

CHAPTER 6131

DEPARTMENT OF NATURAL RESOURCES

PEAT MINING

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GENERAL PROVISIONS

6131.0010 DEFINITIONS.

Subpart 1. **Auxiliary facilities.** "Auxiliary facilities" means all permittee-owned stationary physical property used in a mining operation, including power plants and associated facilities; transmission lines; pipelines; roads; railroads; borrow areas and leased borrow areas and associated facilities; fuel production or preparation facilities; and parking areas, shops, offices, buildings, structures, and storage facilities located within the area where mining is conducted. This does not include common carrier transportation facilities.

Subp. 2. **Beneficiating plants.** "Beneficiating plants" means all processing plants and other facilities used for pelletizing, chemical extraction, gasification, compaction, drying, bagging, densification, pulverizing, and wet carbonization.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Department of Natural Resources, or a duly authorized representative.

Subp. 4. **Deactivation.** "Deactivation" means the process of finally terminating and reclaiming any specific portion of a mining operation. Deactivation begins when mining activities and uses associated with product production have ceased and there will be no renewed use by the permittee that will interfere with reclamation.

Subp. 5. **Hereafter.** "Hereafter" means after August 5, 1985.

Subp. 6. **Mine plot.** "Mine plot" means an area from which peat is or will be mined as part of a permitted mining operation. This does not include areas that have been successfully reclaimed.

Subp. 7. **Mining area or area subjected to mining.** "Mining area" or "area subjected to mining" means any area of land from which material is hereafter removed in connection with the extraction of peat; the lands upon which material from mining is hereafter deposited; the lands upon which beneficiation plants and auxiliary facilities are hereafter located; lands upon which the water reservoirs used in the mining process are hereafter located; and auxiliary lands that are hereafter used or intended to be used in a particular mining operation.

Subp. 8. **Natural resources.** "Natural resources" means all mineral, animal, plant, air, water, land, timber, soil, quietude, recreational, historic, scenic, and aesthetic resources.

Subp. 9. **Operating life of the mine.** "Operating life of the mine" means the term determined necessary by the commissioner for the completion of the proposed mining operation, including reclamation.

Subp. 10. **Operator.** "Operator" means any owner or lessee of peat resources engaged in or preparing to engage in a mining operation.

Subp. 11. **Peat.** "Peat" means organic matter, excluding coal, formed by the partial decomposition of plant material under saturated conditions.

Subp. 12. **Peat mining.** "Peat mining" means the removal of peat for commercial purposes, including draining, stockpiling, processing, storing, transporting, and reclaiming any material in connection with the commercial development of peat. "Peat mining" does not include removal of peat that is incidental to the harvesting of an agricultural or horticultural crop, or to mining of a metallic mineral that is subject to a mineland reclamation rule and a permit to mine.

Subp. 13. **Permit to mine or mining permit.** "Permit to mine" or "mining permit" means permit issued pursuant to Minnesota Statutes, section 93.481.

Subp. 14. **Progressive reclamation.** "Progressive reclamation" means the removal of resource in a manner which creates areas that can be reclaimed as soon after initiation of the operation as practical and as continuously as practical throughout the life of the operation.

Subp. 15. **Protected waters.** "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 103G.005, subdivision 15 or 15a; or 103G.201.

Subp. 16. **Reclamation.** "Reclamation" means the successful accomplishment of the goals in parts 6131.0100 to 6131.0130.

Subp. 17. **Stockpile.** "Stockpile" means an accumulation of mined or processed peat.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0020 PURPOSE AND POLICY.

The purpose of this chapter is to implement Minnesota Statutes, sections 93.44 to 93.51 in order to control possible adverse environmental effects of peat mining, to preserve the natural resources, and to encourage the planning of future land utilization, while at the same time promoting the orderly development of peat mining, the encouragement of good peat mining practices, and the recognition and identification of the beneficial aspects of peat mining.

Until more is known about the technological, economic, and environmental feasibility of reclaiming large-scale peat mining operations, the Department of Natural Resources shall adopt parts 6131.0010 to 6131.0340 to serve the state while more information and knowledge is obtained on the feasibility of mining and reclaiming large peat operations. It is the department's intention to amend parts 6131.0010 to 6131.0340 as may be needed in light of new information.

Because of the unique character of each individual peatland and the extreme diversity of the possible types and sizes of operations which might develop during the period when parts 6131.0010 to 6131.0340 are in effect, it is the policy of parts 6131.0010 to 6131.0340 that specific permit requirements for each permitted operation be negotiated within the framework set forth by parts 6131.0010 to 6131.0340. The requirements shall endeavor to fulfill the goals described herein and to attain the best reclamation plan for each individual site.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0030 SCOPE.

Subpart 1. **Generally.** No permit to mine is required until a peat mining operation exceeds 40 acres in size, unless the commissioner determines that there is potential for significant environmental effects which may result from the peat mining operation. A person intending to engage in or carry on a peat mining operation of 40 acres or less, if the intended operation involves removal of more than 1,000 tons of air-dried peat per year, shall notify the commissioner in writing before beginning any mining, specifying the legal description of the tract to be mined and the mining methods to be used. Within 20 days after either receipt of written notice of intent to mine the tract, or after receiving additional information requested, the commissioner shall notify the person of the decision to require, or not to require, a permit.

