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STATE REGISTER

STATE OF MINNESOTA

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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 8		
26	Monday Dec 12	Friday Dec 16	Monday Dec 26
27	Friday Dec 16	Friday Dec 23	Monday Jan 2
28	Friday Dec 23	Friday Dec 30	Monday Jan 9
29	Friday Dec 30	Monday Jan 9	Monday Jan 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 and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

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

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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.

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:

- 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* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the *1982 Reprint* 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 1982 Reprint*.

MCAR AMENDMENTS AND ADDITIONS

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Amendments to Rules of the State Department of Commerce Relating to the Workers' Compensation Assigned Risk Plan

Notice of Intent to Adopt Amendments to Proposed Rules

Notice is hereby given that the Department of Commerce proposes to adopt amendments to proposed rules governing the Workers' Compensation Assigned Risk Plan published in the *State Register* of December 5, 1983, on pages 1294-1296.

The Department of Commerce proposes to adopt the above-entitled rules and amendments without a public hearing. The Commissioner of Commerce has determined that the proposed rules and amendments will be non-controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules and amendments shall have 30 days to submit comments on the proposed rules and amendments. The proposed rules and amendments 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. Persons who wish to submit comments should submit such comments to Alberto Quintela, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 79.251, subd. 3 and 79.252, subd. 5. A Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available 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 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 this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed amendment is attached to this Notice.

Copies of the Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

4 MCAR § 1.9504 Assigned risk rating plan.

D. Small risk merit rating plan. Employers which do not qualify for the experience rating plan are subject to the small risk

merit rating plan. The rules and procedures governing the small risk merit rating plan shall be the same as for the assigned risk experience rating plan, except as regards the premium modification factor. The premium modification factor for the small risk merit rating plan shall be based on the number of claims attributable to an experience period of three years commencing four years prior and ending one year prior to the date for which the rating is promulgated, excluding claims for which medical losses only are expected. The merit rating premium modification factor is as follows: zero claims, credit modification factor; one claim, ~~no~~ zero or debit modification factor; two or more claims, a greater modification factor. The amount of the modification factors shall be fixed by the commissioner simultaneously with the schedule of rates pursuant to Minnesota Statutes, section 79.251, subdivision 3.

Pollution Control Agency

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§ 4.9006-4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§ 4.4001-4.4021 Relating to Permits, 6 MCAR §§ 4.4101-4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§ 4.4201-4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§ 4.4301-4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§ 4.4311-4.4321, Indirect Source Permits

Notice of Intent to Adopt Amendments to Rules without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends, without a public hearing, to do the following:

1. Adopt 6 MCAR §§ 4.4001-4.4021, Permits.
2. Adopt 6 MCAR §§ 4.4101-4.4111, National Pollutant Discharge Elimination System Permits.
3. Adopt 6 MCAR §§ 4.4301-4.4305, Air Emission Facility Permits.
4. Amend Minn. Rule APC 19, Indirect Sources, to be recodified as 6 MCAR §§ 4.4311-4.4321.
5. Adopt 6 MCAR §§ 4.4201-4.4224, Hazardous Waste Facility Permits.
6. Repeal Minn. Rule MPCA 5, Minn. Rule WPC 36, Minn. Rule APC 3, and 6 MCAR §§ 4.9006 and 4.9007.

The Agency has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (1982).

The proposed rules, rule amendment, and repeals are authorized by Minn. Stat. § 116.07, subd. 4 (1982). The rules which are proposed to be adopted will replace the rules which are proposed to be repealed. The following describes the general nature of the rules which are proposed to be adopted or amended:

1. Permits: This rule sets forth the standard Agency permitting procedure and applies to the types of agency permits listed in the "Applicability" section of the rule.

2. National Pollutant Elimination Discharge System Permits: This rule is supplemental to the general permit rule and contains specific requirements for National Pollutant Discharge Elimination System Permits.

3. Hazardous Waste Facility Permits: This rule is supplemental to the general permit rule and contains specific requirements for hazardous waste facility permits.

