearings and presented their views. This can be gleaned, to some extent, from the testimony of people who asked why this limitation was only applicable to power plant sites: They believed that the rules ought to cover other land uses which converted prime agricultural land into non-agricultural uses. But even those who spoke only to a limitation on plant sites did communicate to the Examiner that they felt very strongly about this matter.

A review of the transcripts does indicate that most of the witnesses were not "anti-utility" (although a few were). Instead, the majority were pro-agriculture. Although they recognized the beneficial uses of electricity (including the agricultural uses), they communicated a strong belief that the preservation of agricultural land, particularly prime agricultural land, was very important to them.

II.

The Examiner reached his conclusion on .5 acres per megawatt (Finding No. 31) without any feeling of being bound to either accept the Staff recommendation or reject the rule entirely. He accepted the reasoning of Charles Dayton (see Posthearing submission), who argued that the procedure adopted by the Board allowed the Examiner to recommend any number between .25 and .75. However, as MEQB Exs. 147 and 148 demonstrate, there is a significant reduction in the number of possible sites as the acreage limitation drops below .5.

As stated in Finding No. 31, the Examiner believes that the limitation must be set so as to allow the other exclusion, avoidance and site-selection factors to operate. If the acreage limitation is set too low (or if a cap is allowed), then this one factor is given so much weight that it effectively overshadows all the others.

According to the testimony of one legislator, some legislators considered passing a bill that would set the number. However, it was decided to use this rulemaking proceeding instead. If the Legislature believes that more weight ought to be accorded to the presentation of prime farmland, it would be entirely appropriate to preempt this rule with a law. But until that happens, there must be a balancing of the various factors in siting plants. The Examiner believes that .5 acres does represent a reasonable balance.

A.W.K.

Search Area	Total # of Test Sites[1]	# of Test Sites that Meet 0.25 acres/MW[1]	# of Test Sites that Meet 0.50 acres/MW[1]	# of Test Sites that Meet 0.75 acres/MW[1]
BLUE EARTH				
400 MW	21	4	14	21
800 MW	14	2	9	14
1600 MW	10	1	6	10
GOODHUE				
400 MW	3	1	3	3
800 MW	1	1	1	1
1600 MW	-	-	-	-
OLMSTED				
400 MW	6	0	4	6
800 MW	1	1	1	1
1600 MW	1	0	1	1
ST. LOUIS				
400 MW	6	0	3	6
800 MW	5	0	4	5
1600 MW	4	0	3	4
WABASHA				
400 MW	2	2	2	2
800 MW	2	2	2	2
1600 MW	1	1	1	1
YELLOW MEDICINE				
400 MW	11	1	1	11
800 MW	12	1	1	12
1600 MW	4	0	1	4
TOTAL	104	17	57	104

[1]Test sites with few, if any, major constraints.

			Recommendation*
1.	John Johnson	Granite Falls, pp. 98-99	Avoid prime farmland
2.	Florence Dacy	Granite Falls, p. 94	No prime farmland can be used
3.	Dick Conway, Mower County Coalition	Austin hearing	No prime farmland can be used
4.	Minnesota Citizen/ Labor/Farmer/Senior Energy Coalition (CLFSEC)	Written testimony	Prime farmland or no more than 10% of site
5.	Wayne Kling	Granite Falls II	Less than 0.25 acres/MW
6.	Gary Velde	Granite Falls, pp. 275-276	0.25 acres/MW; 80 acre cap
7.	Minnesota Farm Bureau	Public Exhibit C	0.25 acres/MW; 100 acre cap
8.	Charles Dayton & Myron Peterson, Circuit Breakers	Granite Falls, pp. 193-196, Granite Falls II	0.25 acres/MW; 100 acre cap
9.	Charles Dayton & Paul Ims, Concerned Citizens for the Protection of the Environment	Granite Falls, pp. 213, 228-230 Granite Falls II	0.25 acres/MW; 100 acre cap 0.25 acres/MW: 200 acre cap
10.	Paul Homme	Granite Falls, pp. 208-209 Granite Falls II	0.25 acres/MW; 100 acre cap
11.	Mrs. Leon Velde	Granite Falls, pp. 279 Granite Falls II	0.25 acres/MW; 100 acre cap
12.	M.E. Beito & Mark McAfee, Minnesota Farmers Union	Granite Falls, pp. 77-78 St. Cloud, pp. 27-28	0.25 acres/MW
13.	Lloyd Schutte, Countryside Council	Granite Falls, p. 217	0.25 acres/MW
14.	Representative Gaylin Den Ouden	Granite Falls II	0.25 acres/MW
15.	Neil Deters	Granite Falls, p. 189	0.25 acres/MW
16.	PPSAC	MEQB Exhibit 28	0.5 acres/MW, 200 acre cap
17.	Minnesota Dept. of Agriculture	Written testimony	0.5 acres/MW
18.	MEQB Staff	MEQB Exhibit 146	0.5 acres/MW
19.	Minnesota Dept. of Natural Resources	MEQB Exhibit 36	Upper end of range
20.	Minnesota Catholic Conference	St. Cloud II	0.25 acres/MW
21.	Rev. Elmer J. Torberg	Written statement	0.25 acres/MW
22.	Agnes Kramer	Written statement	0.25 acres/MW

*The specified amount is the recommended limit for the developed portion of the plant sites and also the recommended limit for the reservoir/cooling pond site.

EQB-81-005-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENVIRONMENTAL QUALITY BOARD

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD RELATING TO ROUTING HIGH VOLTAGE TRANSMISSION LINES AND SITING LARGE ELECTRIC POWER GENERATING PLANTS.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, on March 4, 1981, the Minnesota Environmental Quality Board (hereinafter the "Board"), by its Executive Director, Robert Benner, submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of certain documents in rules to be proposed; and

WHEREAS, this submission was supplemented by a letter received on March 12, 1981; and

WHEREAS, pursuant to Minn. Stat. § 15.0412, subd. 4a, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed the following documents:

The Clean Air Act as amended, Title 42 U.S.C. § 7401 et seq.

specifications of prime farm lands, 7 C.F.R. 657.5(a)

State Conservationist's List of Important Farm Lands

and has found them to be in excess of 3,000 words and has determined that they would exceed five pages of publication in the State Register; and

WHEREAS, the Board has indicated that the documents are available for review and copying at its office, and with regard to the State Conservationist's List of Important Farm Lands, at SCS field offices in each county and at the offices of each Regional Development Commission, and that the Chief Hearing Examiner thus finds that the documents are thereby conveniently available for viewing, copying and acquisition by interested persons.

NOW, THEREFORE, IT IS ORDERED, that the Board shall have the approval of the Chief Hearing Examiner to incorporate by reference in their proposed rules the above-referenced documents.

Dated this 16th day of March, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner by DWK


RECEIVED
STATE PLANNING
AGENCY
MAR

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING AMENDMENTS

I, Robert Benner, do hereby certify that I am a member and the Chairman of the Minnesota Environmental Quality Board (Board), of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board, duly and properly called and held on the 10th day of December, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"NOW, THEREFORE BE IT RESOLVED:

THAT the amendments relating to the power plant siting rules be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes § 116.51 et seq. (1980); and

THAT Robert Benner, Chairman, Environmental Quality Board, be and hereby is authorized to sign the Findings of Fact, Conclusions and Order, as amended, adopting these rules and further is authorized to perform the necessary acts to provide that these amendments shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 14 day of December, 1981.

Robert T. Benner

Robert Benner, Chairman
Minnesota Environmental Quality Board

Michael Murphy

Attest by one other Board member

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone _____

RESOLUTION OF THE
MINNESOTA ENVIRONMENTAL QUALITY BOARD
AMENDMENTS RELATING TO POWER PLANT SITING RULES

Mr. Seetin moved:

WHEREAS, on March 19, 1981, the Minnesota Environmental Quality Board (Board) authorized rulemaking on proposed amendments relating to the power plant siting rules; and

WHEREAS, on November 5, 1981, Hearing Examiner Allan Klein submitted the Hearing Examiner's Report which recommended that the Board adopt the proposed amendments and that the limits to use of prime farmland in proposed 6 MCAR § 3.074 H.3.d. be set at 0.5 acres per megawatt;

NOW, THEREFORE BE IT RESOLVED:

THAT the amendments relating to the power plant siting rules be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes § 116.51 et seq. (1980); and

THAT Robert Benner, Chairman, Environmental Quality Board, be and hereby is authorized to sign the Findings of Fact, Conclusions and Order, as amended, adopting these rules and further is authorized to perform the necessary acts to provide that these amendments shall have the force and effect of law.

Seconded by Mr. Murphy, the motion carried unanimously with Benner, Alexander, Botzek, Braun, Buchwald, Larsen, Mulligan, Murphy and Seetin voting aye, Breimhurst, Lukermann and Pettersen not present.

ADOPTED: December 10, 1981

MEQB EXHIBIT 11

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL
QUALITY BOARD

In the Matter of the Proposed
Amendments to Rules Relating
to Siting Large Electric Power
Generating Plants

No. EQB-81-005-AK

STATEMENT OF NEED
AND REASONABLENESS

Table of Contents

I. INTRODUCTION

The Power Plant Siting Act (PPSA) gives the Minnesota Environmental Quality Board (Board) authority and jurisdiction for siting large electric power generating plants and for routing high voltage transmission lines (Minn. Stat. §§ 116C.51-116C.69 (1980)). Three power plants and over 800 miles of transmission lines have been sited and routed under the PPSA and the rules promulgated pursuant to the Act (6 MCAR §§ 3.071-3.082).

The Board is also required to adopt an inventory of large electric power generating plant study areas (Inventory) by the PPSA (Minn. Stat. § 116C.55 (1980)). The Inventory is intended as an advance planning tool to identify relatively large land areas (study areas) where it may be possible to locate power plants with less adverse impact than other areas. The Inventory is intended as a guide for power plant siting, but it does not identify specific power plant sites.

The proposed amendments would amend the Rules for Routing High Voltage Transmission Lines and Siting Large Electric Power Generating Plants to address two topics. First, the proposed amendments change the process by which power plant sites are selected by revising the site selection criteria and adding an avoidance area criterion that places limits on use of prime farmland for power plant sites. Second, the proposed amendments establish criteria, standards and administrative procedures for preparation of an Inventory.

The proposed amendments were developed over a three year period. They incorporate concerns expressed by interested persons at many public meetings throughout the state, and at numerous meetings with utilities and interested persons and agencies (Exhibits 14-56).

The need and reasonableness of the proposed amendments to the power plant site selection process will be discussed first. The need and reasonableness of the proposed amendments concerning the Inventory will be discussed second.

Under Minn. Stat. § 15.0412, subd. 4c (1980), the Board is required to "make an affirmative presentation of fact establishing the need for and reasonableness of the rule proposed for adoption[.]" The Rules of both the Office of Administrative Hearings and the Attorney General require submission of a Statement of Need and Reasonableness (9 MCAR § 2.104; 1 MCAR § 1.202 P.). Basically, the statute and rules require that the Board must present the reasons for its proposals and that the reasons must not be arbitrary or capricious. To the extent that need and reasonableness are separate tests, need means identification of the problem requiring administrative attention and reasonableness means that the solution proposed by the Board is appropriate.

In addition to this Statement, the Board's staff has prepared a Statement of Evidence (attached as Appendix 1) that lists the exhibits it intends to introduce and the expert witnesses it intends to call and also contains a brief summary of the testimony of the expert witnesses.

II. PROPOSED REVISIONS IN THE SITE SELECTION PROCESS

The proposed amendments revise the site evaluation criteria used by the Board to select power plant sites. These criteria are contained in 6 MCAR § 3.074 H. of the existing rules. There are three types of site evaluation criteria:

- Site selection criteria, which list 16 characteristics of preferred sites that are to be balanced by the Board as the Board compares alternative sites and designates the final site (6 MCAR § 3.074 H.1.);

- Exclusion criteria, which list areas where plant sites are prohibited (6 MCAR § 3.074 H.2.); and

- Avoidance areas, where a plant site is allowed only if there are no feasible and prudent alternatives with less adverse environmental impact (6 MCAR § 3.074 H.3.).

The proposed amendments contain three proposed revisions in the site selection criteria and add an avoidance area criterion that places limits on the use of prime farmland for power plant sites.

A. Proposed Revisions in the Site Selecton Criteria

The proposed revisions in the site selection criteria would expand the criterion on energy conservation to include consideration of cogeneration, use of biomass and development of waste-to-energy (solid waste as fuel) systems; delete the criterion that prefers sites that allow for future expansion; and add a criterion addressing community benefits and economic development. "Community benefits" is defined in proposed 6 MCAR § 3.072 S.

In general, the proposed revisions are necessary to update the site selection criteria in recognition of the smaller power plants likely to come before the Board in the future. For example, a 60 megawatt (MW) plant is proposed by Northern States Power Company (Exhibit 106, Exhibit G-2). The existing list of site selection criteria is designed to minimize adverse impacts of the large power plants previously anticipated. As explained below, there are additional concerns and opportunities associated with smaller plants. Under the PPSA, the Board's siting authority extends to all power plants 50 MW or larger. The proposed revisions are also necessary to update the site selection criteria to reflect new information on the feasibility of various methods to promote energy efficiency in power plants and new information on the potential benefits to the local community when a power plant is located nearby.

1. Proposed Amendment of 6 MCAR § 3.074 H.1.j. (Energy conservation criterion)

The proposed amendment would expand the existing criterion on energy conservation to include consideration of cogeneration, use of biomass and development of waste-to-energy (solid waste as fuel) systems.

The proposed revision is needed to update the criterion on energy conservation and supplemental fuels to acknowledge and incorporate recent technological advances. The Board is directed by the PPSA to evaluate "the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects" during its study, research, evaluation and designation of sites (Minn. Stat. § 116C.57, subd. 4 (3) (1980)).

The specified items are now technically feasible, so their inclusion in the criterion is reasonable.

Cogeneration allows productive use of waste heat from power plants by recovering it as steam that can be used for industrial process needs or heating, or as hot water for heating. This improves energy efficiency and reduces the amount of water normally consumed in dissipating the heat (Exhibit 77, p. 13 and Exhibit 100, p. 50). Large plants can provide hot water, although difficulties and costs involved in modification of large plant steam design cycles make large plants less likely candidates for steam sources. Considerable information is now available on cogeneration opportunities (for example, Exhibits 76, 80, 117 and 138).

The references to "biomass" and "waste-to-fuel" concern potential supplemental fuels for the plant. Biomass is plant matter; the following types of biomass are generally considered potential fuels: agricultural crop residues, wood and wood residues, special energy crops (e.g., cattails), and peat. In its 1980 biennial report, the Minnesota Energy Agency concludes that "a rich biomass potential...can provide significant portions of Minnesota's energy needs" (Exhibit 74, p. 1-10). Exhibit 64 also discusses use of biomass in power plants. "Waste-to-fuel" refers to use of urban waste or garbage as fuel. Burning waste or garbage in a plant is beneficial because it reduces sanitary landfill requirements and attendent impacts. The technical feasibility of this option has also received much study (for example, Exhibit 58). The Board has funded such a study (Exhibit 86).

The inclusion of these factors in the energy conservation criterion is also reasonable because it reflects several statutory directives. In particular, the PPSA directs the Board to locate power plants "in an orderly manner compatible with environmental preservation and the efficient use of resources" (Minn. Stat. § 116C.53, subd. 1(1980)). Minn. Stat. § 116C.57, subd. 4(4)(1980) further directs the Board to evaluate "the potential for beneficial uses of waste energy" from proposed plants, which clearly applies to consideration of a site's potential for cogeneration. Since use of waste as a supplemental fuel will reduce landfill needs and the pollution resulting from landfills, the inclusion of waste-to-fuel also furthers the purpose of Minn. Stat. ch. 116D (1980) by minimizing pollution and impairment of the state's natural resources.

There is considerable citizen interest in having these factors considered when plant sites are being selected. Promotion of conservation of energy through cogeneration was a major concern expressed at the 1980 public meetings on the 1979 Draft Inventory (Exhibit 15). The 1979-1980 Power Plant Siting Advisory Committee (PPSAC) also strongly recommended the implementation of cogeneration (Exhibit 118, pp. 51-57). The 1979-80 PPSAC also strongly recommended consideration of alternative fuels, particularly biomass and urban waste (Exhibit 118, pp. 61-78).

2. Proposed Deletion of 6 MCAR § 3.074 H.1.n. (Site expansion criterion)

This amendment proposes deletion of the site selection criterion that states "[p]referred sites allow for future expansion". The subsequent two site selection criteria are then renumbered.

This site selection criterion was included in the original 1974 edition of the Power Plant Siting Rules. MEQC 74 (C) 3 (jj) stated that "[p]referred sites allow for larger rather than smaller generating capacity." Since that language was confusing, causing some people to interpret the rule as encouraging utilities to propose larger plants than necessary rather than indicating a preference for sites capable of expansion, as intended, the rule was changed to its present form in the 1978 edition of the rules.

The proposed deletion of the criterion is now necessary and reasonable in order to ensure that all appropriate siting opportunities are considered by the Board in the future. As now written, the criterion directs utilities to look for sites that are suitable for facilities larger than actually needed. This can exclude many reasonable sites for the plant size actually needed, because there are fewer reasonable sites for larger plants than smaller plants. Larger plants require more resources (e.g., water, land requirements for site and reservoir, rail access needs) and result in more adverse environmental impacts (e.g., air pollution, water pollution) than smaller plants (Exhibit 77). Therefore, the best site for the plant size actually needed may not be among those suitable for larger plants. This conflicts with the Board's responsibility under the PPSA to choose a site location that best minimizes adverse human and environmental impacts (Minn. Stat. § 116C.53, subd. 1 (1980)).

Further, the criterion conflicts with other proposed and existing site selection criteria. Sites suitable for larger plants tend to be located away from cities, which reduces the opportunities for conservation measures such as district heating and cogeneration, and realization of community benefits and economic benefits related to plant location near a city. This conflicts with proposed site selection criteria 6 MCAR § 3.074 H.1.j. and p. This also does not encourage location near large load centers, which conflicts with another site selection criterion (6 MCAR § 3.074 H.1.k.).

The proposed deletion is also reasonable and necessary because the criterion is no longer necessary to ensure that electric energy needs are met in an orderly and timely fashion, as directed by the PPSA (Minn. Stat. § 116C.53, subd.1 (1980)). The criterion is designed to handle a situation of rapidly increasing demand for electricity and new power plants, which was the situation when the criterion was adopted. For example, a 1976 multi-agency report evaluated the estimated percent growth rate in demand and estimated that as much as 70,000 MW of additional capacity would be needed in the next 25 years (Exhibit 98, p. 47). Clearly, under such circumstances, the need to establish an efficient procedure to site all of the anticipated facilities and the benefit of advance planning in minimizing the adverse impacts of these facilities made consideration of expansion potential a reasonable factor in each siting exercise.

However, it is no longer probable that expansion will be needed. Utility forecasts on the number and size of plants needed in the next 15 years have dropped dramatically since 1974. Table 1 documents a decrease of at least 4800 MW in plants proposed and projected to be located in Minnesota. Now, in addition to an 800 MW plant already sited, the latest 15-year advance forecast shows only a 60 MW plant for the Twin Cities Metro Area and 1183 MW that may or may not even be located in Minnesota.

Table 1

New Facilities Anticipated for Minnesota within 15 Years

Date of Advance Forecast	Proposed Facilities (MW)*		Projected Facilities (MW)	
	Minnesota Location	Unspecified Location	Minnesota Location	Unspecified Location
1974	2,560	0	4,300	0
1976	2,520**	0	0	6,000
1977 Update	2,400**	0	0	4,900
1978	3,350-3,400	100	0	2,445-2,495
1979 Update	1,500	150	0	1,178
1980	860	0	0	1,183

*These figures do not include facilities considered by the utilities to be "committed capacity".

**Approximate.

Source: 15-year advance forecasts submitted by the Minnesota/Wisconsin Power Suppliers. The 1978 and 1980 figures also include a forecast by the Southern Minnesota Municipal Power Agency (Exhibits 101-106).

The proposed deletion is also necessary and reasonable because it recognizes the difficulty in accurately evaluating expansion potential, which can limit the Board's ability to identify and select the sites that best fulfill the directives of PPSA and the other governing statutes. Changes continually occur in pollution control technologies and standards, plant design, resource availability and other factors that affect site suitability. These changes can diminish expansion potential at sites that once appeared suitable for expansion and open up siting opportunities in other areas. Examples of the first case include the growing awareness of the acid rain problem in the Boundary Waters Canoe Area (Exhibit 75, Chapter 4.3) and the Department of Natural Resources' development of protected flow levels on the Mississippi River which would limit water availability; these were not considered fully in the Board's decisions on the MP&L-P-2 site in St. Louis County and the NSP-P-1 site in Sherburne County. Examples of the second case include new technologies (like cogeneration) or plant designs (like improved air emission systems). Since more time will elapse between plant sitings in the future, the likelihood that major changes will occur is increased. Site expansion should be considered on a case-by-case basis under conditions existing when the expansion is actually needed.

The existing rule was adopted at a time when it appeared that expansion of existing sites would minimize adverse impacts. Staff testified during the 1977 rulemaking hearings that adverse effects of additional units may be only of an incremental nature as compared with the impacts of a totally new site (Exhibit 89, Finding 116). Now, it is clear that this is not always the case. Concentration of power generation results in major pollution impacts that, while perhaps less than the accumulated total of impacts from smaller dispersed plants, may still be significant. Further, minimizing pollution is but one aspect of siting a plant. The existing and proposed site selection criteria list several other factors that should be of at least equal weight.

Finally, the criterion proposed for deletion is not necessary to ensure that the benefits of expansion are considered by the Board on a case-by-case basis, as appropriate. Another site selection criterion in the existing rules states that "[p]referred sites maximize the use of already existing operating sites if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites" (6 MCAR § 3.074 H.1.1.).

The proposed deletion would remove from the rules an express preference for sites which allow for future expansion. The removal of that express preference does not establish a preference for sites which do not allow for future expansion. It merely results in the rules being silent on the matter. Determinations of whether new or existing sites should be used for future power plant development will be based upon a case by case determination of which option best fulfills the policies set forth in the Minnesota Environmental Rights Act (MERA) (Minn. Stat. ch. 116B), the Minnesota Environmental Policy Act (MEPA) (Minn. Stat. ch. 116D) and the PPSA.

Moreover, removal of the preference for sites which can be expanded does not contradict the principle of "nonproliferation" implicit in MERA, MEPA, and PPSA (as cited in People for Environmental Enlightenment and Responsibilities, Inc. v. Minnesota Environmental Quality Council, 226 N.W. 2d. 858 (Minn. 1978)). As discussed earlier, the Board would still be required by another site selection criterion to consider expansion of existing sites (6 MCAR § 3.074 H.1.1). In fact, the preference for sites capable of expansion may well contradict the "nonproliferation" principle for plants in general and for transmission lines in particular. Deletion of the preference for site expansion would increase the likelihood that sites with potential for cogeneration would be identified, which will decrease the need for more plants and thereby reduce transmission line requirements.