Subp. 2. **Persons currently engaged in peat mining.** Any person engaged in a peat mining operation as of August 5, 1985, and not excluded by subpart 1 shall apply for a permit to mine by February 5, 1986. Any existing mining operation may continue during the pendency of the application.

Subp. 3. **Permits before commencement of operations.** Any person intending to conduct a new peat mining operation or reactivate an inactive peat mining operation not excluded by subpart 1 shall obtain a permit to mine prior to commencing operations.

Subp. 4. **Mine plot size limit.** No permit to mine shall be issued for a peat mining operation whose total mine plot acreage exceeds 3,000 acres.

Subp. 5. **Term of permit.** The term of a permit to mine issued under parts 6131.0010 to 6131.0340 is the period determined necessary by the commissioner for the completion of the proposed mining and reclamation activities, based on information provided under part 6131.0150.

Subp. 6. **New, existing, and reactivated operations.** Parts 6131.0010 to 6131.0340 apply to:

A. all portions of a peat mining operation initiated hereafter, including both new operations and reactivated operations; and

B. all portions of existing peat mining operations which are hereafter created or used, except that the siting requirements shall not apply to portions constructed prior to August 5, 1985.

Subp. 7. **Effect on other rules or statutes.** Nothing in parts 6131.0010 to 6131.0340 shall be construed to waive the requirements of any other applicable rules or statutes.

Subp. 8. **Other rights.** Pursuant to Minnesota Statutes, section 93.47, subdivision 3, parts 6131.0010 to 6131.0340 are subject to any rights existing pursuant to any permit, license, lease, or other valid existing authorization issued by the commissioner, the Pollution Control Agency, or any other governmental entity or their predecessors in office.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

PEATLAND RECLAMATION STANDARDS**6131.0100 SITING.**

Subpart 1. **Goals.** Mining areas shall be sited to avoid conflicts with adjacent noncompatible land uses.

Subp. 2. **Requirements; exclusion areas for mining.** No peat mining shall be conducted within any of the areas in items A to I unless the commissioner determines that a state or national emergency exists that would require the exploitation of the peat resources within these areas:

A. in and within one-fourth mile of:

(1) the Boundary Waters Canoe Area Wilderness as legally described in Volume 45, No. 67, of the Federal Register for April 4, 1980; and

(2) national wilderness areas, national parks, and national monuments all as they exist and are defined by law on August 5, 1985;

B. in and within one-fourth mile of state wilderness areas and state parks;

C. within a national wild, scenic, or recreational river district or within one-fourth mile of a national wild, scenic, or recreational river (whichever is greater), all as they exist and are defined by law on August 5, 1985; within a designated state land use district or within one-fourth mile of any state wild, scenic, or recreational river (whichever is greater);

D. on sites designated in the National Register of Historic Places and in registered national natural landmarks all as they exist and are defined by law on August 5, 1985; on sites designated in the state Registry of Historic Sites and in designated state scientific and natural areas;

E. within 300 feet of:

(1) any state trout stream designated by rule;

(2) any river listed in Minnesota Statutes, section 85.32, subdivision 1; and

(3) the Bois de Sioux, Red River of the North, Roseau, Rainy, and Pigeon Rivers;

F. within 400 feet of any natural watercourse located within the area defined by the federal Shipsted-Newton-Nolan Act (United States Code, title 16, sections 577-577b);

G. within any stream trout lake designated by rule;

H. within the following areas that are in existence before the issuance of a permit to mine:

(1) 500 feet of any occupied dwelling, public school, church, public institution, cemetery, county or municipal park, unless allowed by the owner; and

(2) 100 feet of the outside right-of-way line of any public roadway, except where mine access or haul roads cross such right-of-way line; and

I. within any area, except federal areas, added to the categories listed in this subpart if the designation is made before the issuance of a permit to mine the area, and an opportunity for a public hearing has been afforded.

Subp. 3. Requirements; avoidance areas for mining. Peat mining within the areas in items A to F will be allowed only if the mining and associated reclamation will enhance the existing use of the area; or, if no reasonable or prudent alternative exists and, in the case of state-owned land, the affected area will be replaced by an area of equal or greater public value serving the same purposes as the affected area:

A. On all lands within the boundaries of all Peatland Protection Management Areas legally described in Peatland Reclamation Report No. 1, Department of Natural Resources, December 1984, which is incorporated by reference and which is available through the Minitex Interlibrary Loan System. This document is not subject to frequent change.

B. Within any national wildlife refuge or waterfowl production area, or on lands designated as national natural landmarks or national trails, all as they exist and are defined by law on the August 5, 1985.

C. Within any state wildlife management area and on any state designated trail listed in Minnesota Statutes, sections 84.029 and 85.015.

D. Within any shorelands defined in Minnesota Statutes, section 103F.205.

E. Within any protected waters except as provided in Minnesota Statutes, sections 103G.211 and 103G.221.

F. Within any area added to the categories listed in this subpart, provided the designation is made before the issuance of a permit to mine the area.