4. Air Emission Facility Permits: This rule is supplemental to the general permit rule and contains specific requirements for air emission facility permits.

5. Indirect Source Permits: This rule is supplemental to the general permit rule and contains specific requirements for indirect sources of air pollutants. This rule is not new, but is an amendment of the existing Minn. Rule APC 19.

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.

One free copy of the rules is available on request from the Agency. Please contact the person whose name and address appears below.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available and may be obtained by contacting:

Perry Beaton
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7354

Interested persons have until January 20, 1984, to submit comments on the proposed amendments. The proposed amendments may be modified if the data and views submitted to the Agency warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the comment period, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. § 14.11-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Perry Beaton, at the Agency address previously stated (telephone: (612) 296-7354), no later than January 20, 1984. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the amendments by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be sent to 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 this material to the Attorney General, or who wish to receive a copy of the final amendments as adopted, should submit a written statement of such request to Perry Beaton at the address previously stated.

You are hereby advised, pursuant to Minn. Laws 1983, ch. 188, "Small business considerations in rulemaking," that the proposed rule amendments may have an impact on some small businesses in Minnesota. This rule will make agency permit requirements more uniform, which will benefit small businesses needing agency permits. The rules relating to hazardous waste facility permits and NPDES permits specifically incorporates federal requirements, which may affect small businesses. The rules relating to air emission facilities and NPDES permits contain some new exemptions which may be beneficial to small businesses. More detailed information concerning the nature of the impact of these changes upon small businesses is set forth in the Agency's Statement of Need and Reasonableness.

Please be advised that 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 (1982) 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 contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Sandra S. Gardebring
Executive Director

Rules as Proposed (all new material)

6 MCAR § 4.4001 Definitions.

A. Scope. The definitions in 6 MCAR § 4.3002 in the agency's procedural rules apply to the terms used in 6 MCAR §§ 4.4001-4.4021 unless the terms are defined as follows.

B. Draft permit. "Draft permit" means a document prepared by the director under 6 MCAR § 4.4010 that indicates the director's preliminary decision to issue, modify, revoke and reissue, or reissue a permit, and that indicates the proposed terms and conditions of the permit; or a notice prepared by the director under 6 MCAR § 4.4010 that indicates the director's preliminary decision to deny, to refuse to reissue, or to revoke a permit without reissuance.

C. Permit. "Permit" means a discharge, emission, and disposal authorization; a construction, installation, or operation authorization; and other agency authorizations designated "permit" in Minnesota Statutes, chapters 115 and 116, including Minnesota Statutes, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4a; 116.081; and 116.091. "Permit" does not include an "order," "variance," or "stipulation agreement" as defined in 6 MCAR § 4.3002 and does not include a "certification."

D. General permit. "General permit" means a permit issued under 6 MCAR § 4.4021 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

6 MCAR § 4.4002 Scope of rules.

Except as otherwise specifically provided, 6 MCAR §§ 4.4001-4.4021 apply to the following:

A. An agency permit required for the storage, treatment, utilization, processing, transfer, intermediate disposal, or final disposal of solid waste.

B. An agency permit required for the treatment, storage, or disposal of hazardous waste.

C. An agency permit required for sewage sludge landspreading facilities.

D. A letter of approval required for sewage sludge landspreading sites. Rule 6 MCAR § 4.4004 A. and C. applies to these approvals, except that the time period referenced in those rules shall be 30 days instead of 180 days. Rules 6 MCAR §§ 4.4010 D.and E. and 4.4011 do not apply to these approvals.

E. An agency permit required for the construction, installation, or operation of a disposal system. Rule 6 MCAR § 4.4004 A. and C. applies to permits for sewer extensions, except that the time period referenced in those rules shall be 60 days instead of 180 days. Rules 6 MCAR §§ 4.4010 D. and E., 4.4011, and 4.4015 do not apply to permits for sewer extensions.