3. Proposed 6 MCAR § 3.072 S. and 6 MCAR § 3.074 H.1.p. (Community benefits definition and criterion)

These proposed amendments establish a new site selection criterion concerning economic development and community benefits and define the term "community benefits".

a. Proposed 6 MCAR § 3.072 S. (Definition of "community benefits")

This definition is necessary to specify the meaning of "community benefits", which is used in proposed 6 MCAR § 3.074 H.1.p., to distinguish these benefits from economic development benefits. The definition includes a list of reasonable examples, for further clarification. Each example is discussed in more detail in the discussion of the proposed site selection criterion.

b. Proposed 6 MCAR § 3.074 H.1.p. (Community benefits criterion)

This proposed amendment adds a new site selection criterion stating that preferred sites maximize opportunities for community benefits and economic development.

While there is growing recognition that there can be positive benefits to the local community from a nearby power plant, power plants are still generally perceived as a nuisance industry--something no community wants nearby. The existing site selection criteria reinforce this concept, because they stress minimizing the adverse impacts of plant location.

The potential positive benefits include those related to economic development (such as local employment opportunities at the power plant or economic development resulting from new industries attracted by cogeneration opportunities) and other community benefits. Examples of community benefits are given in the proposed definition of community benefits in proposed 6 MCAR § 3.072 S; they include:

- use of community solid waste as a supplemental fuel. This can preclude the need to expand a local landfill, thereby saving community moneys, freeing the land for other uses, and reducing the adverse environmental effects associated with landfills.

- joint water supply. Planning a water supply that can serve both plant and community can reduce costs and result in the benefit of reliable water supply to the local community.

- improving the economic viability of existing rail lines. The addition of the plant's coal traffic can improve the economic viability of marginal rail lines. Power plants of 200 MW and 400 MW would require about 140 cars and 260 cars per week, respectively (Exhibit 77). The 1979 State Rail Plan indicates that certain "marginal" lines would be viable with such additions (Exhibit 73, Exhibit D). Keeping these lines open can help local rail users and perhaps serve to attract other rail dependent industries to the area.

- increased tax base. Plants provide a significant tax base. The benefits to the local area resulting from increased tax base are obvious.

The addition of this proposed site selection criterion is necessary to ensure that the Board considers these positive benefits of plant location during the site selection process. This will encourage the utilities and other parties to identify possible benefits and undertake the early planning necessary so that design changes needed to provide the benefits are actually incorporated in plant design or site arrangement.

The proposed criterion also furthers the mandate of the PPSA, which directs the Board to consider "analysis of the direct and indirect economic impact of proposed sites" (Minn. Stat. § 116C.57, subd. 4 (5) (1980)) in the study, research, evaluation and designation of sites; and to "choose locations that minimize adverse human and environmental impact" (Minn. Stat. § 116C.53, subd. 1 (1980)).

The proposed criterion is reasonable because it will improve the site selection process and also serve to make plant location more acceptable to the local area that bears the burden of the power plant. The potential positive benefits are realistic, as shown by the examples discussed above.

B. Proposed Avoidance Area Criterion Relating to Prime Farmland

The proposed amendments also contain a new avoidance area criterion that places limits on the use of prime farmland for power plant sites. Proposed 6 MCAR § 3.074 H.3.d. contains the major policy statement; two related definitions are contained in proposed 6 MCAR § 3.072 P. and R.

The proposed avoidance area criterion limits the amount of prime farmland in the developed portion of the plant site and in the water storage reservoir or cooling pond site to a certain amount based on the net generating capacity of the plant. The limits would not apply to certain urbanizing areas. Since this is an avoidance area criterion, the limits would apply unless there are no feasible and prudent alternatives.

The criterion as proposed contains a range of numbers for the allowable amount of prime farmland that can be taken. The criterion as adopted will contain one number for the developed portion of the plant site and one number for the reservoir or cooling pond.

The proposed criterion was developed after numerous meetings with Board member agencies, interested citizens, Power Plant Siting Advisory Committees (PPSAC), utilities and other interested agencies, and after considerable effort to reconcile opposing viewpoints and work out technical problems. Major changes were made in the criterion to incorporate recommendations received during this period.

In the broad sense the proposed amendments are necessary in order to protect the important natural resource of productive agricultural land in the siting of power plants. The proposals present a reasonable approach because they establish needed limits on the use of productive agricultural land for power plant sites, while still allowing siting opportunities in all major regions of the state.

1. Need for the Proposed Avoidance Area Criterion

Productive agricultural land is being converted to other uses at an alarming rate. This will affect the ability of the nation to provide sufficient crop yields at an acceptable environmental cost.

The Minnesota Legislature has declared it to be a policy of the state to preserve productive agricultural land from conversion to other uses (Minn. Laws 1979, ch. 315). There can be no debate that development of a power plant on top of productive agricultural land will adversely affect that land's productivity in a significant, and largely irreversible way. Therefore, the Board believes there is a need to exercise its responsibility to ensure that productive agricultural lands are suitably protected when sites for power plants are selected.

There is growing recognition that loss of productive agricultural lands is occurring at a rapid rate. This has sobering implications in terms of the nation's ability to produce sufficient crops for domestic and international consumption. This trend also has environmental implications, since, at some point, productivity needs may require farming other acres on which crop yields will be lower and environmental hazards and production costs (especially for energy needs) will be greater.

The U.S. Department of Agriculture (USDA) has taken the lead in studying this problem. The USDA has established policy concerning loss of the agricultural resource (Exhibit 137). The following information was obtained from recent USDA studies and papers.

In the eight years between 1967 and 1975, the United States experienced a net conversion of nearly one million acres per year of cropland (Exhibit 130, p. 1). The USDA Soil Conservation Service (SCS) suggests that "[e]ach acre taken from cropland by urban development usually means at least one more acre is 'leapfrogged' or isolated and lost to farm production". (Exhibit 63, p. 196). Until recently, the national cropland reserve (land which can be brought into protection) was estimated at 266 million acres; however, the SCS' 1975 Potential Cropland Study estimates that only 111 million acres have high or medium potential for conversion to cropland (Exhibit 130, p. 5). This study indicates that bringing the potential cropland into production will not be without conservation costs, since 76 million acres of the 111 million acres have problems that will require additional management before they can be converted them to cropland (Exhibit 130, p. 5).

The USDA is concerned about the loss of prime farmlands in particular. The SCS defines "prime farmland" as the land that gives the "highest yields with minimum inputs of energy or money and results in the least damage to the environment" (Exhibit 120, p. 240). An SCS paper estimates that eight million acres of prime farmland were lost between 1967 and 1975, or 34% of all agricultural land consumed by other uses (Exhibit 120). There were about 384 million acres of prime farmland in the nation in 1975, about 250 million of them cropped. Of the 134 million acres not cropped, less than 20% (24 million acres) could be converted to cropland with no particular problems. Another 24 million acres have moderate problems that would need to be addressed (Exhibit 120, p. 241).

This concern was echoed by the findings and conclusions of the 1981 National Agricultural Lands Study (NALS). The NALS was an interagency study cochaired by the USDA and the President's Council of Environmental Quality on the availability of the nation's agricultural lands, the extent and causes of their conversion to other uses and the ways in which these lands might be retained for agricultural purposes. The NALS issued a series of reports on these issues (Exhibits 107-116). The NALS found that:

- "the United States at present has approximately 413 million acres of cropland and about 127 million acres of potential cropland for a total of about 540 million acres. In addition, there are some 268 million acres of rural land with low potential for cultivated crops" (Exhibit 113, p. 8).

- "the United States has been converting agricultural land to nonagricultural uses at the rate of about three million acres per year--of which about one million acres is from the cropland base" (Exhibit 113, p. 8).

- "agricultural land is converted to other uses in an incremental piece-by-piece fashion. Many of the effects are local but continued conversion of agricultural land at the current rate could have noteworthy national implications. The cumulative loss of cropland, in conjunction with other stresses on the U.S. agricultural system such as the growing demand for exports and rising energy costs, could seriously increase the economic and environmental costs of producing food and fiber in the United States during the next 20 years" (Exhibit 113, p. 8).

- in response to an increasing demand for U.S. agricultural products "[b]y the year 2000, most if not all of the nation's 540 million acre cropland base (existing cropland plus land with high or medium conversion potential) is likely to be in cultivation. When seen from this perspective, continuing nonagricultural demands upon the agricultural land base becomes a matter for national concern" (Exhibit 113, p. 8).

- "[s]hifts of land into cultivation of this magnitude are technically possible, but they will require some major adjustments in the U.S. agricultural system" (Exhibit 113, p. 15).

- "[h]igher real crop production costs are probable as well because potential cropland now coming into cultivation is more costly to till, is subject to more crop failures and yield variability, and produces poorer quality crops than cropland already in cultivation. Moreover, this land is usually more susceptible to erosion, groundwater overdrafts, and other environmental problems, hence its cultivation results in higher social costs either through conservation expenditures or through environmental degradation" (Exhibit 113, p. 15).

The NALS recommended that the federal government make the protection of good agricultural land a national policy (Exhibit 113, p. 15). It also recommended that state governments assume an active leadership role in protecting agricultural land (Exhibit 113, p. 18).

Other studies have explored the implications of these trends and concluded that the loss of prime agricultural lands must be minimized. For example, Worldwatch Institute points out that "[i]n a world of continuously growing demand for food, it must be viewed as an irreplaceable resource" (Exhibit 59, p. 38). The American Land Forum concludes that "sooner or later, conservationists and agriculturalists will have to face up to the fact that they have an issue in common" (Exhibit 57, p. 45). In the midwest, the Catholic bishops have recommended that public authorities should enact and enforce legislation to prevent the loss of this resource (Exhibit 67, p. 25).

There are similar concerns with the loss of productive agricultural land in Minnesota. Productive agricultural land is an important natural resource in Minnesota. Minnesota has over 30 million acres of agricultural land (Exhibit 70, p. 3)--over half the state. Nearly 23 million of these acres are in cropland (Exhibit 129, Table 3a). Minnesota has 19.5 million acres of prime farmland as defined by the SCS; 15.3 million acres are now being cropped (Exhibit 129, Table 18a). The NALS estimates that about 3.7 million acres of pasture, range, forest and other land have high or medium potential for conversion to cropland (Exhibit 108).

Estimates on loss of agricultural land in Minnesota vary depending upon the definition and the data collection methods used (Exhibit 62, p. 5). The NALS estimated a loss of 490,000 acres of agricultural land from 1967-1977 (Exhibit 108). A report from the Center for Urban and Regional Affairs at the University of Minnesota concluded that, after surveying various estimates, "an educated guess might be that Minnesota is losing about 50,000 acres of farmland per year" (Exhibit 62, p. 5). The State Planning Agency estimated in 1975 that, in the 15 year period between 1975 - 1990, 500,000 acres of agricultural land would be converted to other uses and that 333,000 acres of forest land might be shifted into agricultural use as replacement acreage (Exhibit 97, Table 5 and p. 15).

These numbers show that less than 1% of Minnesota's cropland base is likely to be lost each year. However, Minnesota faces the same problem as the nation in maintaining its ability to meet the demand for crops without sustaining environmental damage. The State Planning Agency study concludes that, "given a high crop demand and a moderate crop yield, a reasonable alternative, a total harvested acreage of 22.6 million acres would be needed in 1990. This level of production would approach the limits of available cropland in the state" (Exhibit 97, p. 15). This study further explores the environmental consequences of this level of production, particularly erosion, and cautions that "the major cause for concern is lack of a process to review tradeoffs between the quality of cropland lost to competing uses and the environmental and economic costs of bringing new land into production" (Exhibit 97, p. 18).

The Minnesota Department of Agriculture concludes, after considering the State Planning Agency information on demand for cropland, that "(p)laced in this perspective, the issue of preservation of the quantity of agricultural land assumes greater significance" (Exhibit 71, p. 7). The Department then cites its concern with the problem of maintaining the quality of agricultural land; erosion is one major problem. The Minnesota Pollution Control Agency's Water Quality Management Plan (the 208 Plan) points to cropland erosion as the most significant source of stream sediment in the state (Exhibit 94, p. 39).

Considerable concern about the loss of prime farmland has been expressed by Minnesota citizens. In a 1980 survey conducted by the State Planning Agency, the loss of prime agricultural lands was considered one of the two most significant land use problems by county and township officials (Exhibit 99, Table 1). That issue was the major concern expressed at

the 11 public meetings on the Information Meeting Draft: 1979 Inventory (of Power Plant Study Areas) (Exhibit 15). The Governor's Council on Rural Development has begun to study the issue of the quantitative and qualitative loss of productive agricultural land (Exhibit 65). The Minnesota Farmers Union and the Minnesota Project studied the issue of family farms and concluded that local, state and national governments should attempt to ensure that agricultural land is retained for agricultural purposes (Exhibit 93, p. iv).

Legislative concern for the preservation of the natural resource of productive agricultural land is reflected in several policy statements including the Minnesota Environmental Rights Act (MERA) (Minn. Stat. ch. 116B (1980)), the Minnesota Environmental Policy Act (MEPA) (Minn. Stat. ch. 116D (1980)), the Power Plant Siting Act (Minn. Stat. §§ 116C.53 to 116C.69 (1980)), the Metropolitan Agricultural Preserves Act (Minn. Stat. ch. 473H (1980)), and Minn. Laws 1979, ch. 315. Perhaps the clearest expression of legislative concern is found in Minn. Laws 1979, ch. 315 which created a joint legislative committee on agricultural land preservation. The legislature declared it to be state policy "that Minnesota lands that are well suited for the production of agricultural products be used and managed for that purpose by ...[p]ermanently preserving certain parcels of prime agricultural land from conversion to other uses[.]" Id. The legislature specifically found that this policy would be best served by:

> (a) Defining and locating lands well suited for the production of agricultural products;
>
> (b) Assuring that state agencies conduct their activities in a manner that considers and seeks to minimize negative impacts on agricultural activities, in accordance with other social, economic and environmental considerations[.]

Id.

The Metropolitan Agricultural Preserves Act, Minn. Stat. ch. 473H (1980), contains a similar policy statement on preservation of productive agricultural land.

In both MERA and MEPA the legislature declares the preservation of the air, water, productive land and other natural resources to be the policy of the state. Minn. Stat. § 116B.01 (1980); Minn. Stat. § 116D.02 (1980). As the Minnesota Supreme Court has stated, both MERA and MEPA prohibit:

> any activity which significantly affects the quality of the environment if there is a "feasible and prudent alternative" consistent with the "state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment or destruction. Economics alone shall not justify such conduct. Minn. Stat. § 116B.09, subd. 2 (1978).

Floodwood-Fine Lakes et. al, v. MEQC, 287 N.W. 2d 390, 397 (Minn. 1979).

As delineated in MERA, protectible natural resources include "all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources." Minn. Stat. § 116B.02, subd. 4 (1980). The Supreme Court has further determined that protectible resources are those resources the destruction of which "is noncompensible and injurious to all present and future residents of Minnesota." People for Environmental Enlightenment and Responsibility, Inc. v. Minnesota Environmental Quality Council [hereinafter cited as PEER], 266 N.W. 2d 858, 869 (Minn. 1978).

While the Minnesota Supreme Court has not yet explicitly accorded productive agricultural land full status as a protectible natural resource, the Court has made it clear that productive agricultural land is entitled to substantial protection. In State by Skeie v. Minnkota Power Cooperative, 281 N.W. 2d 372 (Minn. 1979), the Minnesota Supreme Court refused to hold that interference with the economic operations of farming constituted a violation of the legislative protection afforded land and soil under MERA. However, the Court noted that if there had been evidence showing that the proposed action would have made "the soil sterile; or caused its erosion; or limited its cropping potential, in some significant, irreversible way, we would have a different situation." Id. at 374. The protection to be accorded productive agricultural land is not absolute, and as a dissenting justice in the Skeie case noted, "[w]hen productive farm lands are compared with [the traditionally-recognized] natural resources, the latter should typically receive protection, absent unusual and extraordinary circumstances." Id at 375. (Yetka, J. dissenting). This was the result in County of Freeborn by Tuveson v. Bryson, 309 Minn. 178, 243 N.W. 2d 316 (1976), where the Court held that a proposed highway must be routed through agricultural land in order to preserve a natural wildlife marsh.

The enforcement of MERA and MEPA is a clear statutory obligation of the Board in siting a power plant under the PPSA. Minn. Stat. § 116D.03, subd. 1 (1980); Minn. Stat. § 116C.53, subd. 1 (1980); PEER, supra at 865-866; No Power Line v. Minnesota Environmental Quality Council, 262 N.W. 2d 312, 325-326 (Minn. 1977). Thus, in siting a power plant the Board is required under MERA, MEPA and the PPSA, as interpreted by the Supreme Court, to determine whether the likely environmental impacts of a site on productive agricultural land are more or less significant than the likely impacts on other natural resources. It is then required to select the power plant site with the least significant adverse impacts unless other extraordinary circumstances compel a different site.

The existing rules governing the power plant siting process do not provide sufficient protection for the natural resource of productive agricultural land, as required by MERA, MEPA and PPSA. Agricultural lands are now considered as one of 16 site selection criteria that are used by the Board to evaluate alternative plant sites and select the final plant site. 6 MCAR § 3.074 H.1.g. states:

> Preferred sites minimize the removal of valuable and productive agricultural, forestry or mineral lands from their uses.

The existing rules provide little guaranteed protection for the productive natural resource because the 16 site selection criteria are balanced against each other and the final site need not meet all the criteria. At most the rule would serve to select the alternative site that uses the least amount of productive agricultural land--a choice that may be between alternative sites that each occupy significant amounts of productive agricultural land.

The proposed avoidance area criterion would complement the existing site selection criterion. The Board would use the existing site selection criterion when alternative sites are being compared, first, to minimize the removal of valuable and productive nonprime soils, as well as prime soils, and second, to consider valuable agricultural uses (e.g., turkey farms or livestock operations) other than cropland.

The proposed avoidance area criterion is necessary to provide sufficient protection of the natural resource of productive agricultural land during selection of power plant sites in light of the legislative directives discussed earlier. This is the case regardless of the amount of land that might be taken for power plant sites. If current utility forecasts are accurate, the amount of land taken by plants in the next 15 years will be small--perhaps less than 1500 acres plus land needed for reservoir sites. This is a small amount, only part of the total amount lost each year. However, it does not alter the fact that productive agricultural lands as defined in the proposed avoidance area criterion are an irreplaceable productive resource. Loss of any productive agricultural land reduces the total amount available and must be of concern to the Board.

For a similar reason, the existence of a significant acreage of productive agricultural lands, as defined in the proposed criterion, that are not now used for crops does not render adoption of the proposed criterion unnecessary. The Board must be concerned with the loss of any productive agricultural land.

The proposed criterion seeks to protect prime agricultural land--those soils that meet the specification of 7 C.F.R. § 657.5(a) (1980). These soils have high sustained crop yields under normal management without degrading the environment. It is not appropriate to assume that non-prime soils can replace the productivity of prime soils converted to other uses. Productivity on non-prime soils can be increased through intensive farming with investment of management effort, money and energy (for example, by farming erosive soils or irrigating sandy soils), or, proportionately more acres of the non-prime soils can be put into cropland. However, these options require more resources and will likely have more adverse impacts on the environment. For example, irrigation requires substantial capital investment and increases the demand for surface and ground water. The use of non-prime soils to replace prime soils must be viewed with concern.

In conclusion, the proposed avoidance area criterion is necessary to ensure that the natural resource of productive agricultural lands is given sufficient protection when power plants sites are selected. This

is consistent with legislative mandates expressed in MERA, MEPA, PPSA and other applicable statutes.

2. Reasonableness of Proposed Avoidance Area Criterion

As discussed above, the proposed amendments are needed to fulfill the Board's mandate for protecting productive agricultural land. The proposed amendments are reasonable because they encourage the wise use of productive agricultural land by limiting use of such land for power plant sites but still providing siting opportunities in all major regions of the state.

The proposed amendments appropriately do not accord absolute protection to productive agricultural land. Instead, the protection is limited to only significant conversion of prime agricultural land. The proposed amendments represent the Board's determination that significant conversion of prime agricultural land should be subject to the same limitations as impairment of other "traditional" natural resources. "Prime" agricultural land is that land of special quality which meets the definition provided under 7 CFR 657.5(a)(1980). A "significant" conversion is one which exceeds the acres-per-megawatt standard in the proposed rule.

The proposed amendments explicitly make significant conversion of productive agricultural land subject to the "feasible and prudent alternative standard" of MERA and MEPA by designating prime farmland as an avoidance area criterion. This is reasonable because it is in accord with the legislative directives and court interpretations discussed above.

It would be inappropriate for the proposed criterion on prime farmland to be designated as either an exclusion area criterion or a site selection criterion. If it were designated as an exclusion criterion under 6 MCAR § 3.074 H.2., the "feasible and prudent alternative" standard would not be applicable and agricultural land would assume an importance above most other "traditional" natural resources. Such a consequence is not intended by the proposed amendments and would be inappropriate in light of the Minnesota Supreme Court's decision in Skeie, supra., which does not accord productive agricultural land full status as a protectible natural resource. On the other hand, if the proposed criterion on prime farmland were designated as a general site selection criterion, the protection proposed to be afforded prime agricultural land would dissolve. The general criteria in 6 MCAR § 3.074 H.1. are stated as "preferences" and are not applicable to "all plants in the same degree." The legislative directives, as interpreted by the Court, clearly mandate according protection against significant conversions of prime farmland more than mere status as a "preference."

Designation as an avoidance criterion is also appropriate in light of Minn. Stat. § 116C.66 (1980), which provides that "[n]o rule adopted by the board shall grant priority to state owned wildlife management areas over agricultural land in the designation or (sic) route avoidance areas" (emphasis added). While the statute specifically applies only to routing of transmission lines, it gives a strong indication of the appropriate protection to be accorded to productive agricultural land. Under the present rules, state owned wildlife management areas are designated as avoidance areas with respect to the siting of power plants (3 MCAR § 3.074 H.3.a.) and, thus, it is appropriate to accord similar protection to prime farmland.

The proposed amendment includes language from PEER, supra., that limits the types of human impacts that can be balanced on an equal footing with environmental impacts to human impacts that are noncompensible.

The reasonableness of the proposed definition of prime farmland, the definition of developed portion of the site and the avoidance area criterion are discussed in greater detail below.

a. Proposed 6 MCAR § 3.072 R. (Definition of "prime farmland")

The definition of "prime farmland" in proposed 6 MCAR 3.072 R. identifies the lands that the Board believes should be identified as the natural resource of productive agricultural land and given the protection of the avoidance area criterion proposed in 6 MCAR § 3.074 H.3.d. The proposed definition states that prime farmlands are those soils that meet the specifications of 7 C.F.R. § 657.5 (a)(1980), which is the prime farmland definition established by the U.S. Department of Agriculture Soil Conservation Service (SCS) as part of the SCS's Important Farmland Inventory Program.

