

1 Minnesota Pollution Control Agency

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3 Adopted Rules Relating to Processing 401 Certifications and
4 Other Amendments

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6 Rules as Adopted

7 7001.0010 DEFINITIONS.

8 Subpart 1. and 2. [Unchanged.]

9 Subp. 3. Permit. "Permit" means a discharge, emission,
10 and disposal authorization; a construction, installation, or
11 operation authorization; and other agency authorizations
12 designated "permit" in Minnesota Statutes, chapters 115 and 116,
13 including Minnesota Statutes, sections 115.03, subdivision 1;
14 115.07; 116.07, subdivision 4a; 116.081; and 116.091. "Permit"
15 does not include an "order," "variance," or "stipulation
16 agreement" as defined in part 7000.0100 and does not include a
17 "certification." However, the exclusion of "certification" from
18 the definition of "permit" shall not in any way be considered to
19 affect the applicability of parts 7001.0010 to 7001.0210 to the
20 processing of certifications by the agency under section 401 of
21 the Clean Water Act, United States Code, title 33, section 1341,
22 to the extent provided by parts 7001.1400 to 7001.1470.

23 Subp. 4. [Unchanged.]

24 7001.0020 SCOPE.

25 Except as otherwise specifically provided, parts 7001.0010
26 to 7001.0210 apply to the following:

27 A. to J. [Unchanged.]

28 K. The processing of certifications under section 401
29 of the Clean Water Act, United States Code, title 33, section
30 1341, to the extent provided by parts 7001.1400 to 7001.1470.

31 7001.1400 APPLICABILITY.

32 Parts 7001.1400 to 7001.1470 govern the processing of
33 certifications by the agency under section 401 of the Clean
34 Water Act, United States Code, title 33, section 1341

1 (hereinafter "section 401 certifications"). Parts 7001.0010 to
2 7001.0210 apply to the processing of section 401 certifications
3 except as specifically otherwise provided in parts 7001.1400 to
4 7001.1470. In applying parts 7001.0010 to 7001.0210 to the
5 processing of section 401 certifications, the word "permit"
6 shall be construed to mean "section 401 certification" and the
7 term "permittee" shall be construed to mean "certificate
8 holder." Parts 7000.0100 to 7000.1600, 7001.0010 to 7001.0210,
9 and 7001.1400 to 7001.1470 shall be construed to complement each
10 other.

11 7001.1410 DEFINITIONS.

12 Subpart 1. **Scope.** The definitions in Minnesota Statutes,
13 section 115.01 apply to the terms used in parts 7001.1400 to
14 7001.1470 unless those terms are defined in this part.

15 As used in parts 7001.1400 to 7001.1470, the terms in
16 subparts 2 to 4 have the meanings given them.

17 Subp. 2. **Director.** "Director" means the director of the
18 Minnesota Pollution Control Agency.

19 Subp. 3. **Clean Water Act.** "Clean Water Act" means the
20 federal Water Pollution Control Act, as amended, commonly
21 referred to as the Clean Water Act, United States Code, title
22 33, sections 1251 et seq.

23 Subp. 4. **National pollutant discharge elimination**
24 **system.** "National pollutant discharge elimination system" means
25 the national program for issuing, modifying, revoking and
26 reissuing, terminating, monitoring, and enforcing permits, and
27 imposing and enforcing pretreatment requirements under sections
28 307, 318, 402, and 405 of the Clean Water Act, United States
29 Code, title 33, sections 1317, 1328, 1342, and 1345.

30 7001.1420 REQUIREMENT TO APPLY FOR CERTIFICATION.

31 Any person who is required by section 401 of the Clean
32 Water Act, United States Code, title 33, section 1341, to obtain
33 a certification from the state of Minnesota shall make
34 application to the agency.

1 7001.1430 APPLICATION DEADLINES.