F. An agency permit required for the discharge of a pollutant into the waters of the state from a point source.

G. An agency permit required for the construction or operation of a feedlot; however, rules 6 MCAR §§ 4.4004-4.4007 do not apply to these permits. Rules 6 MCAR §§ 4.4010 D. and E. and 4.4011 do not apply to animal feedlot interim permits.

H. An agency permit required for the construction or operation of a liquid storage facility. Rule 6 MCAR § 4.4004 A. and C. applies to these permits except that the time period referenced in those rules shall be 90 days instead of 180 days. Rules 6 MCAR §§ 4.4010 D. and E., 4.4011, and 4.4015 do not apply to these permits.

I. An agency permit required for the construction, modification, reconstruction, or operation of an air emission facility except those activities permitted under APC 8. Rules 6 MCAR §§ 4.4010 D. and E. and 4.4011 do not apply to permits for construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of less than 100 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of less than 500 tons per year. Rule 6 MCAR § 4.4010 E. does not apply to permits for construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of 100 tons per year to 250 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of 500 tons per year to 5,000 tons per year. Rule 6 MCAR § 4.4004 A. applies to permits for air emission facilities, except that for a permit not subject to a Minnesota or federal public notice requirement, the time period referenced in that rule shall be 90 days.

J. An agency permit required for the construction of a facility, building, structure, or installation that attracts or may attract mobile source activity that results in emissions of an air pollutant for which there is a state standard. Rule 6 MCAR § 4.4015 A. and B. does not apply to these permits.

6 MCAR § 4.4003 Permit required.

No person required by statute or rule to obtain a permit may construct, install, modify, or operate the facility to be permitted, nor shall a person commence an activity for which a permit is required by statute or rule until the agency has issued a written permit for the facility or activity.

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.

6 MCAR § 4.4004 Application deadlines.

A. Application for new permit. Except as otherwise required by 6 MCAR §§ 4.4106 and 4.4204, a permit application for a new facility or activity may be submitted at any time. However, it is recommended that the permit application be submitted at least 180 days before the planned date of the commencement of facility construction or of the activity.

B. Modification or revocation and reissuance of existing permits. If a permit has been issued by the agency, the person holding the permit may file with the agency, at any time, a written application for modification of the permit or for revocation and reissuance of the permit; except that if the reason for the application is the adoption by a federal agency of a new or amended pollution standard, limitation, or guideline the permittee shall file an application within the time for filing specified by the federal agency as a part of the notice of adoption published in the Federal Register.

C. Reissuance of existing permits. If a permit has been issued by the agency and the person holding the permit desires to continue the permitted activity beyond the expiration date of the permit, the person shall submit a written application for permit reissuance at least 180 days before the expiration date of the existing permit.

6 MCAR § 4.4005 Written application.

A person who requests the issuance, modification, revocation and reissuance, or reissuance of a permit shall complete, sign, and submit to the director a written application. The person shall submit the written application in a form prescribed by the director. The application shall contain the items listed in A.-I. unless the director has issued a written exemption from one or more of the data requirements. After receiving a written request for an exemption from a data requirement, the director shall issue the exemption if the director finds that the data is unnecessary to determine whether the permit should be issued or denied. The application must contain:

A. the name, address, and telephone number of the owner of the facility for which the application is submitted and identification of the status of the owner as a federal, state, public, private, or other entity:

B. if the operator of the facility for which the application is submitted is different from the owner, the name, address, and telephone number of the operator and identification of the status of the operator as a federal, state, public, private, or other entity:

C. the name, address, and telephone number of the person who prepared the application;

D. a description including the location of the business, plant, system, facility, or activity for which a permit is sought;

E. a general description of the materials handled, processed, stored, or disposed of by the applicant that are pertinent to the application; and a statement of the nature and quantity of the materials proposed to be stored, processed, discharged, emitted, or disposed of during the period of the required permit, and proposed methods for control of these materials;