The proposed definition is necessary to specify which lands the Board considers prime farmlands for purposes of implementing the proposed avoidance area criterion concerning prime farmland. This clarification is vital. The term "prime" can take on many meanings, ranging from "my land" to "all agricultural land". Many of them have been used by various participants during the development of this policy.

The proposed definition is reasonable. It identifies a natural resource of productive agricultural lands. These soils are "prime" because they are best suited for sustained crop yield with minimum adverse environmental consequences. The definition is based on specific standards, so it is less subject to variation in interpretation. Soils that meet the definition can be readily identified, so the proposed avoidance area criterion can be administered consistently. The definition was developed after extensive study by an agency with considerable expertise in the area. Finally, the definition is better than other possible options.

First, as is essential to receive this level of protection under MERA and MEPA, the definition specifies an irreplaceable, noncompensible natural resource. The definition is based on the physical, chemical and climatic attributes of soils that influence the inherent ability of the soil to produce sustained high crop yields with minimal adverse environmental impacts under normal management.

7 C.F.R. § 657.5 (a)(1980) states that "prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops... It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields...". It summarizes these characteristics as follows: "In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation [irrigation is a factor in states with low rainfall], a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding." 7 C.F.R. § 657.5 (a)(1980) then lists the specific technical standards that soils must meet in order to be classified as prime farmlands.

Indeed, an SCS paper indicates that the intent was to select those lands that are highly productive and energy efficient yet environmentally "safe" to crop over a long period of time. (Exhibit 132, p. 1)

This is also shown by discussion in the background paper that accompanied an early draft of the SCS definition of prime farmland:

> The criteria for identification of prime farmlands are entirely related to soil characteristics and other physical criteria. They were set up to facilitate the identification and inventory of the nation's most productive farmlands in a reasonable time by using existing soil surveys. In addition, the physical criteria chosen are stable criteria that accurately measure the soil's responsiveness to modern management techniques. Factors such as nearness to market, transportation facilities, and other economic data are useful in making land use decisions, but they do not affect the intrinsic quality of the land. If land use decisionmakers wish to add information on these factors to the inventory, the basis for making land use decisions will be improved. These factors change with time and technology, however, and we decided that they should not be included in the criteria.
>
> Most of the prime farmland is now used for crops; however, it could be in pasture, range, forest, or other land uses and still qualify as prime farmland. Urban builtup land and water are excluded. The rationale for this approach is that land not committed to irreversible uses may be available for cropping. Decisionmakers must be aware of the long-term implications of various land use options for the production of food, feed, etc., and the trade-offs involved. Actions that put high quality farmland in irreversible uses will be

initiated only if these actions are clearly in the public interest.... (emphasis supplied) (Exhibit 128, p. 1).

Finally, it is important to emphasize that prime farmlands are some of the most important resources of the nation. These exceptional lands can be farmed continuously or nearly continuously without degrading the environment. They will produce the most food, feed, etc. with the least amount of energy used. They respond exceptionally well to fertilizer and other chemical applications with limited loss of residues by leaching or erosion. These lands have the highest percentage of soils that can be minimum tilled. They are the most responsive to management and require the least investment for maintaining productivity (emphasis supplied)(Ibid, p. 4).

It is reasonable that the definition is keyed to crop production. Many other agricultural uses and operations, such as turkey farms or dairy operations, are not tied to the inherent productive capacity of the land. Because they can be moved with little or no loss of production at a finite economic cost, it would not be appropriate to attempt to protect them in some special manner. Similarly, non-prime soils should not be given the same level of protection as prime soils. Although soils that do not meet the definition of "prime farmlands" may achieve yields as high as those from prime soils, considerable investment of management, money and energy are involved; these investments are economic in nature. Compensible factors are balanced when alternative sites are being compared under the site selection criteria. An existing site selection criterion seeks to minimize loss of valuable and productive agricultural land (6 MCAR § 3.074 H.1.g).

It must be emphasized that crop productivity is not being considered in a purely economic sense. While it is clear that crop yield does translate into dollars, the major concern is the inherent productive capacity of the land as a natural resource. The value being considered is the ability of the land to produce sustained crop yields with minimum environmental degradation.

Minnesota is fortunate that many of its acres are considered prime. The SCS estimates that nearly 19.5 million acres in Minnesota would meet this definition (Exhibit 129, Table 18a). However, this does not invalidate the definition. It simply reflects the fact that Minnesota's soils are very productive soils for several crops.

Second, the definition is reasonable because it was developed by an agency with considerable expertise in the area, the U.S. Department of Agriculture (USDA). The USDA is the federal agency charged with caring for the nation's agricultural resource. It clearly has the expertise to best identify the factors that compose the best cropland. Further, as the following discussion demonstrates, the definition received substantial review and comment from experts in the USDA, other agencies and universities and other persons with pertinent information during the five year development period.

The definition of "prime farmlands" in 7 C.F.R. § 657.5 (a)(1980) was developed by the Soil Conservation Service (SCS) in response to Title III of the Rural Development Act of 1972. Section 302 of that Act directed the Secretary of Agriculture to carry out a program "...for the identification of prime agricultural producing areas...". This program is called the Important Farmland Inventory.

The definition of "prime farmlands" was developed over a period of five years (Exhibit 124). Early drafts were developed by task forces of staff members from the SCS and other U.S. Department of Agriculture divisions. In September, 1973, the state SCS offices reviewed the drafts. In June, 1975 input was requested from SCS cooperators, soil conservation districts, agricultural experiment station leaders and others. A Seminar on the Retention of Prime Lands was held in July, 1975 so that representatives of universities, private agencies or groups and other public agencies could give the U.S.D.A. further input into the definition (Exhibit 122). Directors of the SCS technical service centers were polled in September, 1975 to finalize the draft definitions of prime and unique farmlands. The draft definition was contained in the Land Inventory and Monitoring Memorandum-3 (LIM-3), released on October 15, 1975. The definition was proposed as a federal regulation in the Federal Register on August 23, 1977; following some modification, it was published as a final Rule in the Federal Register on January 31, 1978 (Exhibit 127).

Indeed, the SCS developed the definition to provide information to those who make land use decisions. As stated in an article by SCS soil scientists, "The Department's role--confirmed by many recent requests for assistance--is to collect and interpret resource data so that others may have the information needed to make sound [land use] decisions ...[t]o help assure that decisions can be made with knowledge of the soil and climatic qualities rather than simply trading acres as economic equals. The inventory system can assist decision-makers in determining the real cost of taking any parcel of that land out of production" (Exhibit 63, pp. 195, 197).

Third, the definition of prime farmland contained in 7 C.F.R. § 657.5 (a)(1980) is used in other proceedings. It is used in the U.S. Department of the Interior's Mineland Reclamation Rules (30 C.F.R. § 716.76). Other federal agencies use the definition in other ways. For example, directives from the President's Council on Environmental Quality require federal agencies to assess impacts on prime farmland when preparing federal EISs and in their programs (Exhibit 61).

Fourth, the fact that the proposed definition is easy to interpret and administer also makes this proposed definition reasonable. 7 C.F.R. § 657 (1980) requires the SCS State Conservationist in each state to identify the soils that meet the above definition of prime farmlands. The Minnesota State Conservationist has prepared a background memo that identifies how Minnesota's prime soils will be identified and lists soils that meet the definition (Exhibit 134). The Minnesota State Conservationist updates the list of prime soils to allow consideration

of new soils discovered during county soil surveys. The list is entitled "Important Farmlands Legend"; the most recent list is dated March 15, 1981. It is included in the background memo. The list is intended for use with detailed soil surveys (Exhibit 128, p. 1), particularly the SCS-prepared county soil surveys (See Exhibits 135, 136).

For counties with modern SCS county soil surveys, qualifying soils and their locations can be clearly established early in the siting process. The definition can also be applied in counties without these surveys. Soil surveys would be required for sites in these counties. An example of a site soil survey done by the SCS for a proposed plant site in St. Louis County is shown in Exhibit 131. It is possible to determine if new soils meet the proposed definition, since the standards that define prime soils are factors that are analyzed when new soils are determined (Exhibit 133). New soils discovered during a site survey would be referred to the Minnesota State Conservationist for comment. However, this situation will be less common in the future. The SCS anticipates that the entire state will be surveyed by 1991; 62 county surveys are currently complete or underway (Exhibit 123). Further information is available to assist in selection of potential sites that would likely meet the proposed avoidance area criterion in counties without soil surveys. Local SCS personnel can provide general soils information to show the probable location of prime soils. The SCS is also publishing an "Important Farmlands" map for each county, to show where prime farmlands are concentrated (see exhibits 125 and 126). The SCS also contemplates publishing a statewide map showing general location of prime farmlands in 1981, as a further aid.

Fifth, the fact that soils must meet specified criteria makes this definition easier to understand and less subject to differing interpretation by the parties involved in the siting process.

Finally, the definition is reasonable because it is better than other possible definitions. The other options considered and rejected are discussed below.

- All farmland. Defining prime farmland as "all farmland" would not reflect a reasonable effort to identify the best productive natural resource. It would exclude many prime farmlands not now being farmed and include many not-as-productive areas that are being farmed.

- Land capability classification system. The SCS land capability classification system establishes eight categories of soils based on the limitations of the soils when used for crops, the risk of damage when they are used and the way they respond to reasonable treatment. A policy to protect Class I and II lands was considered as the proposed criterion was developed (Exhibit 79). This definition has several advantages: it is a familiar system, it was developed by the USDA experts, it is keyed to natural characteristics of the soils and, since it is used in conjunction with the county soil surveys, would be easy to administer. Unfortunately, the land capability classification system is not based on specified criteria, which makes it more

susceptible to variation in interpretation, particularly in areas without county soil surveys. The definition is also based more on management limitations than on inherent productivity of the natural resource. It should be noted that the definition of prime farmlands and the land capability classification system overlap, as would be expected. In general, all Class I soils are also prime soils. Most of Class II soils and a few Class III soils are also considered prime soils (Exhibit 134).

- Crop equivalency rating system. The crop equivalency rating system expresses the value or productivity of land in terms of the net economic return associated with a particular combination of soil, climate and management practices (Exhibit 119). The major drawbacks to this system are that it identifies economic worth and involves placement of subjective values by the person rating the land.

- Cropland resources study. Minnesota Cropland Resources, prepared by the State Planning Agency, rates the productivity potential for cropland in the state based on soil characteristics and climate factors (Exhibit 96). The state-wide coverage makes this option attractive. However, the base data and methodology are quite generalized. The report emphasizes that the maps are not intended for use in site planning (Exhibit 96, p. 23).

- Development of a new definition. The other major option concerns development of a new definition of prime lands. A precise definition that would protect the "best of the best" could theoretically be developed. This would require much more time and effort than has already been expended. It is not clear whether the benefits of such an effort would outweigh the costs of the process or whether a better definition could even be developed. There are benefits to using an already established, familiar and accepted definition. It is also quite clear that the need to protect this productive agricultural resource cannot wait upon the development of such a definition.

- Including "unique" farmlands. Extending the definition to include "unique" farmland as defined by the SCS in 7 C.F.R. 657.5 (b)(1980) has been suggested by the 1980-1981 Power Plant Siting Advisory Committee (Exhibit 28). Unique farmland is defined as having special combinations of soil quality, location, growing season and moisture supply to grow a specific crop; examples of such crops are cranberries, fruit and vegetables. The major drawback to this suggestion is the lack of specific standards to define unique farmlands, which would make application of the policy quite difficult. The definition is also not entirely based on inherent, stable, physical criteria, since nearness to market is a consideration.

b. Proposed 6 MCAR § 3.072 P. (Definition of "developed portion of plant site")

The proposed definition of "developed portion of plant site" is necessary to clearly specify which portion of the total plant site is subject to the provisions of the proposed avoidance area criterion concerning prime farmland.

The conventional power plant site consists of a power station or developed portion, in which structures, facilities and land uses necessary to plant operation are located, and a buffer area. The buffer area is land surrounding the power station that is used to minimize plant impacts, such as noise and cooling tower drift, that diminish with increased distance from the plant (Exhibit 121, p. 1-2). A proposed plant may also include a water storage reservoir or cooling pond to store water for the cooling systems or to comprise the cooling system, respectively.

By this definition, the developed portion of the plant site would consist of structures, facilities and land uses that preclude crop production. Land occupied by structures or facilities are obviously not available for crop production. The definition also includes those land uses which, practically speaking, could not be used for crop production; an example would be areas near the coal storage piles where vehicles are driven. The buffer area would not meet this definition, since agricultural uses are allowable in a buffer area (Exhibit 121, p. 1-2).

Excluding the water storage reservoir or cooling pond from the proposed definition is necessary and reasonable, because a separate policy is proposed for them in proposed 6 MCAR § 3.074 H.3.d.

The reasonableness of the proposed definition is discussed on below.

c. Proposed 6 MCAR § 3.074 H.3.d. (Avoidance area criterion concerning prime farmland)

The avoidance area criterion contained in proposed 6 MCAR § 3.074 H.3.d. proposes a maximum amount of prime farmland that can be taken for the developed portion of the plant site and a separate maximum amount for a water storage reservoir or cooling pond. The amounts are proportional to the net generating capacity of the power plant--an "acres per megawatt (MW)" approach. A range of possible values for the maximum amounts of prime farmland has been suggested for consideration during the rule hearings; the range is from 0.25-0.75 acres per megawatt of net generating capacity. The proposed limits do not apply to certain urbanizing areas. "Net generating capacity" refers to the amount of electricity produced by a power plant in excess of the amount needed to run plant equipment.

The proposed criterion applies to two parts of the plant site: the developed portion of the plant site and the water storage reservoir or cooling pond site. This is reasonable because these are the only parts of the site where crop production is indeed precluded. Land within the buffer area is not appropriately subject to the proposed criterion, since agricultural use is an allowable activity in the buffer, during plant operation (Exhibit 121, p. 1-2).

The proposed criterion proposes separate limits on use of prime farmland for the developed portion of the site and for the reservoir or cooling pond. This is reasonable because the purpose of the proposed criterion is better served by requiring that use of prime farmland be minimized as both the plant site and the reservoir site are selected. Were one number specified--or, for the proposed range, 0.5 acres to 1.5 acres per megawatt--to consider both the reservoir or cooling pond and the developed portion of the site, siting flexibility would increase, but prime farmland may not be protected sufficiently. In cases where there is either no reservoir or only a small reservoir, a large amount of prime farmland could be used for the developed portion of the plant site.

Further, the plant site and the reservoir or cooling pond may be miles apart. Water can be piped from a distant reservoir(s) directly to the plant, or, alternatively, used to augment low stream flows such that constant plant withdrawal from the river is possible. The maximum possible distance for piping depends more upon the cost premium involved than any technical constraint.

Finally, land requirements for reservoirs are much more variable than land requirements for the developed portion of the plant site, which takes somewhat less than one acre per megawatt (Table 2). Land requirements for water storage reservoirs vary from site to site, in response to storage needs and reservoir depth. Storage needs vary considerably. The water model developed by the Department of Natural Resources for the 1979 Draft Inventory of Study Areas estimated, for an 800 MW plant with low flow levels at the 90% exceedence flow, storage needs ranging from 1972 acre feet to 27,597 acre feet (Exhibit 72). The actual reservoir may be up to twice as large since it must also contain room for sediment and flood water storage and other inactive storage. Clearly, deeper reservoirs minimize land requirements. For example, 12,000 acre feet of storage is available from 600 acres, if the reservoir is 20 feet deep, or from 400 acres is the reservoir is 30 feet deep. Therefore, it is entirely possible that different values for the allowable amount of prime farmland per megawatt may be appropriate.

Land requirements for cooling ponds are more easily identified - for an area like Minnesota, the surface area needed to allow the required amount of cooling is about 1.1 acres per MW. (Exhibit 77, p. 53 and Exhibit 78, p. 128). The cooling pond can also be located away from the rest of the plant site.

The proposed criterion relates the amount of prime farmland that can be used to the size of the plant. This approach is reasonable because it addresses the issue of protection of prime farmland directly, without a bias to plant size. This is important because the Board's siting responsibility extends to all power plants 50 MW and larger (Minn. Stat. § 116C.52, subd. 4 (1980)). The proposed policy ensures that prime farmland must be conserved in each plant site, regardless of size. Likewise, larger plants are not unduly penalized because they require larger sites.

The "acres per megawatt" approach also provides an incentive for utilities to reduce the size of the site and reservoir/cooling pond, thereby encouraging thrifty use of land. Further, the "acres per megawatt" approach is also easy to understand and administer, since the allowable amount of prime farmlands is easily calculable.

This approach does not have the drawbacks of other approaches that were considered and rejected:

- Maximum acreage. The 10/2/80 draft of the proposed amendments established a maximum allowable acreage of prime farmland, regardless of plant size (Exhibit 17). In this approach, neither the developed portion of the plant nor the reservoir/cooling pond could take more than 320 acres of prime farmland. This confuses the issue of protection of prime farmland with plant size, because it produces an inherent bias towards smaller plants which can more easily meet this standard. Several reviewers were concerned about this, since it appears an inappropriate focus for an agricultural policy and one more appropriately considered by the Minnesota Energy Agency in its Certificate of Need proceedings (Exhibits 20, 21 and 26, p. 9).

  Simple arithmetic shows that this approach also could result in more total loss of prime farmland if smaller plants are built on different sites. Four -400 MW plants totalling 1600 MW could take up to 1280 acres, while two-800 MW plants would be limited to 640 acres.

  Further, the uncertainty as to how many--and what size--plants will be proposed in the future would make it very difficult to select a maximum acreage figure that would be equitable for all future sitings. The current 15-year forecast submitted by the major utilities shows only two plants in Minnesota - one 60 MW plant and one 800 MW plant that has already been sited by the Board. No sizes or locations have been specified for an additional 1183 MW of needed capacity (Exhibit 106, Exhibit G-2). However, these figures may not accurately predict future needs. For example, the Northern States Power Company has cited the uncertain availability of oil and the possibility of premature shutdown of NSP's nuclear plants as adding uncertainty to power system planning (Exhibit 66). Changes in any of the major assumptions used in the utilities' forecast could also change the number and size of plants that must be sited.

- Percent of site. Allowing a certain percentage of the site to be prime farmland has one fatal drawback: the area of a site can be expanded rather easily, so the policy could be easily circumvented. This would not serve to protect prime farmland. Nor would it encourage utilities to be thrifty in their use of land for plant sites.

It can be argued that the policy penalizes smaller plants and plants other than coal-fired plants. Table 2 shows that smaller coal-fired plants require more acres per megawatt than larger plants; sites for a 50 MW plant, 200 MW plant and 400 MW plant involve 1.6 acres per megawatt, 1.0 acres per megawatt, and 0.90 acres per megawatt, respectively. Plants fueled by wood or other bulky alternative material may require larger sites for fuel storage and waste disposal. However, the policy should not unduly penalize smaller plants. Smaller plants require fewer total acres (e.g., 80 acres for a 50 MW plant), and staff research shows it is easier to find small clusters of non-prime soils (Appendix 2). The other question is not as clear cut, since our data on site size concerns coal-fired plants. However, no wood or other fuel plants larger than 50 MW are currently proposed by the utilities for the next 15 years (Exhibit 106, Exhibit G-2).

Table 2

Site Size for Coal-fired Plants

Plant System	Plant Size (MW)			
	50	200	400	800
Boiler-Turbine (acres)	1.5	1.8	2.0	4.0
Fuel Supply (acres)	5.0	15.0	26.0	48.0
Cooling System (acres)	8.0	15.0	20.0	25.0
Water Quality (acres)	1.0	1.5	2.0	4.0
Solid Waste (20 ft. deep)	63.0	165.0	315.0	610.0
Trans. Switchyard (acres)	1.5	2.0	3.0	7.0
Total Developed Area (acres)	80.0	200.3	368.0	698.0
(Acres/MW)	1.6	1.0	0.92	0.87
Buffer Zone (acres)	35.0	90.0	160.0	326.0
Total Plant Area (acres)	115.	290.0	528.0	1024.0

From Considerations in Electric Power Plant Siting: Coal Fired Power Plants from 50 to 2,400 Megawatts. Prepared by Burns and Roe, Inc. for the Minnesota Environmental Quality Board. January, 1980. (Exhibit 77).

The proposed avoidance area criterion gives a range of values for the amount of prime farmlands that can be taken per megawatt of net generating capacity for the site and the reservoir or cooling pond site; the range includes the values from 0.25-0.75 acres per megawatt. The Board has proposed this range, in part, because the Board believes that this will aid the rulemaking process by encouraging interested persons to make affirmative presentations regarding the standard they prefer. It is the Board's belief that statements in support of a particular standard (as opposed to statements in simple opposition to a proposed standard) will provide the Board with more useful and complete data from which to select the best possible standards.

In addition, the Board has proposed the range because it believes that the adoption of any number within the range could be reasonable. In this statement and its appendices, the Board's staff has presented evidence and data that support the numbers within the proposed range. The Board encourages people to comment during the hearings on the number they prefer and the reasons for their recommendation. After consideration of these statements, Board staff intends to identify during the hearing the number(s) it proposes to recommend the Board adopt. There will be opportunity for comment following the staff recommendation.

The range itself encompasses the values most likely to be considered appropriate. The lower figure, 0.25 acres per megawat, means that only about one-fourth of the developed portion of the plant site or the cooling pond site could be prime farmlands. This would be a fairly restrictive policy, given the large concentrations of prime farmlands in certain areas, yet still offer a few siting opportunities. A lower amount would likely not be reasonable, given prime farmland's legal status as a productive natural resource and the need to maintain siting opportunities throughout the state. The upper figure, 0.75 acres per megawatt, is a reasonable upper limit to the discussion because it offers more siting opportunities, since about three-fourths of the sites could be prime farmland, and, therefore, offers less protection of prime farmland. A larger number would afford little protection. The range allows the tradeoff of siting flexibility versus protection of prime farmland to be considered by all interested people during the rulemaking process.

Appendix 2 contains further information on the implications of the range for the developed portion of the site and the reservoir or cooling pond site. Three numbers are considered--0.25 acres per megawatt, 0.5 acres per megawatt and 0.75 acres per megawatt. Information on the number of siting opportunities, level of protection afforded prime farmland and measures the utility can take to meet the limits is presented for each number for both situations. This information shows that there are siting opportunities even in heavily prime areas for all three numbers.

It should be noted that the 1980-1981 Power Plant Siting Advisory Committee has recommended that the appropriate number is 0.5 acres per megawatt for the developed portion of the plant site and 0.5 acres per megawatt for the reservoir or cooling pond site (Exhibit 28).