2 Part 7001.0040, subparts 1 and 2 apply to applications for
3 issuance, modification, revocation and reissuance, or reissuance
4 of a section 401 certification, except that the time period
5 referenced in part 7001.0040, subpart 1, shall be 90 days
6 instead of 180 days.

7 7001.1440 PUBLIC NOTICE OF APPLICATION AND PRELIMINARY
8 DETERMINATION.

9 Subpart 1. **Public notice required.** Except as provided in
10 subpart 2, the director shall prepare and issue public notices
11 in accordance with the requirements of part 7001.0100, subpart
12 4, except that the public comment period shall be established by
13 the director on a case-by-case basis after considering the
14 scope, nature, and potential impacts on water quality of the
15 project. In no event shall the public comment period be less
16 than ten days.

17 Subp. 2. **Exception.** The director is not required to
18 prepare and distribute a public notice pursuant to part
19 7001.0100, subpart 4, if the director finds that a federal
20 agency or department has prepared and distributed or will
21 prepare and distribute a public notice concerning a section 401
22 certification in accordance with the public notice requirements
23 applicable to the federal agency or department under federal
24 statutes or regulations, so long as the notice is actually
25 prepared and distributed.

26 7001.1450 FINAL DETERMINATION.

27 Subpart 1. **Action required.** The agency shall make final
28 determinations with respect to section 401 certifications by
29 taking one of the following actions:

30 A. Issue, reissue, revoke and reissue, or modify a
31 section 401 certification in accordance with part 7001.0140,
32 subpart 1 and upon making a finding that the discharge which is
33 the subject of the section 401 certification will comply with
34 sections 301, 302, 303, 306, and 307 of the Clean Water Act,
35 United States Code, title 33, sections 1311, 1312, 1313, 1316,

1 and 1317.

2 B. Deny or revoke a section 401 certification upon
3 making the findings set forth in part 7001.0140, subpart 2 or
4 the findings set forth in subpart 2.

5 C. Waive the agency's authority to issue a section
6 401 certification in accordance with part 7001.1460.

7 Subp. 2. Denial of certification required. The agency
8 shall deny a section 401 certification if the agency finds that
9 the issuance will result in a discharge of a radiological,
10 chemical, or biological warfare agent.

11 7001.1460 WAIVER.

12 With respect to the discharge that is the subject of the
13 application, the agency is considered to have waived its
14 authority to issue a section 401 certification under the
15 following circumstances:

16 A. If the agency notifies the applicant in writing
17 that it is waiving the agency's authority to certify the
18 project. If issuance of the waiver is conditional, the
19 notification shall specify the conditions that must be met.

20 B. If the agency fails or refuses to make a final
21 determination on an application for a section 401 certification
22 within one year after receipt of the application and the
23 agency's failure or refusal to act is not a result of the
24 applicant's failure or refusal to cure a deficiency in the
25 application as required by the director pursuant to part
26 7001.0090.

27 7001.1470 TERMS AND CONDITIONS OF SECTION 401 CERTIFICATIONS.

28 Subpart 1. General terms required. A section 401
29 certification issued by the agency shall include the following:

30 A. The name and address of the certificate holder.

31 B. A statement that the agency has examined the
32 section 401 certification application and any other information
33 furnished by the applicant and bases its certification upon an
34 evaluation of this information that is relevant to water quality
35 considerations.

1 C. A statement that there is reasonable assurance
2 that the activity will be conducted in a manner that will not
3 violate applicable water quality standards.

4 D. The terms and conditions in part 7001.0150, except
5 that the provisions of part 7001.0150, subpart 1 do not apply to
6 section 401 certifications. In addition to the special
7 conditions in part 7001.0150, subpart 2, a section 401
8 certification shall contain the special conditions described in
9 subpart 2.

10 Subp. 2. **NPDES conditions.** A section 401 certification
11 shall contain the special conditions described in part
12 7001.1080, subparts 2 to 9, which conditions shall be
13 established in the same manner as special conditions are
14 established under part 7001.1080 for national pollutant
15 discharge elimination system permits.