Statutory Authority: *MS s 93.461*

History: *10 SR 277; L 1991 c 259 s 23*

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6131.0110 MINE DESIGN.

Subpart 1. **Goals.** Mining areas shall be designed, constructed, and managed to be compatible with surrounding nonmining land uses; to minimize adverse water quality and quantity effects; to be structurally sound; to promote progressive reclamation; and to encourage the prompt attainment of site restoration goals.

Subp. 2. **Requirements.** The requirements of mine design are contained in items A to D:

A. Mining shall proceed in a manner approved by the commissioner according to the following:

(1) Where practical, the mining area shall be developed as a series of mine plots.

(2) Scheduling of mine plots shall be accomplished in a manner which promotes progressive reclamation.

(3) Mine plots shall be designed so that when reclaimed, open water areas expected to form therein shall have a stable shoreline and a water level which shall not fluctuate to expose large areas of unvegetated land.

B. Adjacent permitted peat mining operations shall be separated by unmined or successfully reclaimed areas, when necessary, to mitigate environmental impacts. The extent of these separations shall be determined by the commissioner according to the following criteria:

(1) mine plot sizes and schedules for production and reclamation;

(2) the extent to which separations will mitigate impacts;

(3) the attainment of site restoration goals;

(4) the use of the peat resource; and

(5) land ownership.

C. Dewatering and ditch design shall proceed in a manner approved by the commissioner according to the following:

(1) Levels of surrounding protected waters shall not be lowered.

(2) Adjacent peatlands shall not be dewatered to the extent that the value of the resource is diminished.

(3) Ditches which divert waters around, or carry waters away from the mining area shall be constructed to avoid bank slumping and erosion.

D. Mine wastes (including peat and wood wastes) from mining and processing shall be disposed of in a manner approved by the commissioner.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0120 SITE RESTORATION.

Subpart 1. **Goals.** The mining area shall be progressively reclaimed so that it is non-polluting, establishes a water system which is compatible with the surrounding regional water resource, has current land use value and future land use potential which recognizes the productivity of the site, and is maintenance-free to the maximum extent possible, unless an approved postmining management plan provides for maintenance.

Subp. 2. **Requirements.** The requirements of site restoration are contained in items A to D:

A. The operator shall contact the landowner to determine whether the landowner agrees to assume management responsibility for a specific postmining land use including but not limited to wildlife habitat, forest production, agriculture, or biomass production. If the landowner does not agree to assume responsibility for postmining management, then the operator shall comply with the site restoration requirements in item B. If the landowner

agrees to assume postmining management, the operator and the landowner shall jointly develop a postmining management plan at the time of application for or amendment to a permit to mine. The postmining management plan shall:

- (1) be compatible with restoration goals;
- (2) be compatible with adjacent uses;
- (3) consider the needs of the area;
- (4) consider the productivity of the site;
- (5) consider projected land use trends;
- (6) protect public health and safety;
- (7) avoid pollution of air and water; and
- (8) be compatible with local land use plans and plans of the surface owners.

B. Within the mining area, all mined peat surfaces, islands, littoral zones, and disturbed peat and mineral surfaces such as ditches (excluding field ditches), dredge spoil, borrow pits, plant sites, and auxiliary facilities shall be stabilized with vegetation.

(1) To ensure progressive reclamation, the establishment of vegetation shall be initiated during the first normal planting period following the point when according to the permit to mine, a surface, structure, facility, or element is no longer scheduled to be disturbed or used in a manner that would interfere with the establishment and maintenance of vegetation.

(2) During the fourth and fifth year following initiation of revegetation, a vegetated reclaimed area shall have a 75 percent live vegetative cover comprised of wetland or typical peatland species that are either planted or naturally occurring. The vegetation shall be self-sustaining, and either regenerating or in a stage of natural succession. Cover estimates of revegetation shall be measured by standard procedures approved by the commissioner for assessing ground cover and productivity. Where this standard is not met, the surface shall be repaired as necessary and replanted during the next normal planting period. No release pursuant to part 6131.0250 shall be granted until the area has such characteristics.

(3) Water levels in open water areas shall be stable within five years following the cessation of mining.

C. The amount of peat that remains in a mine plot shall be dependent on the texture and type of the underlying soil and the approved mining and reclamation plans.

D. Plans for water control shall be implemented pursuant to part 6131.0170.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0130 CLEANUP.

Subpart 1. **Goals.** The mining area shall be cleaned up so that it is nonpolluting, free of hazards, and maintenance-free to the maximum extent possible.

Subp. 2. **Requirements.** The requirements for cleanup are contained in items A to D:

A. Cleanup shall commence upon deactivation.

B. The mining area shall be managed during cleanup to attain site restoration goals.

C. Within one year after cleanup begins or within a longer period approved by the commissioner, debris and mobile equipment which will not be used for reclamation shall be removed from the area being deactivated.