The proposed avoidance area criterion does not apply to certain urbanizing areas. This is reasonable because it addresses the equity problem inherent in requiring the utilities and others in the siting process to avoid use of prime farmlands near urban areas only to watch the same land go to urban uses shortly thereafter.

It will also encourage location of plants near large load centers, thereby avoiding areas of concentrated agricultural use and perhaps minimizing adverse impacts on the areas due to transmission line requirements and other factors. It also increases the possibility that advantages associated with near location of power plant and urban area can be realized; examples include cogeneration possibilities, district heating systems and other economic development and other community benefits discussed under proposed 6 MCAR § 3.074 H.1.p. This is reasonable because it reflects and furthers the goals of several site selection criteria--6 MCAR § 3.074 H.1.g. and k. and proposed 6 MCAR § 3.074 H.1.p.

The exemption is limited to three cases--areas located within home rule charter or statutory cities (the two types of cities), areas located within two miles of first, second and third class home rule charter or statutory cities; and areas designated for orderly annexation under Minn. Stat. § 414.0325 (1980). This is reasonable because these areas have been officially designated as having potential for urban growth. By definition, cities are considered as having potential for urban growth.

However, growth may occur outside city boundaries. Therefore, it is reasonable to include two other types of areas The first type is areas designated for orderly annexation. These areas have been formally identified by the annexing city and the surrounding township(s) as being areas of future growth for the city; the purpose of orderly annexation is to provide areas of growth for the city so that unregulated sprawl into agricultural or other important areas can be avoided. The Minnesota Municipal Board must review these agreements; about 50 agreements have been made (Exhibit 92). It should be noted that only areas designated specifically as orderly annexation areas are subject to this exemption.

Areas within two miles of first, second and third class cities are also exempt from the proposed avoidance area criterion. This is reasonable because, otherwise, significant areas of potential urban growth are omitted. Most cities have not adopted orderly annexation agreements that identify areas of anticipated urban growth. This is also reasonable becaue it is compatible with a legislative presumption that areas within two miles of cities are subject to urban growth. Minn. Stat. §§ 462.357, subd. 1 and 462.358, subd. 1a (1980) allow cities to extend their zoning and subdivision review authority to areas within two miles of the city boundaries.

The exemption applies only to areas within two miles of first, second and third class cities--those with at least 10,000 inhabitants. The 1980 Census indicates that 65 cities have at least 10,000 inhabitants

(Exhibit 91). This limitation is reasonable because an unacceptable amount of land would be exempted if the almost 800 fourth class cities were added to the exemption, as suggested by the 1980-1981 PPSAC (Exhibit 28). If each fourth class city were one square mile, nearly 9½ million acres would be exempted from the protection of the Avoidance Area criterion--nearly 20% of the state. In fact, this estimate likely underestimates the impact, since many fourth class cities are likely to be larger than one square mile. While this would greatly increase siting opportunities, it would also exempt an unacceptable amount of prime farmland from protection, particularly in southern Minnesota where there are many cities (Exhibit 83). Further, cities with populations of at least 10,000 are more likely to be considered as large load centers and more likely able to take advantage of the benefits of near location of power plants.

Areas subject to the proposed exemptions are easily identifiable which should minimize problems associated with the administration of the policy.

It might be argued that lands zoned for urban uses by the local units of government should be used to define the areas of potential urban growth. This is not a reasonable approach, for two reasons. First, zoning ordinances can be changed easily by the local unit of government; this fact could be used by the local unit to profoundly influence plant siting in Minnesota, which contradicts the legislative directive that "...(t)o assure the paramount and controlling effect of the provisions herein...(s)uch certificate (of site compatibility) shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government" (Minn. Stat. § 116C.61, subd. 1 (1980)). Second, given the great variation in zoning ordinances throughout the state, it would be difficult to define these areas in a comprehensive, consistent fashion.

The exemption of these specific urbanizing areas is not inconsistent with the intent of the proposed avoidance area criterion to protect prime farmlands. First, the exemptions recognize and seek to remedy an inequity in the siting process. Second, the list of exemptions has been limited to those areas most clearly shown to be "urbanizing"; the land affected by the policy is small. And, third, it is clearly better to encourage plant location in areas that will likely be lost anyway than to allow plant location in stable agricultural areas.

In general, the proposed criterion is reasonable because it establishes policy that will protect Minnesota's prime farmland without unreasonably restricting siting opportunities throughout the state. It does this in a way that is clear and easy to administer.

There was substantial comment on the possible impact of the proposed Avoidance Area criterion during review of the various drafts of the proposed Rules. On the one hand, the utilities were concerned that the proposed policy would unduly restrict siting opportunities, particularly in areas with major concentrations of prime farmland (Exhibits 20, 21 and 22). On the other hand, the 1980-81 PPSAC and interested citizens

were concerned that the proposed policy did not provide sufficient protection of prime farmland, and recommended that, in addition to an "acres per megawatt" limitation, an absolute maximum acreage or "cap" be placed on the amount of prime farmland that can be taken for each plant site and for each reservoir/cooling pond (Exhibits 24, 28 and 39).

The avoidance area criterion is reasonable as proposed, since it allows siting opportunities even in heavily prime areas. As explained in Appendix 2, staff research shows that the policy allows sufficient flexibility to permit siting of plants of various sizes throughout the state. The research shows, as expected, that there are more locations at the upper end of the range (0.5 - 0.75 acres per megawatt) than there are at the lower end of the range. Although some of these potential sites may not be good plant sites because of slope problems or other constraints, many other potential sites remain in each search area.

Further, the proposed criterion does allow use of a certain amount of prime farmland. Techniques are available to reduce site size which can expand siting opportunities in heavily prime areas. It may be possible to reduce site size by using more efficient site layouts. It is also possible to have deeper waste storage ponds; these ponds are the largest part of the developed portion of the site. There are also various ways to reduce the area of the water storage reservoir. The site can be aligned to follow non-prime soils. Plants can be sited within the urbanizing areas exempt from this proposed criterion. Finally, if there are really no feasible and prudent alternatives, the site could be used.

Addition of a maximum acreage or "cap" to the proposed criterion is not appropriate. While this would offer a higher level of protection to prime farmland, there are major drawbacks. First, there is an obvious bias against larger plants. While some may argue that this is desirable, determination of appropriate plant site is a major issue in and of itself and should not be confused with a policy that is designed to protect prime farmland. The size issue is considered by the Minnesota Energy Agency during its Certificate of Need process. Second, it is not clear on what basis, other than limiting plant size, a "cap" could be selected. Third, a "cap" may make siting in the heavily prime areas of southern and western Minnesota much more restrictive than in other areas of the state. This may prevent siting of a plant near an agricultural industry that is a potential cogenerator or supplemental fuel source. Also, it should be recognized that electrical demand growth, while slackening, is still above state average in the agricultural areas and, if need for new transmission lines is to be minimized, the option to site near load centers should be maintained. Finally, the "cap" approach brings up the problem of how to handle site expansion; it would not be fair, and would be extremely restrictive, to limit the total site development to that maximum amount.

III. PROPOSED AMENDMENTS RELATING TO THE INVENTORY OF LARGE ELECTRIC POWER GENERATING PLANT STUDY AREAS

The PPSA directs the Board to adopt an Inventory of Power Plant Study Areas (Minn. Stat. § 116C.55 (1980)). The Inventory of Power Plant Study Areas (Inventory) is intended to be an advance planning guide useful in identifying appropriate areas for power plant location. A study area is a large land area which meets certain criteria and standards and in which one or more plant sites will likely be found after further study.

Proposed 6 MCAR § 3.083 establishes the criteria and standards and administrative procedures to be used by the Board in identifying study areas and adopting an Inventory of Power Plant Study Areas. Proposed 6 MCAR § 3.072 H. and Q. contain two definitions used in proposed 6 MCAR § 3.083.

The proposed Inventory criteria and standards address the four factors which best identify large land areas where plants might be located: water availability (for plants using evaporative cooling), transportation access (for coal-fired plants), acceptable air quality impacts and areas where siting is prohibited by statute. Since technical assumptions (i.e., water, fuel and land requirements for a given plant size) needed to apply the criteria and standards will change often as new data becomes available, the proposed rules specify the process by which the Board will develop such assumptions. That process includes consultation with MEQB agencies, utilities and other parties with pertinent information.

Since plant capacity, fuel type and design have major impacts on resource needs, each study area will be identified for a plant of a particular capacity, fuel type and design using appropriate criteria, standards, and technical assumptions. The Inventory will identify study areas only for plant capacities, fuel types and designs that may be sited by the Board in the near future.

Under the PPSA (Minn. Stat. § 116C.55, subd. 3 (1980)), the Board is required to update the Inventory as needed and to publish an Inventory report; therefore, the proposed amendments do not repeat these statutory requirements.

After the Board has adopted the Inventory, the PPSA and the existing rules direct the utilities to specify the reasons for proposing any site not included in the Inventory and evaluate the proposed site based on Inventory criteria and standards (Minn. Stat. § 116C.57, subd. 1 (1980), 6 MCAR § 3.074 A.). This means that the Inventory criteria and standards, while compatible with the rules governing site selection, are valid only as general guides for identifying specific sites.

As originally enacted in the PPSA (Minn. Stat. § 116C.55, subd. 2, 3 (1973)), the Board was required to prepare an Inventory of Power Plant Sites. An inventory of sites was attempted in 1974-1975. Since it was not possible to sufficiently study a state as large as Minnesota (over

50 million acres) to identify all the relatively small power plant sites (2,000 acres or less), the final document identified candidate areas rather than actual sites (Exhibit 82). The Inventory was never adopted by the Board. As the Minnesota Supreme Court has noted, the PPSA was amended in 1977 "in recognition of the awkward and unnecessary processes[.]" (Floodwood-Fine Lakes et al. v. MEQB, 287 N.W. 2d 390, 396 (Minn. 1979). The PPSA now requires the Board to adopt an inventory of study areas rather than of plant sites.

The PPSA also requires the Board to use a "public planning process where all interested persons can participate in developing the criteria and standards to be used by the Board in preparing an inventory of large electric power generating plant study areas[.]" (Minn. Stat. § 116C.55, subd. 2 (1980)). As directed, there was wide citizen participation in the development of the proposed Inventory criteria and standards. The following is a brief summary of the process:

- The 1978-1979 Power Plant Siting Advisory Committee (PPSAC) was charged with providing the Board and its staff with advice on ways to involve interested citizens and on the issues and criteria that might be included in the Inventory. This committee met about twenty times in 1978 and 1979 to discuss the Inventory. The PPSAC was made up of private citizens interested in various aspects of power plant siting who were appointed by the Board pursuant to Minn. Stat. § 116C.59, subd. 1 (1980).

- During the fall of 1978, nearly 300 citizens participated in eleven discussion meetings held around the state to elicit suggestions for the Inventory. The issues of most interest to the people of Minnesota were identified, which helped in the development of the proposed criteria and standards (Exhibit 14).

- During 1979, the Board's staff prepared a report called Information Meeting Draft--1979 Inventory of Power Plant Study Areas (1979 Draft Inventory). This report contained a draft list of Inventory criteria and standards, illustrative maps of resulting study areas using various technical information, and background information (Exhibit 85). Numerous drafts of this report were reviewed by the 1978-1979 PPSAC, Board member agencies, utilities and interested persons. This input helped to crystallize the proposals.

- In January and February, 1980, the 1979 Draft Inventory of the Inventory was presented at eleven discussion meetings around the state. Over 500 people attended these meetings. The presentation elicited public comments on the proposed issues, criteria and standards (Exhibit 15).

- The Board published a Notice of Intent to Solicit Outside Opinion in the May 19, 1980 issue of the State Register (4 S.R. 1832-1833) (Exhibit 12). No response to this Notice was received.

- In late 1980 and early 1981, three draft sets of proposed amendments were circulated to Board member agencies, 1979-80 and 1980-81 PPSAC members, utilities and other interested agencies and persons, for review and comment. (Exhibits 17, 33, 45). Over 50 meetings were also held with these reviewers during this period (Exhibits 30, 42, 48).

A. Need and Reasonableness of Proposed Amendments Relating to the Inventory

The proposed amendments relating to the Inventory are needed so that the Board can fulfill two legislative directives--first, to adopt an Inventory of Study Areas and, second, to follow the rulemaking provisions of Minn. Stat. ch. 15 in adopting the criteria and standards to be used in preparing the Inventory (Minn. Stat. § 116C.55 (1980). The proposed amendments contain criteria and standards necessary to the identification of study areas; they also contain necessary administrative procedures. The proposed amendments, and the Inventory adopted pursuant to them, will provide guidance to the Board, utilties and interested persons in finding appropriate areas for power plant sites.

The proposed amendments are reasonable, because they establish a process that is equitable and clear. Further, the proposed amendments will result in an Inventory that is a realistic guide. The criteria and standards are limited to the major factors that define large areas as appropriate for plant locations and for which reasonable technical assumptions can be made. Study areas will be specific as to plant size, type and design, and will be identified only for plants anticipated in the near future.

Further comments on the need and reasonableness of specific provisions of the proposed amendments follow.

1. Proposed Amendment of 6 MCAR § 3.072 H (Definition of "study area")

The proposed amendment is necessary and reasonable because it updates the definition of "study area" to reflect the establishment of criteria and standards to be used to identify study areas in proposed 6 MCAR § 3.083. The amended definition of "study area" clearly specifies that study areas are those land areas that meet Inventory criteria and standards.

The amended definition also stipulates that study areas will be specific to plant capacity, fuel type and design. This is necessary and reasonable because the resource requirements and impacts of a plant vary considerably depending upon these factors. For example, a 200 MW coal-fired plant using wet cooling towers consumes about 3.75 cubic feet of water per second at full load, while an 800 MW plant of similar fuel type and design consumes about 15 cubic feet of water per second at full load. A combination wet-dry cooling tower can be designed to consume any amount of water below the needs of the 100% wet tower. Clearly, the areas with adequate water for these example plant sizes and designs are likely to be different.

The specification of study areas by plant capacity, fuel type and design is also appropriate because it provides a clear framework for identifying technical assumptions needed to apply the criteria and standards and it clearly indicates which study area should be used to guide location of a proposed plant.

2. Proposed 6 MCAR § 3.072 Q. (Definition of "technical assumptions")

The amendment gives meaning to the term "technical assumptions" used in proposed 6 MCAR § 3.083, which establishes Inventory criteria, standards and procedures. The definition explains what types of assumptions are needed to apply the Inventory criteria and standards to identify land areas that meet the Inventory criteria and standards.

Each Inventory criterion and standard addresses a resource needed for plant operation. Assumptions must be made to estimate resource requirements of the power plant (e.g., water needs) and resource availability (e.g., amount of water that is available for plant use from a particular river segment). Table 3 lists the specific areas in which technical assumptions will likely be needed to apply each Inventory criteria and standard. The table reflects the experience gained in preparing the 1979 Draft Inventory (Exhibit 85).

The ability to change the technical assumptions is necessary and reasonable to allow updating and revision of the Inventory of Power Plant Study Areas, as required by the PPSA (Minn. Stat. § 116C.55(1980)). This also ensures that the Inventory is a strategic planning tool as intended by the Legislature. The Inventory criteria and standards are adopted rules. However, land areas that meet these criteria and standards will change over time, in response to changes in resource availability (e.g., railroad abandonment will diminish the existing transportation system, while improving air quality may open new areas) and resource requirements of plants (e.g., new water conservation measures may reduce water needs, and use of fluidized bed combustion can minimize SO2 emissions). Regulatory standards that affect resource requirements and resource availability (e.g., establishment of protected flow levels by DNR will affect water availability) will also change over

time. Likewise, our ability to assess resource needs and resource availability will change over time, as more and better data becomes available.

Since the technical assumptions are an important factor in identifying study areas, an open process by which the Board will develop the technical assumptions is established in proposed 6 MCAR § 3.,083 B. This process is discussed later with proposed 6 MCAR § 3.083 B.

Table 3
Inventory Technical Assumptions

This is a preliminary list of the areas in which technical assumptions must be developed before maps of Inventory study areas can be made.

Criteria/Standard	Technical Assumptions
1. Exclusion areas	
o No exclusion areas	o Current list of exclusion areas o Which exclusion areas to be included
2. Air quality	
o No violations for SO_2 or particulates	o Which standards - federal or state, 24 hour or 3 hour - the ones most likely to be violated o Available PSD increment: - Baseline ambient levels updated - Handling of non-attainment areas and offsets o "Footprint" of emissions: - Coal characteristics - Control technology required - Choice of model to generate footprint o Methodology for assessing impact
3. Coal accessibility	
o Within 12 miles o Existing transportation systems	o Which transportation systems are options for particular plant sizes o Current list of existing systems o Which parts of existing systems can be upgraded
4. Water availability	
o Rivers, lakes o Within 25 miles o Adequate water (direct withdrawal or supplemental water storage)	o Which lakes to be considered for evaluation, based on size, location o Which rivers to be considered for evaluation, based on: - Size, location - Sufficiency of daily streamflow records - based on low flow for the area - If insufficient record, whether and how artificial records would be developed o Water demand for plant, based on plant size, cooling system technology, water intake pipe size, plant capacity factor o Methodology to evaluate water adequacy, based on historic stream flows, cooling water system technology and the environmental, economic and engineering constraints of reservoir design related to size: - Historic low flows/low elevations - Methodology to estimate supplemental storage needs - Likelihood of finding reasonable locations for supplemental storage

3. Proposed 6 MCAR § 3.083 A. (Inventory Criteria and Standards)

This proposed amendment establishes the Inventory criteria and standards to be used to identify study areas and also to evaluate proposed plant sites which are not included within the appropriate study area. It is necessary to clearly specify the basis by which study areas are identified and, thus, satisfy the requirements of Minn. Stat. § 116C.55 (1980).

Although the criteria and standards apply to all plant capacities, fuel types and designs, unless otherwise specified, they are clearly appropriate with respect to coal-fired plants, the only type of plant over 50 MW proposed to be sited in Minnesota by the utilities in the next 15 years (Exhibit 106, Exhibit G-2).

The proposed amendment limits the criteria and standards to the four major resources for which data is available that define large areas as being appropriate potential areas for plant location, which is reasonable because it makes the Inventory a more useful guide for plant siting. Several additional criteria and standards were proposed in earlier drafts of the proposed amendments, particularly the 1979 Draft Inventory (Exhibit 81). These were eliminated because they were too site-specific in nature to be useful in identifying large land areas or because there is no available statewide data with which to interpret them.

The need and reasonableness of each criterion and standard is discussed below. For background information on the areas in which technical assumptions will likely be made for each criterion and standard, refer to Table 3.

a. Proposed 6 MCAR 3.083 A.1. (Exclusion areas)

This provision establishes an Inventory criterion and standard that would exclude Board-designated exclusion areas from being part of a study area.

Certain lands have been identified in the existing rules as being such significant natural resources that they cannot be used for plant sites, except for water intake structures and water pipelines (6 MCAR 3.074 H.2.b.). These lands include national parks; national historic sites and landmarks; national historic districts; national wildlife refuges; national monuments; national wild, scenic and recreational riverways; state wild, scenic and recreational rivers and their land use districts; state parks; nature conservancy preserves; state scientific and natural areas; and state and national wilderness areas.

It is necessary and reasonable that the Inventory criteria and standards are made compatible with existing rules relating to site selection. The existing rules provide that certain areas of the state are not available for plant location (6 MCAR § 3.072 H.2.b.). The proposal also is necessary to emphasize the importance of these natural areas to the state and the commitment of the Board to direct plant location away from these environmentally significant areas.

The proposed criterion and standard are reasonable because they follow existing Rules adopted after careful consideration and a public hearing process. Additionally, since the Exclusion Areas are defined on maps, they can be easily incorporated into the Inventory data base.

An example map showing the application of this criterion and standard, using certain possible technical assumptions, is shown in Figure 1. This map was developed for the 1979 Draft Inventory (Exhibit 85, pp. 38-39).

b. Proposed 6 MCAR § 3.083 A. 2 (Air quality)

This proposed amendment establishes an Inventory criterion and standard concerning air quality.

The proposed criterion and standard address a major consideration in siting a power plant--whether federal and state air quality standards can likely be met. Minn. Stat. § 116C.57, subd. 4 (14)(1980) mandates that "[n]o site or route shall be designated which violates state agency rules" and 6 MCAR § 3.074 H.2.a. states that a plant cannot be sited "in violation of any federal or state statute or law, rule or regulation". Since plants cannot be sited in violation of air quality standards, it is necessary and reasonable that the search for suitable areas for plant location be directed away from likely problem areas. This amendment is also necessary to make the Inventory criterion and standard compatible with existing statutes and rules relating to power plant siting.

The proposal is reasonable because it has been carefully designed to accomplish the difficult task of assessing air quality for an entire state. The standard specifices only two "index" pollutants to be used in identifying study areas. Sulfur dioxide and particulate matter were selected as the "index" pollutants by the Minnesota Pollution Control Agency (MPCA) during work on the 1979 Draft Inventory, because they are the major pollutants most likely to be subject to violation of standards. This efficiently concentrates Board efforts. The standard also specifies two types of air quality standards -- the primary and secondary (ambient) standards and the prevention of significant deterioration (PSD) increments (the amount that net ambient pollution levels can increase). This is reasonable because these standards most affect which areas are open to plant siting as explained in Table 4. Table 4 shows the relationship between ambient standards and PSD increments and explains how the two types of standards are useful in identfying areas with air quality constraints.

FIGURE 1

MINNESOTA ENVIRONMENTAL QUALITY BOARD

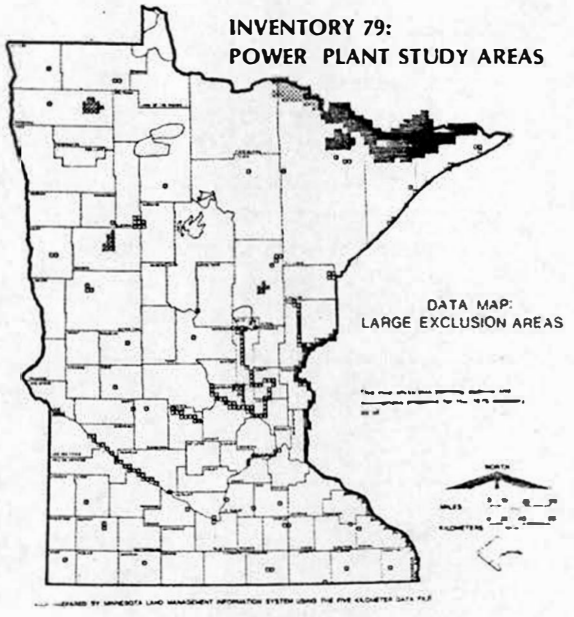


FIGURE III-1

DISCUSSION:

Figure III-1, "Data Map: Large Exclusion Areas," shows the location of the Large Exclusion Areas - those types of Exclusion Areas that are large enough to be significant at the five-kilometer cell scale. Nearly 7% of the cells contain large Exclusion Areas. This is one of the maps used to produce Figure III-4, "Policy Map: Exclusion Areas and Avoidance Area Concentrations."