F. a topographic map, or other map if a topographic map is unavailable, that shows the facility and the area surrounding the facility for a distance of at least one mile in all directions of the facility; and all structures that relate to the proposed discharge, emission, storage, processing, or disposal activity;

G. a copy of a draft or final environmental impact statement that has been prepared under the National Environmental Policy Act, United States Code, title 42, sections 4331 et seq. as amended through December 31, 1982, or a copy of an environmental assessment or environmental impact statement prepared under the rules of the Minnesota Environmental Quality Board, 6 MCAR §§ 3.021 et seq.;

H. additional information determined by the director to be relevant to a decision as to permit issuance, including but not limited to plans, specifications, or other technical information that is necessary to determine whether the facility will meet all applicable Minnesota and federal statutes and rules;

I. other information relevant to the application as required by 6 MCAR §§ 4.4106, 4.4206-4.4215, 4.4304, 4.4315, or 4.6105 and 4.6106.

6 MCAR § 4.4006 Signatures.

A permit application must be signed as follows:

A. for a corporation, by a principal executive officer of at least the level of vice president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for the overall operation of the facility that is the subject of the permit application;

B. for a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

C. for a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official;

D. if the operator of the facility for which the application is submitted is different from the owner, both the owner and the operator shall sign the application according to A.-C. Except in the case of a hazardous waste facility permit application, if the

director finds that this requirement is impracticable under the circumstances, the director shall require the operator to sign the application according to A.-C.

6 MCAR § 4.4007 Certification.

A person who signs a permit application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete." Where applicable, the person shall also fulfill the certification requirements of 6 MCAR § 4.4205.

6 MCAR § 4.4008 Retention of records.

The applicant shall retain copies of the permit application, all data and information used by the applicant to complete the application, and additional information requested by the director during the review of the application for a period of at least three years from the date the application is signed. This period is automatically extended during the course of an unresolved enforcement action regarding the facilities or as requested by the director.

6 MCAR § 4.4009 Review of permit applications.

The director shall review all permit applications for completeness. If the director finds that the application is incomplete or otherwise deficient, the director shall promptly advise the applicant in writing of the incompleteness or deficiency. The director shall suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

6 MCAR § 4.4010 Preliminary determination and draft permit.

A. Preliminary determination. After a permit application is complete, the director shall make a preliminary determination as to whether the permit should be issued or denied.

B. Draft permit. If the preliminary determination is to issue a permit, the director shall prepare a draft permit, including a proposed schedule of compliance if a schedule is necessary to meet all applicable standards and limitations imposed by statute or rule. If the preliminary determination is to deny the permit application, the director shall prepare a notice of intent to deny the permit. For the purposes of the procedures required in B.-E., a notice of intent to deny a permit is considered a draft permit.

C. Fact sheet. The director shall prepare a fact sheet for each draft permit described in 6 MCAR § 4.4108 B. for each draft permit proposed to be issued under 6 MCAR §§ 4.4021 and 4.4217 A., and for each draft permit that the director finds is the subject of widespread public interest or involves issues of major importance to the agency or to the public. The fact sheet must set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The fact sheet must include, if applicable:

1. a concise description of the type of facility or activity that is the subject of the permit application;

2. the type and quantity of wastes, fluids, or pollutants that are proposed to be or are being handled, processed, treated, stored, disposed of, emitted, or discharged;

3. a summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions;

4. reasons why requested variances or alternatives to required standards do or do not appear justified;

5. a concise statement regarding the requirements prescribed in Minnesota Statutes, chapter 116D that are or may be applicable to the facility or activity which is the subject of the permit application;

6. the preliminary determinations made by the director on the permit application; and

7. a description of the procedures for reaching a final decision on the draft permit, including:

a. the beginning and ending dates of the public comment period;

b. procedures for requesting a public informational meeting or contested case hearing and the nature of the two types of proceedings;

c. other procedures by which the public may participate in the agency's consideration of the permit application; and

d. the name, address, and telephone number of a person to contact for additional information or to whom comments may be submitted.