D. Within three years after cleanup begins, or within a longer period approved by the commissioner, the following shall be accomplished unless provisions have been made

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for continued subsequent use in accordance with an approved deactivation plan pursuant to part 6131.0250:

- (1) removal of roads, parking areas, and storage pads; and
- (2) all equipment, facilities, and structures shall be removed and the site shall be revegetated.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

PERMIT REQUIREMENTS**6131.0140 PERMIT TO MINE PEAT.**

Subpart 1. **Preapplication conference and site visit.** Prior to the preparation of an application for a permit to mine, a person shall meet with the commissioner for a preapplication conference and a site visit.

Subp. 2. **Generally.** Pursuant to part 6131.0030, subpart 1, no person shall carry out a mining operation for peat in this state without first obtaining a permit to mine from the commissioner.

Subp. 3. **Mines in operation on August 5, 1985.** Pursuant to part 6131.0030, subpart 1, a person conducting a mining operation on August 5, 1985, who applies for a permit to mine by February 5, 1986, may continue to conduct the operation during the pendency of the application.

Subp. 4. **Joint applications.** Where two or more persons are or will be engaged in a mining operation, all shall join in the application and the permit to mine shall be issued on a joint basis. Where a person is or will be engaged in only a portion of the operation, that person need only be a joint permittee in the portion in which that person is participating.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0150 PERMIT APPLICATIONS.

Subpart 1. **Submission of application.** An application for a permit to mine containing the information in subparts 2 to 6, shall be submitted in duplicate by the applicant to the commissioner.

Subp. 2. **Documents.** To comply with statutory requirements, the applicant shall submit:

- A. a certificate or evidence of insurance as required by Minnesota Statutes, section 93.481, subdivision 1, clause (2);
- B. the notice and affidavit of publication pursuant to part 6131.0190, subpart 1;
- C. if the applicant is a foreign corporation, as defined by Minnesota Statutes, sections 300.02 and 303.02, a certified copy of the certificate of authority to transact business in Minnesota; and
- D. a statement documenting financial capability to perform reclamation obligations or a performance bond pursuant to part 6131.0310.

Subp. 3. **Organizational data.** To comply with statutory requirements, the applicant shall submit:

- A. the post office address of the applicant;
- B. the general organizational structure of the applicant, any parent companies, owners, principal stockholders, partners, and joint venturers;
- C. any managing agents or subsidiaries which are or may be involved in the mining operation; and
- D. organizational relationships between or among joint applicants.

Subp. 4. **Environmental setting.** To gain information on the environmental setting of the proposed mining area, the applicant shall submit:

- A. A copy of any environmental reports prepared relative to the mining operation.
- B. Environmental setting maps prepared as overlays to 7-1/2 minute United States Geologic Survey quadrangle maps delineating the mining area and such adjacent lands as required by the commissioner to show the areas directly or indirectly affected by the mining operation. The following information as it exists at the time of application shall be submitted:
 - (1) shape and depth of the peatland;
 - (2) ditch locations, surface waterflow in existing ditches, water basins, water courses, and wetlands which are or could be affected by the mining operation;
 - (3) surface ownership of record and ownership of easements above, on, or below the surface within the mining area;
 - (4) all underground uses of the property including pipelines and cables; and
 - (5) exclusion and avoidance areas pursuant to part 6131.0100, subparts 2 and 3.

Subp. 5. **Mining and reclamation maps and plans.** The purpose of mining and reclamation maps and plans is to evaluate anticipated activities to be conducted during the term of the permit. Minnesota Statutes, section 93.481, subdivision 3, requires that a permit be issued for the life of the operation. Therefore, for the operating life of the mine, the applicant shall submit:

- A. Mining and reclamation maps and cross-sections containing all features normally found on a United States Geologic Survey quadrangle map, at a scale agreed upon by the applicant and the commissioner which:
 - (1) describe the shape, depth, and type of the peat resource that will support the operating life of the mine and the texture and type of the underlying mineral soil;
 - (2) identify potential peat mining areas which have not been included as part of the mining plan; and
 - (3) depict at appropriate production or time intervals approved by the commissioner the status of development and reclamation for:
 - (a) mine plots;
 - (b) ditches;
 - (c) water control structures;
 - (d) settling basins;
 - (e) stockpiling areas; and
 - (f) auxiliary facilities.
- B. Mining and reclamation plans that describe for the operating life of the mine:
 - (1) the mining activities to be conducted including:
 - (a) the types, amounts, sequence, and schedule for mining the peat; and
 - (b) the beneficiating process, including a discussion of the type and amount of any chemicals to be added, and the types, amounts, and means of waste disposal;
 - (2) the methods and schedules of reclamation activities; and
 - (3) anticipated or proposed reclamation research.

Subp. 6. **Postmining management plan.** In support of the postmining management plan required by part 6131.0120, subpart 2, item A, the applicant shall submit:

- A. documentation of the landowner's management ability; and

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B. a copy of the written agreement between the landowner and the operator detailing fiscal and reclamation responsibilities.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0160 ANNUAL REPORT.

Subpart 1. **Purpose.** The purpose of the annual report is to describe actual mining activities completed during the past year and mining activities planned for the upcoming year. The permittee shall submit to the commissioner in duplicate an annual report between March 1 and 31 of each year.

Subp. 2. **Preceding calendar year.** For the preceding calendar year, the report shall include:

- A. a statement describing financial capability to perform reclamation obligations;
- B. the actual rate of mining;
- C. the actual mining activities; and
- D. the actual reclamation activities.