Assumptions

All cells containing these large Exclusion Areas are shown. Some cells may only be partly filled with Exclusion Areas, so a small buffer is created around these important resources.

Data Sources

Each administering agency was consulted for the most recent data and maps. All areas designated through August 31, 1978 are included in this Inventory:

Area	Contact Agency
National Parks	National Park Service
National Wildlife Refuges	U.S. Fish & Wildlife Service
National Wild/Scenic Recreational Waterways	MN Dept. of Natural Resources
State Wild/Scenic/Recreational Waterways/Land Use Districts	MN Dept. of Natural Resources
State Parks	MN Dept. of Natural Resources
State and National Wilderness Areas	MN Dept. of Natural Resources and National Park Service

Table 4

Allowable Increments - Clean Air Act, As Amended (1977)

Area	PSD Increment*	Comments
Nonattainment Areas	No increase allowed	Nonattainment areas (NAA) are those with existing or anticipated violations of ambient standards. No major new sources in or near the NAA are permitted without corresponding decreases in other emissions in the area.
Attainment Areas:		Attainment Areas have no existing or anticipated violations of ambient standards; there are two types of Attainment Areas in Minnesota: Class I and Class II areas.
	Maximum Increase:	
Class I	24 hour SO_2: 5 ug/m^3; 24 hour particulates: 10 ug/m^3	Class I areas have significant natural resources and very good ambient air quality. The BWCA and Voyageurs National Park are the only Class I areas in Minnesota. The low allowable increment would probably prevent plant location inside and near a Class I area.
Class II	24 hour SO_2: 91 ug/m^3; 24 hour particulates: 37 ug/m^3. In no case can pollutants exceed ambient standards, so existing ambient levels help determine actual increment.	Except for designated nonattainment areas, Class I areas and areas with insufficient data, the state is a designed Class II area. Multi-unit power plants using best available technology can be accomodated in most of Class II areas, except for those areas with ambient levels very near the maximum permissable level.

*The permissible amount that net ambient pollution levels can increase. There are also PSD increments for the 3 hour and annual SO_2 standards and the annual particulate standard.

It is reasonable that both federal and state requirements are referenced, since both must be met. Air quality is regulated by the U.S. Environmental Protection Agency (EPA) under 42 U.S.C. §§ 7401-7642 (1980), the Clean Air Act, and by the MPCA under Minn. Stat. § 116.07 (1980). Minn. Rule APC 1 contains the state primary and secondary (ambient) air standards. Note that the EPA and MPCA primary and secondary (ambient) air standards for SO_2 currently are different, as shown in Table 5; MPCA is now in rulemaking to consider whether to change its standards (Office of Administrative Hearings File No. PCA-81-003-HK). Clearly, if the standards differ, the more restrictive standard would be used to identify study areas.

Table 5

Primary and Secondary (Ambient) Standards
For Sulfur Dioxide and Particulate Matter*

Pollutant	Time Period	Federal		State	
		Primary	Secondary	Primary	Secondary
Sulfur dioxide	3 hr.	-	1300	655	655
	24 hr.	365	-	260	260
	annual	80	-	60	60
Particulate Matter	24 hr.	260	150	260	150
	annual	75	60	75	60

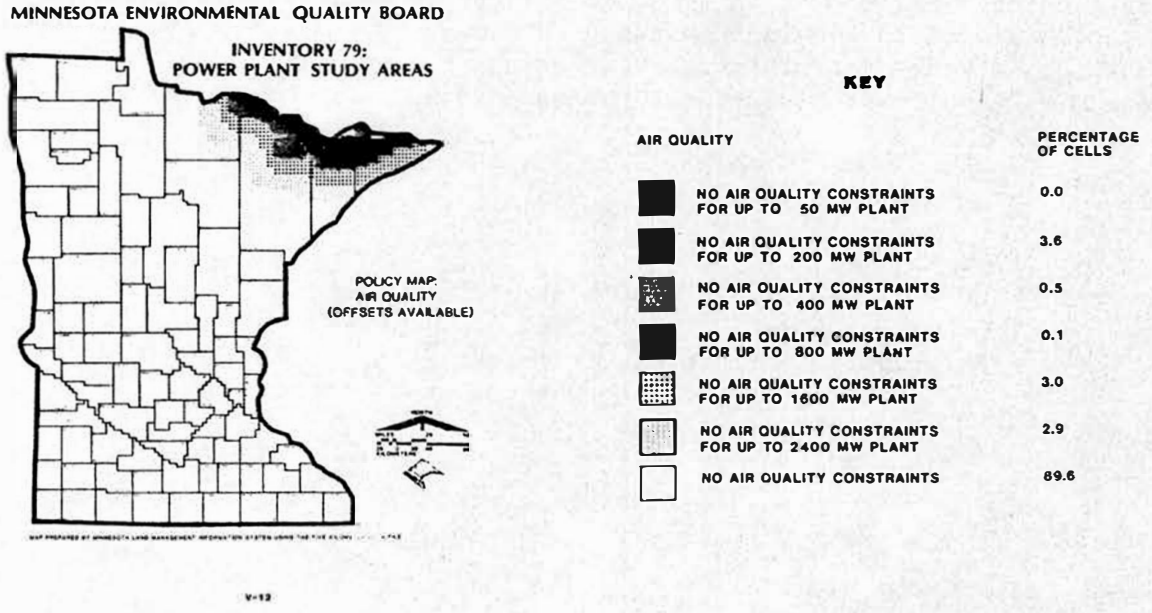
* Units are micrograms per cubic meter

Note that the Rule specifies "likely" violation. This is reasonable because it reflects the "screening" nature of the analysis done to determine study areas. It would be impossible to analyze the entire state in sufficient detail to actually determine whether study areas are indeed licensable. As written, the proposed standard allows use of technical assumptions to best incorporate available information to determine study areas.

Specifying the federal and state requirements does not constitute a delegation of authority to the MPCA or the EPA, as the Board has no authority to set air quality standards. Indeed, as stated earlier, the PPSA and the existing rules require sites to meet both federal and state standards.

An example map showing the application of this criterion and standard, using certain possible technical assumptions, is shown in Figure 2. This map was developed for the 1979 Draft Inventory (Exhibit 85, pp. 96-97).

FIGURE 2



V-12

DISCUSSION:

Figure V-12, "Policy Map: Air Quality (Offsets Available)," shows those areas of the state where air quality regulations can likely be met by new coal fired power plants assuming that emission offsets are available in all the non-attainment areas. This map only considers the secondary standards for twenty-four hour concentrations of sulfur dioxide (SO_2) and particulates. These standards are the most severe regarding coal fired power plants. Under the proposed criteria and planning policies, and using the assumptions listed below, power plant siting would likely be unconstrained by air quality regulations in 100% of the state for plants under 50 megawatt capacity. For larger plants, with their increased air pollution emissions, the unconstrained area naturally shrinks. For example, according to this map about 90% of the state would likely be unconstrained by air quality regulations for a 2400 megawatt plant.

Note that this map is not meant to be a substitute for the detailed air quality investigations that are necessary to estimate the air quality impacts of specific new power plants.

Assumptions

The assumptions used for Figures V-7 and V-8 that were used to estimate the ambient air quality also apply to this map. In addition, the following assumptions apply:

Power Plant emissions were calculated assuming compliance with the September 19, 1978 new source performance standards and have not yet been updated for the final standards - in some situations, this may have caused a slight underestimate of the impacts and these will be updated as soon as possible;

Fugitive dust from the associated coal handling and stockpiles was not included in the particulate modeling;

It was assumed that other sources of pollution could be cleaned up enough in the non-attainment areas to allow the siting of plants within these areas. Obviously, a utility would have to obtain the necessary offsets to locate a new plant in a non-attainment area (see the text of this chapter for more detail). Figure V-11 assumes that no offsets are available.

Data Source

The Minnesota Pollution Control Agency, Division of Air Quality, provided the air pollution modeling for various sized power plants based on model plant data provided by a consultant to the Minnesota Environmental Quality Board; "Guidelines on Air Quality Models" by the EPA; meteorological data from Minneapolis/St. Paul, St. Cloud, and International Falls; and proposed EPA New Source Performance Standards (September 19, 1978). In addition, the data sources for Figures V-2, V-3, V-7 and V-8 also apply to this map.

c. Proposed 6 MCAR § 3.083A.3. (Transportation)

This proposed amendment establishes an Inventory criterion and standard concerning access to transportation, which would apply only to study areas for coal-fired plants.

The proposal is necessary and reasonable because it addresses a major siting issue for coal-fired plants -- the plant type most likely to be sited in the near future. Coal-fired power plants require access to transportation systems capable of delivering the amount of coal required for operation. Coal can be transported by railroad, barge, truck and coal-slurry pipeline. Table 6 shows coal requirements and resulting transportation requirements for several plant sizes. This information indicates that railroad and barges are the most likely mode of transport for large plants. Truck delivery may be feasible for small plants. There are no existing or proposed coal-slurry pipelines in Minnesota.

Table 6

Transportation Needs of Coal-fired Plants

Plants size	Coal (tons/week)[a]	Water Transport (barges/week)[b]	Rail Transport (unit trains/week)[c]	Truck Transport (trucks/week)[d]
50MW	3,800	4.3	0.4	127
100MW	7,400	8.4	0.7	247
200MW	13,800	15.5	1.4	460
400MW	26,400	29.7	2.6	880

a Western coal; 8,300 Btu/pound; at 65% plant capacity factor.

b 1 bargeload = 1,400 tons of coal. Based on a 33 week shipping season.

c 1 unit train = 10,000 tons of coal, or 100-100 ton cars. Plants smaller than 150 MW would most likely receive rail shipments by individual carloads rather than unit trains.

d 1 truck load = 30 tons.

Sources:

Considerations in Electric Power Plant Siting: Coal-fired Plants from 50-2400 Megawatts. Prepared by Burns and Roe, Inc. for the Minnesota Environmental Quality Board. January, 1980 (Exhibit 77).

Minnesota Coal Transport. Prepared by Earth Science Associates for the Minnesota Environmental Quality Board. January, 1979 (Exhibit 84).

The proposal limits the criterion and standard to coal-fired plants. This is reasonable because coal-fired plants are the only plants proposed in the future. Further, transportation access does not constrain location of other plant types to the same degree, so transportation access would not be useful in defining large areas where location of these other plant types might be appropriate.

Specifying that the study area must have reasonable access to an existing transportation system is reasonable because it recognizes the tremendous environmental and economic cost involved in constructing new systems--for example, by deepening new stream segments to handle barge traffic or constructing a major new railroad; upgrading is generally much less damaging to the environment (Exhibit 84, pp. II-29-30). It also makes the proposed criterion and standard compatible with existing rules 6 MCAR § 3.074 H.1. d., g., m. and p.

The proposed standard defines "reasonable access" as being no more than 12 miles from the existing transportation system. Twelve miles is a reasonable maximum distance for constructing a link between plant and transportation system, given the substantial environmental and social impact and the economic costs of new construction.

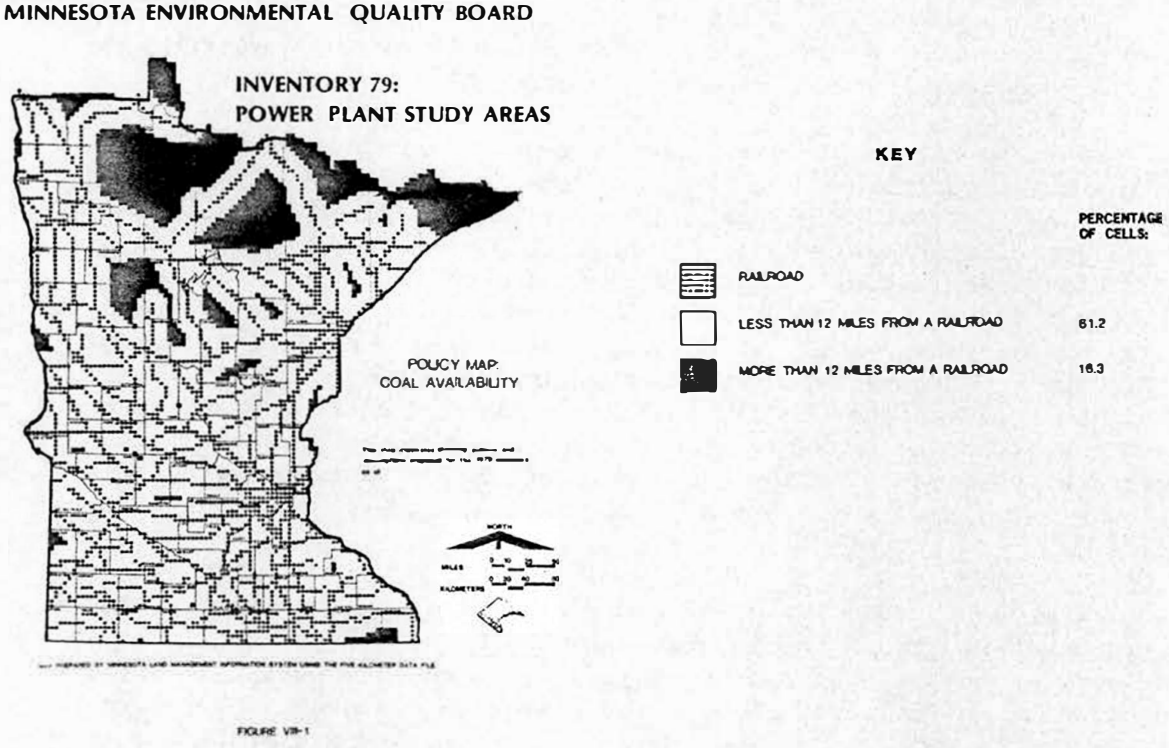
The likely links between plant and transportation system would be built above ground and thus would involve land use disruptions, loss of productivity in the right of way and creation of a linear barrier. In many parts of the state, there are roads every section; a new 12-mile linear barrier could disrupt 10-12 roads. A 12-mile linear barrier could also disrupt up to twelve sections of land. The average size of a farm in Minnesota is 291 acres (Exhibit 70, p. 3). If the transportation link were routed on property boundaries and the farms were square, an average of three farms would be affected per mile in farm areas, or a total of 36 farms for the 12-mile segment. The minimum right of way width for a rail spur is 50 feet; the 12-mile segment would require the removal of about 6.1 acres/mile from other uses (Exhibit 84, p. II-20). The cost of such construction is substantial. For example, the capital costs of a 12-mile rail spur could range up to $18 million (Exhibit 84, p. II-21).

An example map showing the application of this criterion and standard, using certain possible technical assumptions, is shown in Figure 3. This map was developed for the 1979 Draft Inventory (Exhibit 85, pp. 116-117).

d. Proposed Rule 6 MCAR § 3.083 A.4. (Water)

This proposed amendment establishes a criterion and three standards that relate to water availability for plants using evaporative cooling systems.

FIGURE 3



DISCUSSION:

Figure VII-1, "Policy Map: Coal Availability," shows those areas of the state that are within twelve miles of existing railroad rights of way. Note that only 16.3 percent of the state is not within this distance of existing railroad rights of way. Although existing waterways were not included in this map, railroad rights of way tend to follow these waterways so no significant change in the map would result in their exclusion. This map does not consider the environmental and social effects of coal transportation and is not meant to take the place of the detailed studies needed for specific power plant siting applications.

Assumptions

The major assumption made in developing this map is that all railroad rights of way are either now capable of handling coal unit trains or can be upgraded to allow the use of unit trains.

Data Sources

The information for this map was obtained from:

Railroad Map of Minnesota, by Burlington Northern (1974); and
Reuse of Abandoned Railroad Rights of Way, Report to the Legislature, by the Minnesota Planning Agency (1978).

The proposed criterion and standards are needed to recognize the importance of access to an adequate water supply for power plants with evaporative cooling systems and incorporate that fact in identifying study areas for those power plants. They are also necessary to make the Inventory criterion and standards compatible with existing statutory and regulatory constraints with respect to water supply.

Power plants require cooling systems to remove waste heat (heat rejected from the steam cycle). Dry cooling systems are "air cooled", so water requirements for cooling purposes are minimal. Evaporative cooling systems use substantial amounts of water to provide cooling by evaporation. For example, a 200 MW plant and an 800 MW plant with wet cooling systems would consume about 3.75 cubic feet of water per second and 15 cubic feet of water per second, respectively, at full capacity. Evaporative cooling systems include mechnical and natural draft wet cooling towers, cooling ponds, combination wet/dry cooling systems and once-through cooling systems. Power plants must be able to generate electricity year-round. Therefore, power plants with evaporative cooling systems need access to a constant water supply, even during dry periods.

Potential water sources for major water withdrawal include rivers, lakes and groundwater. There are several existing statutory and regulatory contraints on these water sources that must be considered in identifying study areas. The existing power plant siting rules establish criteria with respect to water supply for power plants. Under the exclusion criterion in 6 MCAR § 3.074 H. 2.c, the plant site must have reasonable access to a proven water supply sufficient for plant operation and mining of groundwater is prohibited. Avoidance area criterion 6 MCAR § 3.074 H.3.c. states that use of groundwater for high consumption purposes like cooling should be avoided if there are better surface water alternatives; the use of groundwater to supplement surface water is permissable. The Department of Natural Resources (DNR) regulates water appropriations for power plants and other uses through a permit system (6 MCAR §§ 1.5050-1.5058); the DNR can restrict appropriation during periods of low stream flow or low lake elevations, to provide for instream or inlake needs. State law prohibits withdrawal from lakes in excess of one-half foot annually per acre of lake surface (Minn. Stat. § 105.417, subd. 3 (a) (1980)). River pools and river reservoirs, like Lake Pepin and Lac Qui Parle, are considered lakes and are subject to the withdrawal limitation.

The proposed criterion and standards limit consideration of water adequacy to plants with evaporative cooling systems. This is reasonable because plants with dry cooling systems do not require major amounts of water, so access to water is not a useful factor in identifying study areas for them.

The proposed criterion and standards are reasonable because they address a complicated subject in a sound manner. Surveying an entire state to determine water adequacy is a difficult undertaking. There are no precise standards that indicate adequacy, as there are MPCA/EPA standards

for air quality. There are many potential water sources, with continually increasing amounts of data on them. The ability to successfully analyze this data is also evolving as DNR gains experience with its recently promulgated water appropriation rules and as DNR completes studies on related issues. The proposed criterion and standards allow use of technical assumptions to incorporate the most recent informatiom and analytic capability into the identification of study areas.

The first standard appropriately identifies lakes and rivers as potential water sources. Rivers currently provide water for most power plants in Minnesota. Lakes are also considered as a potential water source in identifying study areas, since a few large lakes, particularly Lake Superior and major river pool reservoirs like Lac Qui Parle and Lake Pepin, may be able to supply sufficient water for certain plant sizes and designs. It should be stressed that this standard is not encouraging use of lakes as a primary water source; it simply recognizes that some of the larger lakes may be capable of supplying adequate water. Groundwater is not included as a potential water source in identifying study areas in light of the existing limitations on ground water in 6 MCAR § 3.074 H 2.c. and 6 MCAR § 3.074 H 3.c. and the current lack of specific groundwater aquifer data on a statewide basis.

The second standard states that study areas should be within 25 miles of an adequate water source. It is reasonable that plants can be located away from the water source. Siting at a distance from the water supply allows consideration of new areas and increases the likelihood that suitable sites will be located within the study areas. Moreover, from a technical viewpoint, water can be pumped any distance by including enough pumping stations. There is, however, a practical limit to the total distance between the source and the plant. It is estimated that a distance of 20-25 miles represents a practical limit beyond which pumping water is not economical (Exhibit 77, p. 75). The 1975 Inventory of Candidate Areas described areas within 15 miles of a water source as desirable and areas over 30 miles as undesirable (Exhibit 82, p. II-C56). The use of 25 miles is selected as maximum reasonable distance for use in the proposed standard.

Allowing a longer distance for access to water than access to rail acknowledges the less adverse environmental impact of water pipelines as compared to that of new transporation links. Water pipelines are below grade, so, once constructed, they do not interfere with surface activities or land uses and there is little potential for air pollution.

The third standard concerns the determination of the adequacy of water sources; it states that the water source is considered adequate if it appears likely to allow LEPGP operation during periods of low flow (rivers) or low elevations (lakes), either by direct withdrawal or by using supplemental stored water, and lists the three factors to be considered in the evaluation. This standard recognizes that plants need a continuous source of water, even during periods of low flows or low elevations when appropriation may be restricted by the DNR. Plant water supplies are typically designed to enable plant operation during such low water conditions.

The third standard also appropriately recognizes that supplemental stored water is a reasonable option to constant withdrawal in providing a constant water supply. Unless storage can be used to supplement that available from the lake or stream, siting of large plants will be confined to the lower reaches of a few large rivers in the state and the largest lakes, forcing a few areas of the state to bear all of the adverse environmental and social impacts of power plants. State law encourages appropriation and use of water from streams during periods of high flows (Minn. Stat. § 105.41 subd.1a) (1980)). Thus, consideration of alternatives involving stored water is also consistent with that policy.

The third standard lists the three factors to be used in evaluating whether water sources will likely be adequate. These include historic stream flows, cooling water system technology and the environmental, economic and engineering constraints of reservoir design related to size. The use of "likely" reflects the fact that the evaluation is a screening device based on certain technical assumptions and is not a statement on licensability. These three factors are based on the factors considered by the DNR when granting water appropriation permits and also on the factors that must be considered by the Board in selecting reasonable reservoir sites, if storage is needed--6 MCAR 3.074 H.1. d,g,h and p. Therefore, the evaluation will, through the judicious selection of technical assumptions, use the best available information on resource availability and regulatory experience to identify water sources likely to be considered as adequate for planning purposes by DNR and the Board. This is reasonable because the plant must be licensable by DNR and must meet Board concerns.

An example map showing the application of the criterion and standards, using certain possible technical assumptions, is shown in Figure 4. This map was developed for the 1979 Draft Inventory (Exhibit 85, pp. 64-65).

4. Proposed 6 MCAR § 3.083B. (Application of Inventory criteria and standards)

This proposed amendment concerns the application of the Inventory criteria and standards. It outlines the procedures to be followed by the Board in adopting the Inventory of Power Plant Study Areas and also specifies Inventory content.

This amendment is necessary to clearly state the manner in which the Board will fulfill its statutory responsibility to adopt an Inventory based on the criteria and standards. The amendment is reasonable because it explicitly states the procedures and Inventory content for ease of understanding, ensures that major issues are addressed in the Inventory and allows for necessary updating of the Inventory.