D. Public notice of permit application and preliminary determination. The director shall prepare and issue a public notice of a completed application and the director's preliminary determination as to whether the permit should be issued or denied. The public notice must include, at a minimum:

1. The address and telephone number of the main agency office and the applicable agency regional office and a statement that additional information may be obtained at these offices.

2. The name and address of the applicant, and if different, of the facility or activity that is the subject of the permit application.

3. A concise description of the facility or activity that is the subject of the permit application.

4. A statement of the preliminary determination of the director to issue or deny the permit.

5. If the director's preliminary determination is to issue the permit, a statement of the duration of the draft permit.

6. A statement that a draft permit has been prepared and, if applicable, that a fact sheet has been prepared and that a copy of these documents will be mailed to any interested person upon the agency's receipt of a written request.

7. A statement that during the public comment period a person may submit comments to the agency on the draft permit or on the preliminary determination, a statement of the dates on which the comment period commences and terminates, and a statement of the information that the person is required by 6 MCAR § 4.4011 to include in the comments. The public comment period shall be 30 days unless a different public comment period is specifically established by another agency rule.

8. A brief description of the procedures for reaching a final decision on the permit application, including procedures for requesting a public information meeting or a contested case hearing and the nature of the two types of proceedings; and any other procedures by which the public may participate in the agency's consideration of the permit application.

E. Distribution of public notice. The director shall distribute the public notice in the following manner:

1. The director shall make a copy of the public notice available at the main agency office and at the applicable agency regional office.

2. The director shall mail a copy of the public notice to the applicant, to all persons who have registered their names and addresses on the mailing list established under 6 MCAR § 4.4020, and to any interested person upon request. If applicable, the director shall also mail copies of the public notice according to 6 MCAR § 4.4217 C.

3. The director shall circulate the public notice within the geographical area of the facility or activity which is the subject of the permit application. The director shall designate the geographical area which shall, as a minimum, include the county in which the facility or activity is or will be located. The director shall circulate the public notice in one or more of the following ways:

a. by posting the notice in the post office, public library, or other buildings used by the general public in the designated geographical area;

b. by posting the notice at or near the entrance of the applicant's premises, if located near the facility or activity that is the subject of the permit application;

c. by publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area;

d. by publishing the notice in a manner constituting legal notice to the public; or

e. if applicable, in the manner required by 6 MCAR §§ 4.4021 D. and 4.4217 D.

6 MCAR § 4.4011 Public comments.

A. Submission of written comments. During the public comment period established in the public notice, an interested person, including the applicant, may submit written comments on the application or on the draft permit. If the subject of the draft permit and public notice is the modification of a permit, these comments must be limited to the portion of the permit proposed to be modified. The person may also request that a public informational meeting or a contested case hearing be held on the application.

B. Contents of written comments. A person who submits comments under A. shall include in the comments the following:

1. a statement of the person's interest in the permit application or the draft permit;

2. a statement of the action the person wishes the agency to take, including specific references to sections of the draft permit that the person believes should be changed; and

3. the reasons supporting the person's position, stated with sufficient specificity as to allow the director to investigate the merits of the person's positions.

C. Public meeting or hearing. If a person requests a public informational meeting or contested case hearing, the comments must include the items listed in B. and a statement of the reasons the person desires the agency to hold a public informational meeting or contested case hearing and the issues that the person would like the agency to address at the public informational meeting or contested case hearing.

D. Extension of comment period. The public comment period may be extended by the director if the director finds an extension of time is necessary to facilitate additional public comment. Comments submitted in writing by interested persons or the applicant during the public comment period must be retained and considered in the formulation of final determinations concerning the permit application.

6 MCAR § 4.4012 Public informational meeting.

A. Determination of need. If the director or the agency determines that a public informational meeting would help clarify and resolve issues regarding the director's preliminary determination or the terms of the draft permit or if the director has received a request under 6 MCAR § 4.4218 A., the director shall hold a public informational meeting.