Subp. 3. **Upcoming calendar year.** For the upcoming calendar year, the report shall include:

- A. the anticipated rate of mining;
- B. the anticipated mining activities including:
 - (1) the types, amounts, and schedule for mining the peat; and
 - (2) the beneficiating process, including a discussion of the type and amount of any chemicals to be added and the types, amount, and means of waste disposal; and
- C. the anticipated reclamation activities including methods, schedules, and research.

Subp. 4. **Map.** For the preceding and upcoming year, the report shall contain a map in the form prescribed by part 6131.0150, subpart 5, item A, which depicts the status of mining, reclamation, and watershed modifications.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0170 PLAN FOR DEACTIVATION.

Subpart 1. **Purpose.** The purpose of the deactivation plan is to describe the detailed reclamation activities to be conducted on the deactivated portion. This plan shall be approved by the commissioner pursuant to part 6131.0250 prior to its implementation.

Subp. 2. **Deactivation plan.** The permittee shall submit to the commissioner in duplicate, a deactivation plan at least two years prior to beginning deactivation for any portion of the mining area. This plan shall replace the annual report for the portion of the mining area to be deactivated. The deactivation plan shall contain:

- A. detailed plans, schedules, designs, specifications, and supporting data for reclamation activities which comply with the mining permit;
- B. the depth and the physical and chemical characteristics of the soil in each mine plot;
- C. a description of water table depths;
- D. a description of water control structures including location and extent, inspection methods and schedule, potential maintenance problems and solutions, and an estimate of maintenance costs; and

E. an updated copy of the written agreement between the landowner and the operator detailing fiscal, reclamation, and postmining management responsibilities.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0180 REQUEST FOR RELEASE.

Subpart 1. **Purpose.** The purpose of the request for release is to evaluate compliance with parts 6131.0010 to 6131.0340, the approved deactivation plans, and the permit to mine in order to release the permittee from further responsibilities.

Subp. 2. **Request for release.** The permittee shall submit to the commissioner in duplicate a request for release pursuant to part 6131.0250. This request shall include:

- A. a detailed description of provisions for continued maintenance;
- B. identification of the ownership of the mining area and all remaining structures and facilities; and
- C. a map in the form prescribed by part 6131.0150, subpart 5, item A, which depicts the following:
 - (1) the final topography;
 - (2) the postmining drainage system including the amounts and locations of discharge to receiving waters;
 - (3) the extent and type of vegetation; and
 - (4) the existing and expected permanent water levels within the deactivated mining area and the year in which they will be reached.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

PROCEDURES AND STANDARDS

6131.0190 PERMITS TO MINE.

Subpart 1. **Application and publication.** The process for requesting a permit to mine is commenced by submitting an application to the commissioner pursuant to parts 6131.0010 to 6131.0340. After the commissioner determines the application is complete, the applicant shall publish an advertisement as required by part 6131.0280. Within seven days after the last date of publication, the applicant shall submit to the commissioner a copy of the advertisement and an affidavit from the printer verifying publication. The application shall then be considered filed.

Subp. 2. **Determination with hearing.** Hearings on permits to mine may be held as follows:

- A. Written objections and a request for a hearing may be filed with the commissioner according to Minnesota Statutes, section 93.481, subdivision 2.
- B. Within ten days after the receipt of the objections, the commissioner shall determine whether the person filing the objection is entitled to object. If the objections were filed by a person entitled to object, the commissioner shall:
 - (1) Select a hearing date which shall be no more than 30 days after the last date of opportunity to object.
 - (2) Serve an order for hearing in the form and manner required by part 1400.5600, except those in part 1400.5600, subpart 3, which shall not apply. In no event shall such an order be served less than 20 days prior to the hearing.
 - (3) Mail a copy of the order for hearing to all persons who filed objections and all local units of government in which all or a part of the operation is located.
 - (4) Publish notice of subject, time, date, and place of the hearing at least once prior to the hearing in a newspaper which must be both a legal newspaper, within

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the meaning of Minnesota Statutes, section 331A.02, and circulated in the locality of the proposed mining operation.

If the objections were filed by a person not entitled to object, the commissioner shall notify the person in writing by mail of the determination giving reasons for it.

C. The commissioner may hold a hearing on the proposed application without receipt of objections if the commissioner deems it necessary to protect public health, safety, and welfare.

D. Within 120 days after the close of the hearing record, or 90 days after service of the hearing examiner's report whichever comes later, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 3. Determination without hearing. Determination without hearing:

A. If, within 30 days after the last publication required by part 6131.0280, no objections to an application are received from persons entitled to object, the commissioner within 120 days, may without hearing process the application in accordance with the following:

- (1) grant the permit to mine with or without modifications or conditions;
- (2) deny the permit to mine stating reasons therefor; or
- (3) request in writing that the applicant provide additional information.

B. If the commissioner has made a request for additional information within 120 days after receiving the information, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 4. Hearing upon demand of applicant. If the commissioner processes an application without a hearing, the applicant may, within 30 days after mailed notice of the commissioner's order on the application, file with the commissioner a demand for hearing pursuant to Minnesota Statutes, chapter 14. The application shall thereupon be fully heard on notice.