FIGURE 4

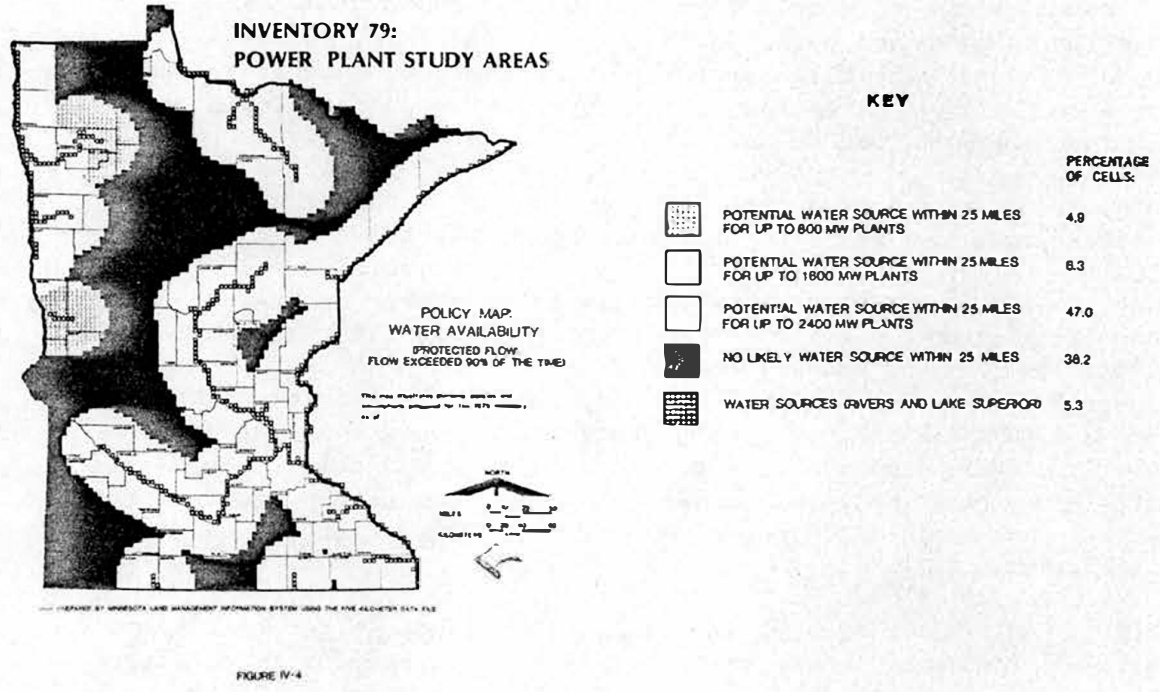


FIGURE IV-4

DISCUSSION:

Figure IV-4, "Policy Map: Water Availability (Protected Flow: Flow Exceeded 90% of the time)," shows those areas of the state that are within twenty-five miles of water sources likely to be available and adequate for coal fired power plants. Note that this map assumes a protected flow level equal to the flow exceeded 90% of the time. Potential water availability for other protected flow levels are shown on Figures IV-5 and IV-6.

Note that under the proposed criteria and planning policies (for the stated protected flow), power plant siting would likely be unconstrained by water availability in over 58% of the state for 800 megawatt plants. For larger plants, with their larger water consumption, the unconstrained area shrinks. For example, according to this map only 47% of the state would likely be unconstrained by water availability for a 2400 megawatt plant. Note that this map is not meant to be a substitute for the detailed water availability studies needed for specific power plant applications.

Assumptions

The following primary assumptions were used in developing this policy map:

An annual plant capacity factor of 65% was used in determining plant water needs;
One hundred percent wet cooling was used in determining plant water needs for plants of greater than 200 MW capacity;
Lake water (except Lake Superior) and ground water were not considered primary or secondary water supplies;
The maximum reasonable reservoir size would provide 30,000 acre feet of useable water storage;
A protected flow level equal to the flow exceeded 90% of the time was used.

Data Sources

Power plant water needs were obtained from a study done by Burns and Roe, Incorporated, for the Minnesota Environmental Quality Board (This study is available from the Board). Stream flow data was obtained from United States Geological Survey daily stream records.

There are four elements to this proposed amendment.

First, the proposed amendment indicates that the Inventory will include study areas for specific plant capacities, fuel types and designs. This is in accord with the proposed definition of "study areas" (see discussion of proposed amendment to 6 MCAR § 3.072 H. supra). As discussed earlier, this limitation is reasonable because it reflects the importance of these three factors in determining whether Inventory criteria and standards can be met.

Second, the proposed amendment establishes that study areas will be identified only for plant capacities, fuel types and designs reasonably anticipated to be subject to application for a Certificate of Site Compatibility in the near future. This is necessary and reasonable because it requires identification of plant capacities, fuel types and designs likely to be subject to Board action and thus appropriately focusses Board efforts. There are many potential capacities, fuel types and designs for plants. Defining study areas for all of them would require too much needless effort. It is also reasonable because it eliminates the unproductive controversy that results from proposing study areas for controversial plant sizes and fuel types that are not proposed for the future.

Specifying the "near future" is reasonable because it recognizes the uncertainty inherent in forecasting future plant needs. The accuracy of any forecast generally decreases the farther the forecast looks to the future. The revisions in the later years of the utilities' 15-year advance forecasts from 1974-1980, shown earlier in Table 1, demonstrate this. The proposed amendment allows the Board to concentrate on those plants that most likely will be subject to Board action. The Board can review the 15-year advance forecasts submitted by the utilities, the biennial reports of the Minnesota Energy Agency and other available information to determine which plant capacities, fuel types and designs should be included in the Inventory.

Third, the proposed amendment establishes Inventory content. The proposed amendment is necessary to specify the content of the Inventory and to differentiate the Inventory from the Inventory report that the Board must also prepare. The Inventory report will be a lengthier document that provides additional background information, similar to the 1979 Draft Inventory (Exhibit 85). The Inventory content is clearly limited to study area maps and a brief discussion of the underlying assumptions. This is reasonable because it makes the Inventory easier to update and requires that underlying assumptions be clearly stated for easier review. The Inventory is intended to be a working, evolving document which will clearly provide information useful to utilities and other interested parties in identifying and evaluating possible sites. An outdated document would not provide such assistance.

Fourth, the proposed amendment commits the Board to consultation with Board member agencies, utilities and other persons with pertinent information as it develops the technical assumptions needed to apply the

Inventory criteria and standards and define study areas. This open process is necessary and reasonable in light of the legislative directive that there be a public participation process in developing Inventory criteria and standards (Minn. Stat. § 116C.55, subd. 2 (1980)).

This amendment is also necessary to specify the process by which the Board will determine technical assumptions, which will be extremely important in identifying study areas. The proposed amendment is reasonable because it provides for outside participation from those with expertise, so that the final products will be as accurate as possible. It is also reasonable because it centers the response on the technical aspects rather than inviting a broad opinion poll about such technical topics.

B. Inventory Preparation

The following process would be used by the Board to prepare the Inventory:

1. After reviewing the latest biennial report of the Minnesota Energy Agency, the latest 15-year utility advance forecast from the utilities, and other pertinent information, the Board will designate plant capacities, fuel types and designs for which study areas are to be determined.

2. Board staff will direct development of the data base and technical assumptions, in consultation with utilities, Board member agencies and other parties likely to have technical data.

3. The Board will designate the technical assumptions to be used in developing study area maps.

4. Study area maps will be prepared for the designated plants with the designated technical assumptions.

5. The Board will adopt the Inventory.

6. Annually, or as appropriate, the Board will review the Inventory and determine if revisions are needed to reflect:

    - o changes in forecasts on which plant fuel types and capacities are likely to come before the Board for site selection.

    - o major advances in plant design.

    - o changes in technical assumptions, because of new or improved data, changing regulations, etc.

It should be noted that study areas will only be developed for plants for which the Board has siting authority--those 50 MW or larger. It is possible that smaller plants may be considered as reasonable alternatives; however, they would not be subject to a Certificate of Site Compatibility.

IV. CONCLUSION

The evidence and arguments justifying both the need and reasonableness of the Board's proposed amendments to the Rules Relating to Siting Large Electric Power Generating Plants, 6 MCAR § 3.071 et seq., are summarized in this document and its attachments, Appendix 1 (the Statement of Evidence containing the exhibit list and the summary of expert testimony to be elicited) and Appendix 2 (Report on Proposed Range for Limits to Use of Prime Farmland for Plant Sites). This document and its attachments constitute the Board's Statement of Need and Reasonableness for the hearing on the proposed amendments.

Environmental Quality Board

Arthur E. Sidner

Arthur E. Sidner, Chairman
June 25, 1981

APPENDIX 1

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Amendments to Rules Relating to Siting Large Electric Power Generating Plants

No. EQB-81-005-AK

STATEMENT OF EVIDENCE

I. List of Exhibits

Jurisdictional Documents

1. Order for Hearing (May 22, 1981).

2. Certificate of Board's Authorizing Resolution (March 19, 1981).

3. Notice of Hearing as Signed (May 28, 1981).

4. Notice of Hearing as Mailed on June 15, 1981.

5. June 15, 1981 State Register containing the Notice of Hearing and the Proposed Amendments at pages 1995-2000.

6. Mailing List Certificate (June 15, 1981).

7. Order of the Chief Hearing Examiner approving incorporation by reference.

8. Affidavit of Mailing (June 16, 1981).

9. Affidavits of Additional Notice of Mailing.

   9a. June 16, 1981.
   9b. June 25, 1981.

10. June 22, 1981 EQB Monitor containing a notice of the hearings on the Proposed Amendments.

11. Statement of Need and Reasonableness.

12. May 19, 1980 State Register containing Notice of Intent to Solicit Outside Opinion Regarding Revision of Rules Relating to Power Plant Siting at pages 1832-1833 .

13. All written materials or telephone messages received in response to the Notice of Intent published in the State Register on May 19, 1980 at pages 1832-1833. Record open to June 9, 1980. None was received.

Response During Rule Development

14. Summary of 1978 Information Meetings

15. Summary of 1980 Information Meetings on 1979 Draft Inventory

16. Presentation to Minn./Wisc. Power Suppliers Group, September 10, 1980

17. 10/2/80 Draft Rules and Attachment

18. October 24, 1980 letter from Chris Sandberg, Minnesota Public Utilities Commission

19. October 27, 1980 letter from Cecelia Lewis, 1979-80 PPSAC member

20. October 29, 1980 letter from A.W. Benkusky, NSP

21. November 3, 1980 letter from K.A. Carlson, Chairman, Minnesota/Wisconsin Power Suppliers Environmental Committee

22. November 4, 1980 letter from David Martin, Owatonna Public Utilities

23. November 6, 1980 letter from Ray Diedrick, SCS

24. November 7, 1980 letter from Charles Dayton, attorney representing Concerned Citizens for the Preservation of the Environment and Circuit Breakers

25. November 13, 1980 memo from Tom Balcom, Environmental Review Coordinator, DNR

26. Paper entitled "Power Plant Siting and Agricultural Land: Commentary on Proposed Regulation" by John Waelti, presented at December 5, 1980 PPSAC meeting

27. Paper entitled "Observations on Minnesota Land Use Trends and on Definition of Prime Farmland-Draft Copy," presented by Joe Stinchfield at December 6, 1980 PPSAC meeting

28. December 6, 1980 Recommendation of 1980-1981 Power Plant Siting Advisory Committee (PPSAC) concerning prime farmlands policy

29. Summary of telephone comments on 10/2/80 Draft Rules by Cliff Swedenburg, Public Utilities Commission, October 20, 1980; Rex Sala, 1980-81 PPSAC member, October 20, 1980; Richard Skarie, Agricultural Extension Service, University of Minnesota, October 27, 1980; and Bill Marshall, Public Service Department.

30. List of Meetings Held by Staff on 10/2/80 Draft

31. List of Persons Receiving 10/2/80 Draft

32. Cover letters to Persons Receiving 10/2/80 Draft (example memo to EQB Technical Representatives; memo to 1979-80, 1980-81 Power Plant Siting Advisory Committee members; letter to Minnesota-Wisconsin Power Suppliers Environemtal Committee, staff and frequent attendees from other utilities and list of recipients; letters to persons Involved with Specific Rules; and letters to other agencies).

33. 12/17/80 Draft Rules and attachment

34. January 5, 1981 letter from Cecelia Lewis, 1979-80 Power Plant Siting Advisory Committee Member

35. January 12, 1981 letter from Lowell Hanson, Extension Soils Scientist, Agricultural Extension Service, University of Minnesota

36. January 14, 1981 memo from Tom Balcom, Environmental Review Coordinator, DNR

37. January 21, 1981 letter from David M. Martin, Owatonna Public Utilities

38. January 22, 1981 letter from Ray Diedrick, SCS

39. February 26, 1981 letter from Charles Dayton, attorney representing Concerned Citizens for the Preservation of the Environment and Circuit Breaks

40. January, 1981 note from Ann Bateson, Office of the Revision of Statutes

41. Summary of Telephone Comments on 12/17/80 Draft Rules by Mark Lahtinen, Water Quality Division, PCA, January 8, 1981; Terry Merritt, MN Municipal Board, January 13, 1981; and Diane Vosick, MN Audubon Society.

42. List of Meetings Held by Staff on 12/17/80 Draft

43. List of Persons Receiving 12/17/80 Draft

44. Cover letters Requesting Review of 12/17/80 Draft (memo to persons receiving the 10/2/80 Draft; representative letter to agricultural, environmental and citizen Groups and list of recipients; letter to Paul Ims, Echo; letter to State Rep. Gaylen Den Ouden; letter to Brian Higgins, HDR; and letter to Merlin Lokensgard, Minnesota Farm Bureau Federation.

45. 3/5/81 Draft Rules and Cover Memo

46. March 13, 1981 letter from Keith Wietecki, NSP

47. March 18, 1981 letter from Vern Ingvalson, Minnesota Farm Bureau Federation

48. List of Meetings Held by Staff on 3/5/81 Draft and List of Persons Receiving 3/5/81 Draft

49. Staff Materials Prepared for March 19, 1981 MEQB meeting (copy of Notice of Meeting published in the State Register on March 9, 1981 at pages 1409-1410; staff report dated 3/12/81; March 16, 1981 staff response to March 13, 1981 letter from Keith Wietecki, NSP; March 16, 1981 Staff Memo about staff proposed amendments to 3/5/81 draft; March 17, 1981 Staff Memo about staff proposed amendments to 3/5/81 draft; March 18, 1981 draft of Rules incorporating staff proposed amendments to 3/5/81 draft; and March 19, 1981 proposed MEQB resolution authorizing rulemaking).

50. March 30, 1981 staff memo concerning status of proposed amendments; (sent to all persons receiving the 3/5/81 draft)

51. March 20, 1981 letter from Mary Williams, Minnesota Project

52. March 31, 1981 letter from Ray Diedrick, SCS

53. May 7, 1981 memo from Ann Bateson, Office of the Revisor of Statutes

54. June 12, 1981 letter to Soil Conservation Service field officers concerning prime farmland materials and mailing list

55. June 12, 1981 letter to Executive Directors of the Regional Development Commissions concerning prime farmland materials and mailing list

56. Materials sent in June 15, 1981 mailing of Notice of Hearing

Documentary Evidence

57. American Land Forum. Land and Food: The Preservation of U.S. Farmland--Report Number 1. Washington, D.C. 1979.

58. Bloomfield, Roger B. "What you should know before converting to waste fuels." Power. April, 1981. Pp. 69-71.

59. Brown, Lester R. Worldwatch Paper 24--The Worldwide Loss of Cropland. Worldwatch Institute, Washington, D.C. October, 1978.

60. California Energy Commission. Municipal Waste Water as a Source of Cooling Water for California Electric Power Plants. Sacramento, California. May, 1980.

61. Council on Environmental Quality. "Publishing of Three Memoranda for Heads of Agencies." (The first two memoranda concern prime farmlands.) Federal Register. September 8, 1980. Pp. 59189-92.

62. Craig, William J. What is Happening to Farmland in Minnesota? Center for Urban and Regional Affairs Publication No. CURA 81-4. Minneapolis, Minnesota. 1981.

63. Dideriksen, Ray and Sampson, R. Neil. "Important farmlands: A national view". Journal of Soil and Water Conservation. September-October, 1976. Pp. 195-197.

64. EPRI Journal. "Energy from Biomass." December, 1980. Pp. 30-32.

65. Governor's Council on Rural Development. Letter from Mark Seetin, Vice-Chair, to Nancy Onkka, Power Plant Siting Program, Minnesota Environmental Quality Board. May 7, 1981.

66. Haik, Ray. Letter to Chief Justice Sheran. September 22, 1980.

67. Heartland Project. Strangers and Guests--Toward Community in the Heartland, A Regional Catholic Bishops' Statement on Land Issues. Sioux Falls, South Dakota. May 1, 1980.

68. Janssen, Kent. "Why Dry Scrubbers Are Better." Public Power. July-August, 1980. Pp. 26-29.

69. Minnesota Conservation Needs Committee, U.S.D.A. Soil Conservation Service, Chairman. Minnesota Soil and Water Conservation Needs Inventory. St. Paul, Minnesota. August, 1971.

70. Minnesota Crop and Livestock Reporting Service, et al. Minnesota Agricultural Statistics--1979. St. Paul, Minnesota. June, 1979.

71. Minnesota Department of Agriculture. The Thirty-First Biennial Report: July 1, 1978-June 30, 1980. St. Paul, Minnesota. 1980.

72. Minnesota Department of Natural Resources, Office of Planning and Research, Methodology for Calculation of Reservoir Size, Appendix to Water Consumption by Future Power Plants in Minnesota--A Framework for Planning (Preliminary Draft). St. Paul, Minnesota. January, 1978.

73. Minnesota Department of Transportation. 1979 State Rail Plan. St. Paul, Minnesota. December 31, 1979.

74. Minnesota Energy Agency. 1980 Energy Policy and Conservation Biennial Report (Draft). St. Paul, Minnesota. 1980.

75. Minnesota Environmental Quality Board. Regional Copper-Nickel Study. Volume 3-Chapter 4--Water Resources. St. Paul, Minnesota. December, 1979.

76. ----------. Power Plant Siting Program. Assessment of Cogeneration Potential in Minnesota--Draft Final Report (prepared by Synergic Resources Corporation, Bala-Cynwyd, Pennsylvania). St. Paul, Minnesota. April, 1981.

77. ----------. Considerations in Electric Power Plant Siting: Coal-Fired Power Plants from 50 to 2400 Megawatts (prepared by Burns and Roe, Inc., Ordell, New Jersey). St. Paul, Minnesota. January, 1980.

78. ----------. Considerations in Electric Power Plant Siting: Considerations in the Identification and Evaluation of Potential Reservoir Sites for Coal-Fired Power Plants (prepared by Woodward-Clyde Consultants, San Francisco, California). St. Paul, Minnesota. July, 1980.

79. ----------. Considerations in Electric Power Plant Siting: Cropland Preservation. St. Paul, Minnesota. January, 1980.

80. ----------. Economic Feasibility of Power Plant Conversion to District Heating Operation--Addendum to Considerations in Electric Power Plant Siting--Coal-Fired Plants from 50 to 2400 Megawatts (prepared by Burns and Roe, Inc., Oradell, New Jersey). St. Paul, Minnesota. March, 1981.

81. ----------. Information Meeting Draft, 1979 Inventory of Power Plant Study Areas, Issue Summary, October, 1979. St. Paul, Minnesota. Mimeo.

82. ----------. Inventory 1975: Candidate Areas for Large Electric Power Generating Plants (prepared by EDAW, Inc. and the Power Plant Siting Advisory Committee). St. Paul, Minnesota. 1975.

83. ----------. Maps showing approximate two-mile radius around all cities in two locations in Minnesota. N.d.

84. ----------. Minnesota Coal Transport Evaluations (prepared by Earth Science Associates, Palo Alto, California). St. Paul, Minnesota. January, 1979.

85. ----------. 1979 Inventory: Information Meeting Draft. St. Paul, Minnesota. October, 1979.

86. ----------. Potential Joint-Use of Waste Disposal and Electric Power Generating Facilities--Phase 1 Draft Report (prepared by Sanders and Thomas, Inc.). St. Paul, Minnesota. November 14, 1980.

87. ----------. A Review of Site Compatibility--The Floodwood-Fine Lakes Large Electric Generating Plant Site (Draft) (prepared by Woodward-Clyde Consultants). St. Paul, Minnesota. December, 1977.

88. ----------. A series of maps showing research on proposed range for limits to use of prime farmland for plant sites.

88a. Prime Farmland Policy Test Sites--Blue Earth County Search Area
88b. Prime Farmland Policy Test Sites--Goodhue County Search Area
88c. Prime Farmland Policy Test Sites--Olmsted County Search Area
88d. Prime Farmland Policy Test Sites--St. Louis County Search Area
88e. Prime Farmland Policy Test Sites--Wabasha County Search Area
88f. Prime Farmland Policy Test Sites--Yellow Medicine County Search Area
88g. Possible Constraints to Test Sites--Blue Earth County Search Area
88h. Possible Constraints to Test Sites--Goodhue County Search Area
88i. Possible Constraints to Test Sites--Olmsted County Search Area
88j. Possible Constraints to Test Sites--St. Louis County Search Area
88k. Possible Constraints to Test Sites--Wabasha County Search Area
88l. Possible Constraints to Test Sites--Yellow Medicine County Search Area

89. ----------. "Staff Proposed Findings of Fact, Conclusions and Recommendations In the Matter of the Rules Proposed for Adoption by the Minnesota Environmental Quality Board Relating to Power Plant Siting and Transmission Line Routing." St. Paul, Minnesota. March, 1978.

90. ----------. Research Results on Proposed Range for Limits to Use of Prime Farmland for Plant Sites. St. Paul, Minnesota. June, 1980.

91. ----------. Two maps showing cities with 10,000 or more inhabitants (1980 Census).

92. Minnesota Municipal Board. "Municipal Board Jurisdiction Regarding Orderly Annexation." St. Paul, Minnesota. November 22, 1978. (Updated by hand).

93. The Minnesota Farmers Union and Minnesota Project. The Farm Structure Project: Strengthening the Family Farm. Minneapolis, Minnesota. May, 1980.

94. Minnesota Pollution Control Agency, Division of Water Quality, Planning Section. Water Quality Management--Minnesota's 208 Plan. Roseville, Minnesota. February, 1980.

95. ----------. SHERCO 3 Final Environmental Supplement to the Northern States Power Company's Proposed Units 3 and 4 Sherco Steam Electric Station Final Environmental Impact Statement. Roseville, Minnesota. May, 1981.

96. Minnesota State Planning Agency, Environmental Planning Division. Minnesota Cropland Resources. St. Paul, Minnesota. May, 1979.

97. ----------. Notebook of Land Use Projections. St. Paul, Minnesota. June, 1978.

98. ----------(Study Coordinator), Minnesota Pollution Control Agency, Minnesota Energy Agency, Minnesota Department of Natural Resources. Future Electrical Energy Resource Demands Pilot Study. St. Paul, Minnesota. December, 1976.