Within 120 days after the close of the hearing record or 90 days after service of the hearing examiner's report, whichever comes later, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 5. Review of annual report. After granting a permit to mine, the commissioner shall review the annual report required by part 6131.0160, to determine if it complies with the provisions of the permit to mine and parts 6131.0010 to 6131.0340. Upon completion of this review, the commissioner shall inform the permittee regarding compliance of the report with the permit to mine and parts 6131.0010 to 6131.0340.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0200 VARIANCE PROCEDURES.

Subpart 1. Application for variance. A proceeding for requesting a variance from parts 6131.0010 to 6131.0340 is commenced when the permit applicant or permittee files an application for a variance with the commissioner. The application shall include information necessary for the commissioner to determine that the proposed variance is consistent with the general welfare and the goals of parts 6131.0010 to 6131.0340.

Subp. 2. Determination by commissioner. Within 30 days after receipt of the application, the commissioner shall determine whether the proposed variance constitutes a substantial change from the requirements of parts 6131.0010 to 6131.0340.

If the commissioner determines that a substantial change, would result, the applicant shall follow the procedures for permit to mine applications in part 6131.0190.

If the commissioner determines that there would be no substantial change, the commissioner shall without a hearing allow the variance with or without additional terms or conditions which are consistent with parts 6131.0010 to 6131.0340, or deny the application stating reasons therefor.

Subp. 3. **Demand for hearing.** If the commissioner processes the application without a hearing, pursuant to subpart 2, the applicant may file with the commissioner a demand for hearing on the decision pursuant to part 6131.0190, subpart 4.

Subp. 4. **Simultaneous filing of applications.** Applications for variance from parts 6131.0010 to 6131.0340 may be filed simultaneously with an application for a permit to mine, provided that the advertisement contains all information required for applications for permits to mine and for variance.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0210 AMENDMENTS.

Subpart 1. **Application for amendment.** A proceeding for requesting an amendment of a permit to mine is commenced when the permittee files an application for an amendment with the commissioner. The application shall include information necessary for the commissioner to determine that the proposed amendment meets the lawful requirements and parts 6131.0010 to 6131.0340.

Subp. 2. **Determination by commissioner.** Within 30 days after receipt of the application, the commissioner shall determine whether the proposed amendment constitutes a substantial change in the permit to mine.

If the commissioner determines that a substantial change would occur, the applicant shall follow the procedures for permit to mine applications in part 6131.0190.

If the commissioner determines that there would be no substantial change, the commissioner shall without a hearing allow the amendment with or without additional terms or conditions which are consistent with parts 6131.0010 to 6131.0340, or deny the applications stating reasons therefor.

Subp. 3. **Demand for hearing.** If the commissioner processes the application without a hearing pursuant to subpart 2, the applicant may file with the commissioner a demand for hearing on the decision pursuant to part 6131.0190, subpart 4.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0220 CANCELLATION OF PERMIT.

Subpart 1. **Cancellation at request of permittee.** A proceeding to cancel a permit to mine at the request of the permittee is commenced when a permittee files a written request with the commissioner. The request shall identify the permittee and give reasons for the cancellation.

Within 30 days after the receipt of a request, the commissioner shall determine whether cancellation would have a significant adverse effect on any public interest relating to the goals of parts 6131.0010 to 6131.0340.

If the commissioner determines that the cancellation has such an adverse effect, the permittee shall publish an advertisement pursuant to part 6131.0280 and the commissioner shall proceed as if an application for a permit to mine pursuant to part 6131.0190 had been received.

If the commissioner determines that the cancellation shall not have such adverse effect, the permit may be canceled with or without conditions.

Subp. 2. **Cancellation with consent of permittee.** A proceeding to cancel a permit to mine with the consent of the permittee is commenced when the commissioner serves the permittee with a written request giving reasons for the cancellation.

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If no reply or an affirmative reply is filed with the commissioner within 30 days, procedures pursuant to subpart 1 shall be commenced except that the commissioner shall publish an advertisement pursuant to part 6131.0280.

If a negative reply is filed with the commissioner within 30 days, the permit to mine will continue in effect or a proceeding to revoke the permit to mine pursuant to part 6131.0220, subpart 2 shall be commenced.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0230 REVOCATION OR MODIFICATION.

Subpart 1. **Commencement of proceedings.** A proceeding to revoke or modify a permit to mine, to require a performance bond, or to assess a civil penalty shall be commenced by serving upon the permittee:

- A. a notice and order for hearing in the form and manner under part 1400.5600;
- B. a proposed order revoking or modifying the permit to mine, requiring a performance bond, or assessing a civil penalty; and
- C. a statement of the measures, if any, required to correct the situation and the time available therefor.

If conditions that provided the grounds for the action are corrected to the commissioner's satisfaction, within a period, established by the commissioner, of not less than 15 days after the notice, or as appropriate, approved measures are taken to ensure that the conditions do not recur, the proceedings shall be canceled.