99. Minnesota State Planning Agency, Physical Planning Division. Growth Management. St. Paul, Minnesota. 1981.

100. Minnesota Water Planning Board. "Emerging Issues in Water and Energy--Working Paper 6 (Staff Draft)." St. Paul, Minnesota. October, 1980.

101. Minnesota/Wisconsin Power Suppliers Group. 1974 Advance Forecasting Report to the Minnesota Environmental Quality Council. July 1, 1974.

102 ----------. 1976 Advance Forecasting Report to the Minnesota Environmental Quality Council. 1976

103. ----------. Update of the 1976 Advance Forecasting Report to the Minnesota Environmental Quality Board. July, 1977.

104. ---------- and Southern Minnesota Municipal Power Agency. 1978 Advance Forecast Report to the Minnesota Environmental Quality Board. 1978.

105. Minnesota/Wisconsin Power Suppliers Group. Update of the 1978 Advance Forecasting Report to the Minnesota Environmental Quality Board. July, 1979.

106. ---------- and Southern Minnesota Municipal Power Agency. 1980 Advance Forecast Report to the Minnesota Environmental Quality Board. September, 15, 1980.

107. National Agricultural Lands Study, co-chaired by the U.S. Department of Agriculture and the Council on Environmental Quality. Agricultural Lands Workshops--North Central Region. Washington, D.C. N.d.

108. ----------. "Agricultural Land Data Sheet--America's Land Base in 1977." Washington, D.C. June, 1980.

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II. Expert Witnesses Who May or May Not Be Called To Testify On Proposed Amendments

- Robert Gray, former Executive Director of the National Agricultural Lands Study (NALS), and now associated with the American Farmland Trust. Mr. Gray will discuss (1) the program of study, conclusions and recommendations of the NALS and (2) the national implications of loss of prime farmland at the July 20 hearing beginning at 7:00 p.m.

- Raymond Diedrick, State Soil Scientist with the Minnesota Office of the U.S.D.A. Soil Conservation Service (SCS). Mr. Diedrick will discuss the definition of prime farmland contained in 7 C.F.R. 657.5 (a), development of the state list of soils that meet that definition, the Important Farmlands Inventory of the SCS, soil survey procedures and definitions, the SCS Land capability classification system and related items. SCS area field officers will answer questions on these topics at hearings where Mr. Diedrick is not present; SCS area field officers Paul Nyberg and Carroll Carlson are tentatively scheduled for the July 27 and July 29 hearings.

- Dr. Matt Walton, director of the Minnesota Geological Survey. Dr. Walton will discuss potential construction limitations to building power plants in the five prime farmland policy search areas and identify engineering techniques to overcome limitations (if any) at the July 22 hearing beginning at 7:00 p.m.

III. Agency Personnel Who Will Represent the Minnesota Environmental Quality Board at the Hearings

The agency representatives will include Lee Alnes, Larry Hartman, John Hynes, Sheldon Mains, Nancy Onkka, and Special Assistant Attorney General Christie Eller.

Appendix 2

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Amendments to Rules Relating to Siting Large Electric Power Generating Plants

No. EQB-81-005-AK

REPORT ON PROPOSED RANGE FOR LIMITS TO USE OF PRIME FARMLAND FOR PLANT SITES

The Minnesota Environmental Quality Board (Board) has proposed amendments to its rules which would strengthen protection of prime farmland during selection of power plant sites. Soils that meet the standards listed in 7 C.F.R. 657.5(a)(1980) are considered as prime farmlands; these standards were developed by the USDA Soil Conservation Service.

The proposed amendments contain an avoidance area criterion that limits the amount of prime farmland in the developed portion of the plant site and in an associated water storage reservoir or cooling pond site to a certain amount based on the net generating capacity of the plant. The policy would not apply to certain urbanizing areas. Since this is an avoidance area criterion, the limits would apply unless there are no feasible and prudent alternatives. The Statement of Need and Reasonableness contains more information on the proposed criterion.

The criterion as proposed contains a range of figures from 0.25-0.75 acres per megawatt for the allowable amount of prime farmland that can be taken. The rule as adopted will contain one number for the developed portion of the plant site and one number for the reservoir or cooling pond.

Interested persons are encouraged to present testimony on any figure they believe is the appropriate limit. The Board believes that such testimony is essential to provide complete and useful data from which to select the best possible limits. The Board's goal is to select limits that provide sufficient protection of prime farmland without unreasonably restricting siting opportunities throughout the state, in accord with legislative directives in Minn. Stat. ch. 116B, ch. 116C and 116D (1980).

This appendix provides background information useful in assessing the impact of various numbers within the range--0.25 acres per megawatt, 0.5 acres per megawatt and 0.75 acres per megawatt. It summarizes data on test sites in six search areas (Figure 1). These search areas were selected because they contain high concentrations of prime farmland, thereby testing the proposed limits in the most restrictive area, and importantly, because these search areas were likely to contain realistic sites, since they had been identified as plant site search areas in recent utility siting studies (Exhibits 121 and 141). This appendix also discusses the implications of these three numbers in terms of protection of prime farmland versus siting opportunities and, in Attachment 2, identifies the ways in which utilities can reduce land requirements

PRIME FARMLAND POLICY

SEARCH AREAS

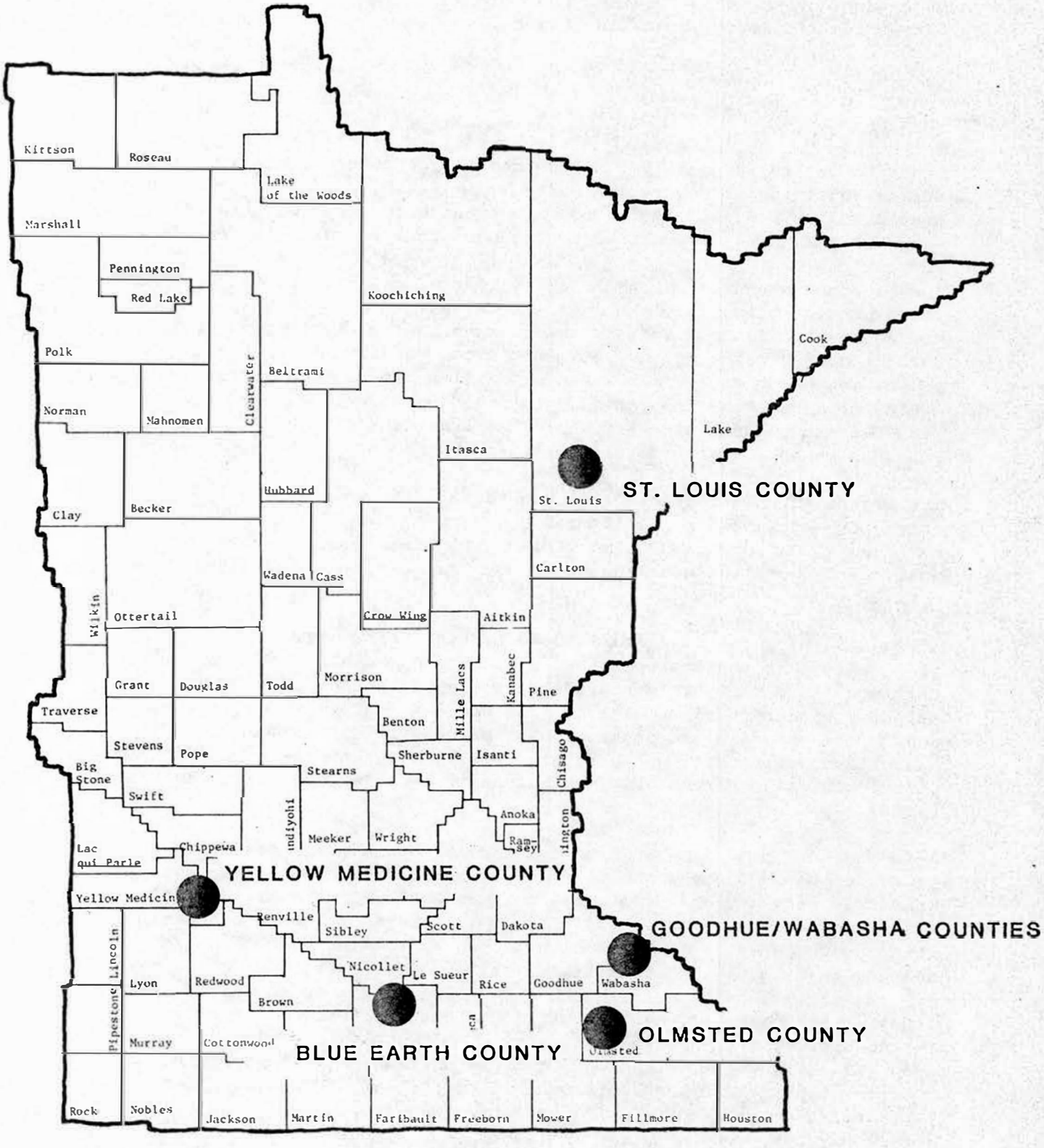

FIGURE 1

for the plant or reservoir site to meet the proposed limit. Attachment 1 contains more information on all test sites, so that interested persons can consider the impact of other possible limits.

Developed Portion of the Plant Site

Land requirements for power plants vary according to the size of the plant. As shown in Table 1, larger plants take less land per megawatt (MW) than smaller plants. Plants with capacities of 1600 MW, 800 MW, and 400 MW would use 0.84, 0.87 and 0.92 acres of land per megawatt, respectively.

These three plant sizes were considered in the research done on the six search areas to test the impact of the three possible limits.

A policy level of 0.75 acres of prime farmland per megawatt would allow:

1200 acres of prime farmland (or 89%) on a 1600 MW site
600 acres of prime farmland (or 86%) on a 800 MW site
300 acres of prime farmland (or 81%) on a 400 MW site

A limit of 0.50 acres of prime farmland per megawatt would allow:

800 acres of prime farmland (or 59%) on a 1600 MW site
400 acres of prime farmland (or 57%) on a 800 MW site
200 acres of prime farmland (or 54%) on a 400 MW site

A policy level of 0.25 acres of prime farmland per megawatt would allow:

400 acres of prime farmland (or 29%) on a 1600 MW site
200 acres of prime farmland (or 28%) on a 800 MW site
100 acres of prime farmland (or 27%) on a 400 MW site

Table 2 shows the number of the 185 test sites within the six search areas that meet each of the three limits. As expected, there are more sites that meet the upper limit than meet the lower limit. All sites meet the upper limit, while only 30 meet the lower limit. This indicates that siting opportunities in heavily prime areas are reduced as the policy becomes more restrictive. However, with one exception, there is at least one site for each plant size in each search area that meets or is close to the lower limit.

These results likely underestimate the number of sites that meet the three limits. Square test sites were used in the calculations. In reality, site layout is flexible. Had the square site layout been altered slightly, the calculated acres of prime farmland per megawatt could have been reduced. Six more sites would meet the 0.25 acres per megawatt limit and 12 more sites the 0.5 acres per megawatt limit, if the layout were adjusted slightly. Further, many more test sites could have been selected, particularly those at the upper end of the range. Time constraints prevented this.

TABLE 1 MODEL PLANT AND LAND USE (Acres)

PLANT SYSTEM	NET GENERATING CAPACITY (MW)		
	400	800	1600
Boiler-Turbine	2	4	7
Fuel Supply	26	48	95
Cooling System	20	25	41
Water Quality	2	4	7
Solid Wastes	315	610	1197
Transportation	3	7	13
Total Acres	368	698	1360
Acres/MW	0.92	0.87	0.85

Interpreted from: Considerations in Electric Power Plant Siting: Coal fired Power Plants from 50-2400 MW. Prepared by Burns and Roe, Inc.

TABLE 2

Search Area	Total # of Test Sites	# of Test Sites that Meet 0.25 acres/MW	# of Test Sites that Meet 0.50 acres/MW	# of Test Sites that Meet 0.75 acres/MW
BLUE EARTH				
400 MW	29	5	19	29
800 MW	20	2	11	20
1600 MW	11	1	7	11
GOODHUE				
400 MW	4	2	4	4
800 MW	2	2	2	2
1600 MW	-	-	-	-
OLMSTED				
400 MW	34	4	29	34
800 MW	17	2	16	17
1600 MW	6	1	6	6
ST. LOUIS				
400 MW	8	1	6	8
800 MW	8	1	7	8
1600 MW	8	1	5	8
WABASHA				
400 MW	2	2	2	2
800 MW	2	2	2	2
1600 MW	1	1	1	1
YELLOW MEDICINE				
400 MW	14	2	2	14
800 MW	14	2	2	14
1600 MW	5	-	2	5
TOTAL	185	31	123	185

It is likely that certain test sites would not make suitable plant sites as only one criterion has been applied. A reasonable plant site requires certain characteristics, like access to water. However, even if some are not suitable, given the number of test sites identified, many others would remain. These test sites were located within general search areas identified by the utilities. It must also be recognized that there are some problems with almost any possible plant site that must be worked around. (See Exhibits 87, 121, and 140.) Attachment 1 contains the results of research concerning major potential constraints for each test site.

There are a number of ways available to permit plant location in certain areas and still meet a prime farmland limit. These include aligning the site to follow non-prime soils, reducing site size by installing higher dikes on the waste ponds (these are the largest part of the site) or by reducing other system acreages and using dry scrubbers for SO_2 removal so the waste can be deposited in a landfill rather than stored on-site. Attachment 2 discusses these and other options.

Water Storage Reservoir or Cooling Pond Site

It is more difficult to develop general estimates of land requirements for reservoir sites. Land requirements for water storage reservoirs vary from site to site, in response to storage needs and reservoir depth. Reservoirs are generally sized to allow plant operation during the record period of low flows, when water cannot be withdrawn from the river. Storage needs vary considerably. For example, the water model developed by the Department of Natural Resources for the 1979 Draft Inventory of Study Areas estimated, for an 800 MW plant with low flow levels at the 90% exceedence flow, storage needs ranging from 1972 acre feet to 27,597 acre feet (Exhibit 72). The actual reservoir may be up to twice as large since it must also contain room for sediment and flood water storage and other inactive storage. Table 5 shows the relationship between depth of reservoir and land requirements for several storage volumes.

Table 3

Relation of Storage Capacity to Reservoir Depth and Land Area*

	Depth of Reservoir		
Land Area	10 Feet	20 Feet	30 Feet
200 acres	2,000*	4,000	6,000
400 acres	4,000	8,000	12,000
800 acres	6,000	12,000	18,000
1000 acres	10,000	20,000	30,000

*Storage in acre feet.

Land requirements for cooling ponds are more easily identified--for an area like Minnesota, the surface area needed to allow the required amount of cooling is about 1.1 acres per MW. (Exhibit 77, page 53; Exhibit 78, p. 128). No cooling ponds have been proposed in recent plant siting studies (Exhibits 121, 140 and 141).

There are many types of reservoirs--diked lakes, diked marshes, natural depressions, in-stream reservoirs, or diked reservoirs. The reservoir can provide water directly to the plant or be used to augment low stream flows so that water withdrawal from the river at the plant can remain constant.

Reservoir sites were identified for the search areas in Blue Earth, Olmsted, and Yellow Medicine Counties, since these areas would likely be required to supplement direct withdrawal from a water source during dry periods. The other three search areas were considered to have sufficient water through constant withdrawal (Goodhue and Wabasha County Search Areas, Stone and Webster Co. evaluation Exhibit 21) or stream flow augmentation by utility reservoirs (St. Louis County, Minnesota Power Company reservoirs).

Four types of reservoirs were considered: a dammed tributary for stream flow augmentation during periods of low flow, diked natural lakes, diked natural depressions, and a watershed dam. Since reservoir shape and size depends on local topography and adequacy of the primary water supply, a standard size could not be used for research purposes.

Two potential reservoirs were identified in the Yellow Medicine County search area. Five potential reservoirs were identified near the Blue Earth County search area and one potential reservoir was identified in the Olmsted County search area. Five of the eight reservoir sites had been proposed in siting study for the Minnesota/Wisconsin Power Suppliers (Exhibit 121). The three additional sites were proposed by Board staff. Storage capacity data and when possible the acres of prime farmland per megawatt were calculated. The results are shown in Table 4.

Ten of the twelve reservoirs proposed in the siting study for the Minnesota/Wisconsin Power Suppliers (Exhibit 121) meet the proposed policy range. Most of them are less than 0.50 acres/megawatt (Table 5). All of the sites found by the EQB staff would also meet the proposed policy range.

Identifying reservoir sites that fall within the Board's suggested policy range is somewhat easier than identifying plant sites. Where slope and soil mosture content are possible constraints for plant siting, they can be a benefit in reservoir siting. Natural depressions, watershed valleys, dry lakebeds and marshes are generally non-prime, making them possible areas for diked reservoirs that meet the policy range.

Existing lakes also provide opportunity for siting fully diked reservoirs that meet the policy range. Since the majority of the reservoir area would already be waterless prime farmland is likely to be used. The Stone and Webster Siting Study identified four reservoir possibilities that used existing lakes. Minnesota has more than 15,000 lakes, some of which may be suitable for reservoirs.

Reservoir land requirements can be significantly reduced by constructing high dikes. Dikes as high as forty to fifty feet are feasible in many areas. Diked reservoirs can be designed to conform to local conditions so as to minimize use of prime farmland.

TABLE 4 Reservoir Test Sites

Site Name	Surface Area (Acres)	Storage Capacity (Acrefeet)	Acres of Prime Farmland	Acres Prime/MW 400 MW	800 MW	1600 MW
Hadley Valley	600	28,440	NA	(1.5)	(0.75)	(0.37)
Wood Lake	1470	20,000	786	1.96	0.98	0.49
High Bank Lake	1540	24,100	832	2.08	1.04	0.52
Wita Lake	770	7,400	47	0.11	0.05	0.02
Eagle Lake	1461	48,825	302	0.75	0.37	0.18
Kasota	820	17,500	228	0.57	0.28	0.14
Solberg Lake	1423	45,740	498	1.24	0.62	0.31
Little Cottonwood River	1140	55,000	NA	(2.85)	(1.42)	(0.71)

NOTES:

NA - Data not available.
Figures shown in brackets assume 100% prime farmland on site.
All reservoirs (except Wita Lake) could support plants larger than 1600 MW.

Source: Research Results on Proposed Range for Limits to Use of Prime Farmland for Plant Sites. Minnesota Environmental Quality Board, St. Paul, Minnesota. June, 1980. (Exhibit 90).

TABLE 5 Reservoirs Proposed In MN/WI Power Suppliers Group Siting Study

Reservoir Name	Reservoir Type	Maximum Capacity(MW)	Reservoir Depth(Feet)	Surface Area(Acres)	Acres/MW*
Minn. River at Watson	On Stream	1200	7	2700	2.25
Hawk Creek	Dammed Tributary	3100	110	1180	0.38
Wood Lake	Diked Lake	1300	29	1470	1.13
High Bank Lakes	Diked Lakes	1700	35	1540	0.90
Delhi	Fully Diked	1600	40	625	0.39
Morton	Fully Diked	1600	40	625	0.39
Rice Lake	Diked Depression	1800	13	1590	0.88
Goldsmith Lakes	Diked Lake	2200	40	780	0.35
Goldsmith Reservoir	Watershed Dam	700	70	200	0.28
Kasota Reservoir	Watershed Dam	2200	70	820	0.37
Wita Lake	Diked Lake	900	12	770	0.86
Little Cottonwood River	Dammed Tributary	4400	110	1140	0.26

* Assuming the entire site is prime; calculations are based on the maximum capacity shown.

Source: Minnesota Power Suppliers Siting Study Stage II Report. Stone and Webster Engineering Corporation. May 1, 1978. (Exhibit 121).

In addition to the actual reservoir sites identified, the plant sites that meet the range could theoretically be diked to provide water storage for a nearby site. The 1600 MW site would hold about 64,000 acre feet if ringed by forty foot dikes. The 800 MW site would hold about 32,000 acre feet and the 400 MW site would hold about 16,000 acre feet if diked to forty feet.

Attachment 2 discusses other ways of reducing land requirements so that a reservoir can be sited within the prime farmland limits. These include distant reservoirs in non-prime areas and reducing storage requirements by use of supplemental water, cooling technologies like wet-dry or dry cooling that consumes less water than traditional wet cooling systems, or sewage effluent as a cooling water source.

Statewide Implications of Proposed Limits

The USDA Soil Conservation Service estimates that nearly 19.5 million acres in Minnesota would be considered prime farmland (Exhbit 129).

The six search areas were selected because they illustrate the impact of the proposed limits in areas with much prime farmland. Table 6 shows the estimated amount of prime farmland in several counties that might meet basic criteria for water and rail access, air quality impacts and available land. Staff research indicates that test sites can be found even in heavily prime areas. Clearly, if appropriate sites can be found in these areas, then there exist many more opportunities in counties that do not contain as much prime farmland.

TABLE 6

County	Percent Prime Farmland: Conservative Needs Inventory	Percent Prime Farmland: Important Farmlands Maps
Aitkin	31	-
Brown	73	-
Carlton	-	31
Carver	-	48
Chippewa	74	-
Dodge	-	74
Douglas	-	41
Freeborn	-	66
Goodhue	-	48
Grant	-	68
Houston	22	-
Le Sueur	62	-
Marshall	25	-
Morrison	24	-
Mower	78	91
Nicollet	73	61
Norman	-	69
Olmsted	-	55
Polk	48	-
Pope	-	40
Redwood	79	-
Renville	84	-
Rice	-	54
St. Louis	13	-
Scott	-	34
Sherburne	-	4
Sibley	81	-
Stearns	41	-
Steele	-	65
Stevens	-	77
Wabasha	-	34
Winona	36	34
Yellow Medicine	81	-

Sources: Minnesota Soil and Water Conservation Needs Inventory. Conservation Needs Committee, USDA Soil Conservattion Service, Chairman, St. Paul, Minnesota. August, 1971. (Exhibit 69).

Important Farmlands Maps prepared by the USDA Soil Conservation Service, St. Paul, Minnesota.

Attachment 1

RESEARCH ON PROPOSED RANGE FOR LIMITS TO USE OF PRIME FARMLAND FOR PLANT SITES

This attachment contains the data collected by the Power Plant Siting Staff of the Environmental Quality Board (Board) for the proposed avoidance area criterion limiting use of prime farmland for power plant sites. The purpose of the research described here was to determine the effect of an "acres of prime farmland per megawatt" approach to limiting the use of prime farmland for LEPGP sites and sites of associated water storage reservoirs or cooling pond.

To determine the statewide implication of the policy, six search areas were chosen to test the range (0.25-0.75 acres of prime farmland per megawatt) proposed for public discussion by the EQB. The search areas were selected because they are within areas proposed by utilities in previous power plant siting studies and because the areas contain high concentrations of prime farmlands. Highly prime areas would be most limited by any policy that limits use of prime farmland.

Five search areas are located in Blue Earth, Goodhue, Olmsted, Wabasha and Yellow Medicine counties. These counties range from about 40% prime to more than 80% prime. Only those areas within reasonable distance to adequate water supply were tested. The Soil Conservation Service has completed detailed county soil surveys for these counties.

The sixth search area, located along the St. Louis River between Floodwood and Brookston in southern St. Louis County, has a detailed SCS soil survey in progress. A general soils map, accurate to about 40 acres, was completed in 1976. The general soils map was deemed appropriate for our purposes after consultation with SCS personnel in Virginia, Minnesota. A detailed soil survey for an area just north of Brookston was done for Minnesota Power Company in 1977 when it was considering a power plant for the area (Exhibit 131).

Identification of Power Plant Test Sites

In order to locate test sites for the policy several pieces of information had to be collected. Foremost was the identification of prime soils on the soil maps. Prime soils are those that meet the specifications of 7 C.F.R. 657.5(a)(1980); the SCS has prepared a list of state soils that meet this definition (Exhibit 134). Soils identified on this list were marked on the soils maps for each search area (Exhibits 88a-88f).

Test sites for three plant sizes were then identified within these search areas. The plant sizes were 400 MW, 800 MW and 1600 MW, which take 368 acres, 698 acres and 1360 acres for the developed portion of the plant site, respectively (Exhibit 77). Square site layouts were used in this study, although site layouts are generally designed to conform to local conditions.

The test sites were located in such a manner as to minimize the amount of prime farmland within the square site. In an actual siting of a power plant the amount of prime farmland on site could be reduced simply by using a flexible site rather than a square site.

After locating the test sites on the pockets of non-prime land, a grid overlay technique was used to calculate the acreage of prime farmland within each site. This method was found to be as accurate, and less time consuming than using a planimeter or electronic digitizing equipment.

The results of the research are contained in Exhibit 90.

The test sites were transferred to 1:24,000 scale U.S.G.S. Topographic maps to identify potential constraints to plant construction or land use conflicts (Exhibits 88g-l).

BLUE EARTH COUNTY SEARCH AREA

The Blue Earth County search area is located in the northern third of the county along the Minnesota River. This area was chosen to test the prime farmland policy for three reasons: 1) the Minnesota River is a good source for cooling water, 2) the Minnesota/Wisconsin Power Suppliers Group, in a recent siting study (Exhibit 121), expressed interest in the area near Mankato, and 3) to illustrate siting opportunities in a highly prime county. Blue Earth County is about 70 percent prime. (Exhibit 69, Table 4).

Sixty test sites at twenty-six locations were identified. Five water storage reservoirs near the sites were also identified. Three of the reservoirs were previously proposed by the Minnesota/Wisconsin Power Suppliers Group (Exhibit 121).

Most of the search area is nearly level to gently undulating with the exception of abrupt gorges near the main drainage channels (Blue Earth, LeSeuer and Minnesota Rivers). These areas have a series of terraces.

Elevation in the search area ranges from about 1,000 feet to 1,060 feet above sea level. The elevation of the bluffs along the Minnesota River valley is about 975 feet and the river level at Mankato is 756 feet. Relief is usually a few feet to twenty or thirty feet in most of the search area.

There are few potential siting constraints in this search area. The square test sites along the river may include part of the bluff, however, this could be avoided with a flexible site. Some of the test sites east of Mankato include seasonal wetlands or permanent marshes.

Prime farmland data and comments on the test sites are included below.

Power Plant Test Sites

SITE	ACRES PRIME	ACRES/MW	COMMENTS
400-1	0	0.00	NSP Mankato Site
400-2	21	0.06	
400-3	144	0.36	Little Cottonwood River on site, Hilly
400-4	126	0.32	Hilly
400-5	39	0.10	
400-6	61	0.15	Near Minnesota River & Minneopa State Park
400-7	137	0.34	
400-8	176	0.44	
400-9	154	0.39	
400-10	157	0.39	
400-11	209	0.52	Highway 60 on site
400-12	265	0.66	
400-13	249	0.62	
400-14	268	0.67	
400-15	244	0.61	
400-16	185	0.46	

400-17	223	0.56	
400-18	128	0.32	Near Minnesota River
400-19	257	0.64	
400-20	192	0.48	80 acre marsh on site
400-21	224	0.56	60 acre marsh on site, 20 acre lake on site
400-22	222	0.55	60 acre marsh on site
400-23	184	0.46	
400-24	153	0.38	Hilly
400-25	242	0.61	
400-26	94	0.23	
400-27	157	0.39	
400-28	146	0.36	
400-29	190	0.48	
800-1	25	0.03	NSP Mankato Site
800-2	142	0.18	
800-3	220	0.28	Little Cottonwood River on site, Hilly
800-4	346	0.43	
800-5	372	0.47	
800-6	453	0.57	
800-7	439	0.55	
800-8	488	0.61	
800-9	484	0.61	
800-10	538	0.67	Highway 60 on site
800-11	418	0.52	80 acre marsh on site
800-12	426	0.53	60 acre marsh on site, 20 acre lake on site
800-13	464	0.58	60 acre marsh on site
800-14	378	0.47	
800-15	357	0.45	Hilly
800-16	394	0.49	
800-17	258	0.32	
800-18	376	0.47	
800-19	378	0.47	
800-20	427	0.53	
1600-1	92	0.05	NSP Mankato site
1600-2	555	0.35	
1600-3	704	0.44	
1600-4	964	0.60	
1600-5	878	0.55	
1600-6	904	0.57	
1600-7	1015	0.63	
1600-8	742	0.46	Highway 60 on site
1600-9	623	0.39	
1600-10	458	0.29	
1600-11	485	0.30	

Reservoir Test Sites

Site Name	Surface Area (Acres)	Storage Capacity (Acrefeet)	Acres of Prime Farmland	Acres Prime/MW		
				400 MW	800 MW	1600 MW
Wita Lake	770	7,400	47	0.11	0.05	0.02
Eagle Lake	1461	48,825	302	0.75	0.37	0.18
Kasota	820	17,500	228	0.57	0.28	0.14
Solberg Lake	1423	45,740	498	1.24	0.62	0.31
Little Cottonwood River	1140	55,000	NA	(2.85)	(1.42)	(0.71)

NOTES:

NA - Data not available.
Figures shown in brackets assume 100% prime farmland on site.
All reservoirs (except Wita Lake) could support plants larger than 1600 MW.

GOODHUE COUNTY SEARCH AREA

The Goodhue County search area is located in Florence Township near Lake Pepin on the Mississippi River. This area was chosen to test the prime farmland policy for three reasons: 1) the Mississippi River has sufficient flow to supply cooling water without a storage reservoir, 2) the Minnesota/Wisconsin Power Suppliers Group, in a recent siting study (Exhibit 121), expressed interest in the area along the lower Mississippi, and 3) to illustrate siting opportunities in a highly prime county. Goodhue County is about 49 percent prime (Exhibit 69, Table 4).

Six test sites at four locations were identified in this search area. The test sites are located northwest of Lake City near Frontenac.

The search area is dissected by an intricate pattern of tributaries leading to the Mississippi River. Most of the area is naturally drained. Topography ranges from very steep in the numerous stream valleys to gently sloping and nearly level on the broad upland areas. Most of the valleys along the Mississippi River have a difference of 350 to 450 feet in elevation. The flood plain along the river has an elevation of about 680 feet above sea level.

The rapid changes in topography are the primary constraint to siting power plants in this area. The square test sites frequently include landforms which could be avoided in an actual siting exercise.

Prime farmland data and comments on the test sites are included below.

Power Plant Test Sites

SITE	ACRES PRIME	ACRES/MW	COMMENTS
400-1	0	0.00	Near Frontenac State Park
400-2	5	0.01	Hilly, Near Frontenac State Park
400-3	128	0.32	
400-4	129	0.32	
800-1	36	0.05	Near Frontenac State Park
800-2	21	0.03	Hilly, Near Frontenac State Park

OLMSTED COUNTY SEARCH AREA

The Olmsted County Search Area is located near Rochester in the western half of the county. This area was chosen to test the prime farmland policy because the Southern Minnesota Municipal Power Agency expressed interest in the area in a recent siting study (Exhibit 141). The area was also chosen to illustrate siting opportunities in a highly prime county. Olmsted County is more than fifty percent prime farmland (Exhibit 69, Table 4).

Fifty-seven test sites at twenty-nine locations were identified. One reservoir site was also identified. Most of the test sites are west-northwest of Rochester. Some sites are within two miles of Rochester.

The search area is characterized by a mature landscape that is dissected by numerous streams that flow into the Zumbro, Root and Whitewater Rivers. The stream valleys are usually about 100 feet deep.

Potential siting constraints in this search area include the rapidly changing terrain and the possibility that much of the area is underlain by Karst topography. Availability of cooling water may be a constraint for larger plants.

Prime farmland data and comments on the sites are included below.

Power Plant Test Sites

SITE	ACRES PRIME	ACRES/MW	COMMENTS
400-1	165	0.41	Hilly
400-2	169	0.42	Hilly
400-3	207	0.52	Hilly
400-4	135	0.34	Hilly
400-5	194	0.49	Hilly
400-6	209	0.52	Hilly
400-7	160	0.40	Hilly
400-8	180	0.45	Hilly
400-9	196	0.49	Hilly
400-10	163	0.41	Hilly
400-11	205	0.51	
400-12	188	0.47	
400-13	149	0.37	
400-14	109	0.27	Hilly
400-15	144	0.36	
400-16	172	0.43	Hilly
400-17	84	0.21	
400-18	120	0.30	
400-19	103	0.26	
400-20	84	0.21	
400-21	175	0.44	Hilly
400-22	62	0.16	
400-23	185	0.46	
400-24	126	0.32	

400-25	171	0.43	Hilly
400-26	127	0.32	Hilly
400-27	223	0.56	
400-28	160	0.40	Proposed trail on site
400-29	157	0.39	Hilly
400-30	130	0.33	Hilly
400-31	164	0.41	Hilly
400-32	99	0.25	Hilly
400-33	203	0.51	Hilly
400-34	118	0.30	Hilly
800-1	279	0.35	
800-2	260	0.33	Hilly
800-3	313	0.39	Hilly
800-4	344	0.43	Hilly
800-5	475	0.59	Hilly
800-6	330	0.41	Hilly
800-7	400	0.50	Hilly
800-8	166	0.21	
800-9	280	0.40	
800-10	265	0.33	Hilly
800-11	186	0.23	
800-12	311	0.39	Hilly
800-13	271	0.34	Hilly
800-14	315	0.39	Hilly
800-15	289	0.36	Hilly
800-16	348	0.44	Hilly
800-17	231	0.29	Hilly
1600-1	648	0.40	Hilly
1600-2	651	0.41	
1600-3	635	0.40	Hilly
1600-4	669	0.42	Hilly
1600-5	701	0.44	Hilly
1600-6	302	0.19	

Reservoir Test Sites

Site Name	Surface Area (Acres)	Storage Capacity (Acrefeet)	Acres of Prime Farmland	Acres Prime/MW		
				400 MW	800 MW	1600 MW
Hadley Valley	600	28,440	NA	(1.5)	(0.75)	(0.37)

NOTES:

NA - Data not available.
Figures shown in brackets assume 100% prime farmland on site.

ST. LOUIS COUNTY SEARCH AREA

The St. Louis county search area is located in the southwestern corner of the county between floodwood and Brookston. This area was chosen to test the prime farmland policy because Minnesota Power Co. had proposed a plant for the area in the late 1970's (Exhibit 140).

Twenty-four sites at eight locations were identified in this search area. The sites are located along the St. Louis river which has adequate flow for power plant cooling water supply.

The search area is gently rolling with numerous marshes and peat deposits. The St. Louis river into a 100 foot valley through the search area. Most of the search area is forested.

The major siting constraints in this area are the large swamps and peat deposits.

Prime farmland data and comments on the sites are included below.

Power Plant Test Sites

SITE	ACRES PRIME	ACRES/MW	COMMENTS
1600-1	966	0.60	½ of site is bog
1600-2	602	0.38	½ of site is bog
1600-3	710	0.44	
1600-4	973	0.61	
1600-5	0	0.00	Hilly, marsh on site
1600-6	528	0.33	3/4 of site is swamp
1600-7	560	0.35	3/4 of site is swamp
1600-8	806	0.50	1/4 of site is swamp, across river from rail
800-1	386	0.48	½ of site is bog
800-2	331	0.41	½ of site is bog
800-3	386	0.48	
800-4	400	0.50	
800-5	0	0.00	Hilly, marsh on site
800-6	386	0.48	3/4 of site is swamp
800-7	266	0.33	3/4 of site is swamp
800-8	442	0.55	1/4 of site is swamp, across river from rail
400-1	202	0.50	½ of site is bog
400-2	193	0.48	½ of site is bog
400-3	189	0.47	
400-4	235	0.59	
400-5	0	0.00	Hilly, marsh on site
400-6	225	0.56	3/4 of site is swamp
400-7	147	0.37	3/4 of site is swamp
400-8	248	0.62	1/4 of site is swamp, across river from rail

WABASHA COUNTY SEARCH AREA

The Wabasha county search area is located in the northeastern corner of the county near the town of Kellogg. This area was chosen to test the prime farmland policy for three reasons: 1) the Mississippi River has suffficient flow to supply a power plant cooling system without a storage reservoir, 2) the Minnesota/Wisconsin Power Suppliers Group, in recent siting study (Exhibit 121), expressed interest in the area along the lower Mississippi, and 3) to illustrate siting opportunities in a highly prime county. Wabasha county is about forty percent prime (Exhibit 69, Table 4). Five test sites at two locations near the river were identified in the search area.

The search area is part of a dissected plateau ranging from 1100 to 1200 feet above sea level. The plateau is about 500 feet above the Mississippi river valley floor. The Zumbro river valley cuts west to east through the search area.

Rapid changes in topography are the major siting constraint in this area, however some of the stream valleys and upland areas are large enough for smaller plants. Data and comments on the sites are included below.

Power Plant Test Sites

SITE	ACRES PRIME	ACRES/MW	COMMENTS
400-1	0	0.00	NSP Kellogg site, near wildlife refuge
400-1	11	0.03	
800-1	0	0.00	NSP Kellogg site, near wildlife refuge
800-2	42	0.05	
1600-1	0	0.00	NSP Kellogg site, near wildlife refuge

YELLOW MEDICINE COUNTY SEARCH AREA

The Yellow Medicine county search area is located in the northeastern part of the county. This area was chosen to test the prime, farmland policy for three reasons: 1) the Minnesota river is a good source for cooling water, 2) the Minnesota/Wisconsin Power Suppliers Group expressed interest in this area in a recent siting study (Exhibit 121), and 3) to illustrate siting opportunities in a highly prime county. Yellow Medicine county is more than eighty percent prime (Exhibit 69, Table 4). Thirty-three sites at fourteen locations were identified in this search area. Two reservoir sites were also identified.

Most of the search area is flat. Relief ranges from ten to twenty feet in some places. The Yellow Medicine river cuts west to east across the search area. The valley is fifty feet deep in places. The bluffs along the Minnesota river are typically 150 feet high.

The major siting constraints in this area are the bluffs along the Minnesota and Yellow Medicine Rivers.

Prime farmland data and comments on the sites are included below.

Power Plant Test Sites

SITE	ACRES PRIME	ACRES/MW	COMMENTS
400-1	13	0.03	Marsh on site
400-2	43	0.11	
400-3	298	0.74	
400-4	280	0.70	
400-5	206	0.51	
400-6	274	0.68	60 acre marsh on site
400-7	292	0.73	
400-8	301	0.75	Creek valley on site
400-9	261	0.64	
400-10	281	0.70	50 acre marsh on site
400-11	293	0.73	10 acre marsh on site
400-12	287	0.71	
400-13	297	0.74	
400-14	227	0.66	
800-1	81	0.10	Marsh on site
800-2	112	0.14	
800-3	599	0.74	
800-4	586	0.73	
800-5	473	0.59	
800-6	517	0.64	60 acre marsh on site
800-7	585	0.73	
800-8	589	0.73	Creek valley on site
800-9	516	0.64	
800-10	540	0.67	50 acre marsh on site
800-11	549	0.68	10 acre marsh on site

800-12	560	0.70	
800-13	588	0.73	
800-14	544	0.68	
1600-1	477	0.30	Marsh on site, Hilly
1600-2	490	0.31	Small lakes on site
1600-3	1057	0.66	
1600-4	1125	0.70	60 acre marsh on site
1600-5	1182	0.73	

Reservoir Test Sites

Site Name	Surface Area (Acres)	Storage Capacity (Acrefeet)	Acres of Prime Farmland	Acres Prime/MW		
				400 MW	800 MW	1600 MW
Wood Lake	1470	20,000	786	1.96	0.98	0.49
High Bank Lake	1540	24,100	832	2.08	1.04	0.52

Notes: These reservoirs could support plants larger than 1600 MW.

Attachment 2: Prime Farmland Policy Siting Alternatives

There are many alternatives that help reduce the use of prime farmland when siting power plants and reservoirs in highly prime areas. This attachment lists some ways to reduce use of prime farmlands.

1. Conform the site to the local soil patterns so as to use prime farmland for the buffer zone. Site layout is very flexible as is shown in Exhibits 121, 87 and 140.

2. Split the developed portion of the site to make use of nearby pockets of non-prime land. The Kellogg site in Exhibit 121 (page 5.1-6B) has the fuel supply at a separate location to minimize rail access problems. This technique and others like it could be used to reduce use of prime farmlands.

3. Increase the waste storage pond dike to use less land area. The waste storage pond is the largest use of land on the developed portion of the site. Dikes as high as 54 feet are proposed in Exhibit 95, page 4.81. The developed site size in Exhibit 77 (as shown in Table 1 of this Appendix) assumes only 20 feet of depth for the waste storage pond.

4. Reduce the size of the coal storage area and transportation system. By piling the coal higher and designing the rail loop as efficiently as possible, less land area is required for the plant site. Figure 3.2-26A in Exhibit 121 is one example of efficient site layout. Figure 4.1-11A in Exhibit 121 shows extra land inside the rail loop being used for the recycle water pond. Reducing the total amount of land needed for the plant site will reduce the need to use prime farmland for the developed portion of the site.

5. Use alternate disposal techniques for solid waste material. The use of dry scrubber systems as described in Exhibits 95 (page 3-44), 68, 139 and 77 (page 120) results in a waste product containing no moisture. Because the waste has less volume and less weight, it is easier to handle and transport to disposal sites on non-prime farmland.

6. Use areas exempted from the prime farmland policy for power plant sites. The proposed prime farmland policy does not apply to urbanized areas (within 2 miles of cities of the first, second and third class) because these lands are likely to be used for other development. Although sites in these areas may use some prime farmland, they provide incentive for cogeneration or colocation of other industry.

7. Reduce reservoir area by reducing water storage needs. Power plant water demand can be reduced to allow use of smaller storage reservoirs that would use less prime farmland. There are numerous techniques available to reduce water demand. Exhibit 77 section IV describes combination wet and dry cooling systems and dry cooling systems that reduce cooling water needs. Exhibit 60 describes use of sewage water for cooling. District heating and cogeneration systems as described in Exhibit 77 section IX can also reduce the need for cooling water. Use of groundwater and multiple sources of water for cooling is another method to reduce water storage needs.

8. Reduce reservoir area by increasing reservoir depth. Higher reservoir dikes allow equal storage capacity while using less land. Exhibit 121, Table 4.1-2 shows dikes as high as 40 feet for some reservoirs.

9. Locate the reservoir away from the plant site to make use of non-prime farmland. This could result in a longer distance to pipe the water, or streamflow augmentation could be employed (Exhibits 121, 78).

10. Use of multiple reservoirs. Exhibit 121 shows two site proposals that use multiple reservoirs located a few miles apart. Use of multiple reservoirs may help avoid prime farmland in some cases.

11. Use of existing lakes for diked reservoirs. By incorporating existing lakes into reservoirs (Exhibit 121), less prime farmland is likely to be taken.

12. Use of sites that don't require water storage reservoirs. By choosing plant sites near rivers with sufficient flow to supply cooling water, the need for reservoirs is eliminated.

In the Matter of the Proposed Adoption by the Minnesota Environmental Quality Board of Amendments to Rules Relating to Siting Large Electric Power Generating Plants

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Christie B. Eller, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Christie B. Eller

Dated: December 16, 1981

In the Matter of the Proposed Adoption by the Minnesota Environmental Quality Board of Amendments to Rules Relating to Siting Large Electric Power Generating Plants

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Jane W. Anderson, being first duly sworn, deposes and says:

That on the 16 day of December, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the (State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above entitled matter have been submitted to the Attorney General.

Jane W. Anderson

Subscribed and sworn to before me this 16 day of December, 1981.

Leonard O. Hislop

LEONARD O. HISLOP
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires March 18, 1983

STATE OF MINNESOTA

MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption by the Minnesota Environmental Quality Board of Amendments to Rules Relating to Siting Large Electric Power Generating Plants

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, December 16, 1981, for review as to form and legality. Pursuant to 1 MCAR § 1.206 C., the Attorney General will not approve the rules for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 530 State Office Building, 435 Park Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearings and before submission to the Attorney General, you may contact Nancy Onkka, Minnesota Environmental Quality Board, Power Plant Siting Program, at 612-296-2169.

Robert F. Benner

Robert Benner, Chairman
Minnesota Environmental Quality Board

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone (612) 296-2169

December 16, 1981

TO: Persons Interested in the Proposed Amendments to the MEQB's Power Plant Siting Rules

FROM: Nancy Onkka Onkka
Power Plant Siting Program

SUBJECT: Adoption of the Amendments

At its December 10, 1981 meeting, the Minnesota Environmental Quality Board unanimously adopted the amendments to the Power Plant Siting Rules. The amendments contain limits to use of prime farmland for power plant sites; the limits were set at 0.5 acres of prime farmland per magawatt of net generating capacity.

The amendments will not become effective until they have been reviewed by the Attorney General and the Revisor of Statutes, filed with the Secretary of State, and published in the State Register. This process will take at least one month. The enclosed notice explains the review process undertaken by the Attorney General.

If you have any questions on the amendments, please feel free to call me at 612-296-2169.

NO/lj

Enclosure

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone _____

December 16, 1981

Judith Wehrwein
Room 530 State Office Building
435 Park Avenue
St. Paul, MN. 55155

Re: Review of Adopted Amendments to Power Plant Siting Act

Dear Ms. Wehrwein:

On December 10, 1981, the Minnesota Environmental Quality Board adopted amendments to its Rules Relating to Siting Large Electric Power Generating Plants.

We are hereby transmitting these amendments to you for your review as to legality. Pursuant to Minn. Stat. § 15.0412 subd. 10 (1980), the amendments have also been submitted today to the Revisor of Statutes for review as to form.

If you have any questions, please call Special Assistant Attorney General Christie Eller at 296-9200, or me at 296-2169.

Sincerely,

Nancy Onkka

Nancy Onkka
Power Plant Siting Program

NO/lj

Enclosures