Subp. 2. **Hearing prior to determination.** The commissioner shall hold a hearing prior to the determination to revoke or modify a permit to mine, require a performance bond, or assess a civil penalty if, within 15 days after commencement of the proceeding, any permittee serves an answer on the commissioner and all other parties. If an answer is served, the commissioner, without further notice, shall hold the hearing at the time and place specified in the order for hearing. No hearing shall be held less than 30 days after commencement of the proceeding.

An answer shall contain a written statement of the defenses to each violation alleged in the order for hearing, and a specific admission, denial, or explanation of each fact alleged in the order for hearing, or, if the permittee is without knowledge thereof, a statement to that effect.

Allegations of a complaint not answered shall be deemed to have been admitted.

If an answer contains an admission to an alleged fact, no hearing shall be held on that fact and the allegation shall prevail.

Failure of a permittee to serve an answer, pursuant to subpart 2, item A or to appear at the hearing constitutes a waiver of a hearing on the allegations of the order for hearing and the contents of the proposed order. The waiver authorizes the commissioner, without further notice to the permittee and without proceeding further with the hearing, to adopt the proposed order, or that much as is applicable if the proposed order is in the alternative or if there have been correction measures attempted. The order shall be the commissioner's final decision on the matter.

If the permittee appears at the hearing the commissioner, in reaching a final decision, shall not be bound by the proposed order.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0240 SUSPENSION.

The permit to mine may be suspended by the commissioner, pursuant to Minnesota Statutes, section 93.481, subdivision 4, clause (d). The commissioner's order suspending

the permit to mine for the specified period, once served, constitutes the commissioner's final decision on the matter.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0250 DEACTIVATION AND RELEASE OF PERMITTEE.

Subpart 1. **Deactivation.** The commissioner shall review the deactivation plan, pursuant to part 6131.0170, to determine if it complies with the requirements of the permit to mine and parts 6131.0010 to 6131.0340, in the same manner as if the commissioner had received an application for an amendment pursuant to part 6131.0210.

Subp. 2. **Release.** A proceeding to release the permittee from responsibility on any portion of a deactivated mining area is commenced when the permittee submits a request for release pursuant to part 6131.0180.

The commissioner shall review the request and determine if all terms and conditions of applicable provisions of parts 6131.0010 to 6131.0340, the permit to mine, and the approved deactivation plan have been satisfied; and that it is not necessary to defer the release until other portions of the mining area have been deactivated.

Within 270 days after receipt of the request the commissioner shall release the permittee with or without modifications or conditions, or deny the request stating reasons therefor.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0260 ASSIGNMENT OF PERMIT.

Pursuant to Minnesota Statutes, section 93.481, subdivision 5, the commissioner shall allow the assignment of a permit to mine only if the commissioner determines that the assignee will perform all outstanding obligations of the act, parts 6131.0010 to 6131.0340, and the permit to mine.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0270 HEARING PROCEDURES.

Procedures pursuant to parts 1400.5100 to 1400.8500, shall apply to any contested case hearing under parts 6131.0010 to 6131.0340, except as otherwise provided in Minnesota Statutes, sections 93.44 to 93.51 and parts 6131.0010 to 6131.0340.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0280 PUBLICATION.

When an advertisement is required, it shall be published once each week for four successive weeks in a legal newspaper, pursuant to Minnesota Statutes, section 331A.02, which is circulated in the locality of the proposed mining operation. This advertisement shall contain:

- A. a statement and map indicating the location and boundaries of the mining area;
- B. the names of all surface owners of record and owners of easements above, on, or below the surface within the mining area;
- C. the schedule for accomplishing what is being proposed;
- D. a notice of the deadline date for filing objections; and
- E. the following information:

(1) if application is made for a permit to mine, a description of the proposed mining operation including the general kinds of reclamation or restoration measures to be undertaken pursuant to the reclamation plan;

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(2) if an amendment to a permit to mine is requested, a description of the purpose and nature of the proposed amendment;

(3) if a cancellation of a permit to mine is requested, an explanation of the request for cancellation and the consequences of allowing such a request; or

(4) if a variance from parts 6131.0010 to 6131.0340 is requested, a description of the purpose and nature of the requested variance and a description of the proposed alternative means which will be used to meet the goals and comply with the requirements of parts 6131.0010 to 6131.0340.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0290 VARIANCE STANDARDS.

Subpart 1. **Granting of variance.** The commissioner shall grant a variance from the requirements of parts 6131.0010 to 6131.0340 upon application by a permit applicant or permittee, if it is determined that:

A. a variance is consistent with the general welfare and general purposes of parts 6131.0010 to 6131.0340;

B. by reason of exceptional circumstances, the strict enforcement of the reclamation requirements would cause undue hardship or strict conformity with the requirements of parts 6131.0010 to 6131.0340 would be unreasonable or not feasible; and

C. acceptable alternative means of accomplishing the goals, pursuant to parts 6131.0100 to 6131.0130, have been provided by the permit applicant or permittee.

Subp. 2. **Conditional granting.** The commissioner shall grant a variance upon such conditions as shall be necessary for the prevention, control, or correction of adverse environmental effects, consistent with the requirements of parts 6131.0010 to 6131.0340 and Minnesota Statutes.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0300 REVOCATION OR MODIFICATION AUTHORITY.

The commissioner may revoke a permit to mine or modify any of its terms or conditions, pursuant to Minnesota Statutes, section 93.481, subdivision 4. A permittee shall not be considered to have commenced substantial construction of plant facilities unless erection of the primary plant facilities has begun. Planning, securing capital, purchasing land and materials, and otherwise preparing for construction are not sufficient.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0310 PERFORMANCE BONDS.

Subpart 1. **Need for bond.** At any time during the pendency of a permit application, during the mining operation, or following the completion of mining but prior to the release of the permittee, the commissioner:

A. shall require the operator to furnish a performance bond if the commissioner determines that the operator has failed to:

(1) perform any part of a reclamation measure required by the permit to mine or any amendment or modification thereto;

(2) comply with a provision of parts 6131.0010 to 6131.0340; or

(3) perform any research required, pursuant to Minnesota Statutes, sections 93.44 to 93.51; or

B. may require the operator to furnish a performance bond if there is reasonable doubt that the operator will be financially able to comply with the requirements of the permit to mine or parts 6131.0010 to 6131.0340.

Subp. 2. **Amount of bond.** The amount of a performance bond shall be determined by the commissioner and shall be equal to the estimated cost, to the Department of Natural Resources, of satisfactorily accomplishing reclamation of all lands disturbed and unreclaimed up to the date of annual bond review.

Subp. 3. **Conditions of bond.** A performance bond required pursuant to this part shall be conditioned upon the performance by the operator within a time period established by the commissioner of all actions necessary to correct the deficiency or noncompliance for which reason the bond is required. For the purpose of the bond, "performance" shall mean the accomplishment as determined by the commissioner of all actions required under the bond. The bond shall also provide that the surety or a successor or assign is not released in any way from liability thereunder by any amendment of the terms or conditions of the permit to mine; provided that, regardless of amendment, the surety shall be liable for no more than the amount specified in the bond. The need for and amount of all bonds shall be reviewed annually.

Subp. 4. **Other security and assurance.** Whenever an operator is required to furnish a performance bond pursuant to this part, the operator may, in lieu thereof:

A. Submit as security to the commissioner for deposit with the commissioner of management and budget, assignable bonds or notes of the United States in a sum equal, at their par value, to the amount of the required performance bond.

B. Give a lien against a real or personal property as its wholesale value in lieu of a bond. The property must remain in the state for the duration of the agreement and be managed and repaired by the permittee as necessary to maintain its value. Failure to maintain value shall allow the commissioner to modify or revoke the permit to mine, or to require bonds or notes to be deposited as a replacement bond. The commissioner shall accept such property as assurance if it is determined, by the commissioner, that no other liens exist on said property; the wholesale value is adequate to cover reclamation costs; and sufficient market exists, such that, the sale of said property can occur rapidly.

C. Submit other security or assurances as may be acceptable to the commissioner.

The permittee shall submit an agreement authorizing the commissioner to collect or sell the bonds, notes, property, or other security or assurance so submitted or deposited, upon the same conditions as would constitute a default under a performance bond. The acceptance of United States bonds, notes, a lien on property, or other security or assurance, in lieu of a performance bond, shall have the same force and effect as if a performance bond has been furnished.

Subp. 5. **Return of security or assurance to permittee.** When it is determined during the annual bond review that security is no longer necessary, any bonds, notes, lien, or other security or assurance deposited pursuant to part 6131.0310 shall be returned to the permittee.

Subp. 6. **Access to mining areas after forfeiture.** Upon forfeiture of a bond the permittee shall allow access to the commissioner and contractors designated by the commissioner into all mining areas for the purpose of reclaiming all lands disturbed and unreclaimed.

Statutory Authority: *MS s 93.461*

History: *10 SR 277; 17 SR 1279; L 2003 c 112 art 2 s 50; L 2009 c 101 art 2 s 109*

6131.0320 CIVIL PENALTIES.

Subpart 1. **Amount.** If any person violates any provision of Minnesota Statutes, sections 93.44 to 93.51, parts 6131.0010 to 6131.0340, or any permit to mine issued thereunder, the commissioner may order imposition of a civil penalty of not more than \$1,000 per day

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for each violation of each provision or the same provision in more than one portion of the mining area.

Subp. 2. **Determining the amount.** In determining the amount of a penalty, the commissioner shall consider the severity of the violation, the need to deter future violations, and the magnitude of potential or actual gains resulting from the violation.

Subp. 3. **Collection.** The commissioner shall collect any assessed civil penalty in the same manner as any other debt owed the state.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0330 SUSPENSION OF PERMIT.

The commissioner may suspend all or any part of a permit to mine pursuant to Minnesota Statutes, section 93.481, subdivision 4. Any suspension ordered pursuant to this part shall be for such period and upon such terms as the commissioner deems appropriate to correct the conditions which necessitated suspension.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*

6131.0340 INSPECTION OF MINING AREA.

The permittee shall allow the commissioner to inspect all mining operations and records needed to monitor compliance with the permit to mine and parts 6131.0010 to 6131.0340 after reasonable prior notice.

Statutory Authority: *MS s 93.461*

History: *10 SR 277*