B. Location. If the requester desires, the public informational meeting must be held in the geographical area of the facility or activity which is the subject of the permit application. Otherwise, the public informational meeting must be held in a place selected by the director which is generally convenient to persons expected to attend the meeting.

C. Notice. The director shall prepare a notice of the public informational meeting. The notice must contain a reference to the public notice of the application and the draft permit, including any identification numbers on the draft permit and the dates of issuance of the public notice and the draft permit; the date, time, and location of the public informational meeting; the information described in 6 MCAR § 4.4010 D.1.-6.; a concise description of the manner in which the public informational meeting will be conducted; and the issue or issues to be discussed.

D. Distribution of notice. The director shall publish the notice in a newspaper of general circulation in the geographical area of the facility or activity which is the subject of the permit application, and shall mail a copy of the notice to the applicant, the appropriate city and county officials, and all other persons determined by the director to have an interest in the permit application. If applicable, the director shall comply with 6 MCAR § 4.4218 C.

E. Consolidation of issues. If the director or the agency determines that no person would be adversely affected by consolidation, the director or the agency may consolidate two or more matters, issues, or related groups of permit applications for which a public informational meeting will be held.

6 MCAR § 4.4013 Contested case hearing.

A. Required hearing. The agency shall hold a contested case hearing if it finds all of the following:

1. that a person requesting the contested case hearing has raised a material issue of fact or of the application of facts to law related to the director's preliminary determination or the terms of the draft permit;

2. that the agency has jurisdication to make determinations on the issues of fact or of the application of facts to law raised by the person requesting the contested case hearing; and

3. that there is a reasonable basis underlying issues of fact or law raised by the person that requests the contested case hearing such that the holding of a contested case hearing would aid the agency in making a final determination on the permit application.

B. Public informational meeting. If the agency finds that the holding of a contested case is not justified under A., the agency shall nevertheless hold a public informational meeting if the agency determines that a public informational meeting would help clarify or resolve issues regarding the terms of the draft permit.

C. Hearing notice and order. If the agency decides to hold a contested case hearing, the director shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

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1. the information required by 9 MCAR § 2.204 of the Office of Administrative Hearings;

2. a reference to the public notice of the application and the draft permit, including any identification numbers on the draft permit, and the dates of issuance of the public notice and the draft permit;

3. identification of the existing parties and a concise description of the issues which have been raised by any party; and

4. the address of the agency office or offices where interested persons may inspect or obtain copies of the public notice of the application, the draft permit, the fact sheet, and other information relevant to the permit application and the holding of the hearing.

D. Relevant rules. The notice of hearing, distribution of the notice, and the conduct of the contested case hearing are governed by Minnesota Statutes, sections 14.57 to 14.62; the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.201 et seq.; and, if applicable by 6 MCAR § 4.4218 B., C., and D.

6 MCAR § 4.4014 Final determination.

A. Agency action. Except as provided in B., the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules and that all applicable requirements of Minnesota Statutes, chapter 116D and the rules promulgated under chapter 116D have been fulfilled.

B. Agency findings. The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

1. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules;

2. that there exists at the facility to be permitted unresolved noncompliance with applicable state and federal pollution control statutes and rules or permit conditions and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

3. that the permittee has failed to disclose fully all facts relevant to the facility or activity to be permitted, or that the permittee has submitted false or misleading information to the agency or to the director;

4. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit; or

5. that all applicable requirements of Minnesota Statutes, chapter 116D and the rules promulgated under chapter 116D have not been fulfilled.

C. Contested case hearing. If a contested case hearing has been held, the agency shall comply with the procedures set forth in 6 MCAR § 4.3008 of the agency procedural rules prior to making a final determination.

6 MCAR § 4.4015 Terms and conditions of permits.

A. Term of permit. Unless specifically otherwise provided by statute or rule, an agency permit is issued for a term not to exceed five years.

B. Special conditions. Each draft and final permit must contain conditions necessary for the permittee to achieve compliance with applicable Minnesota or federal statutes or rules. If applicable to the circumstances, the conditions must include:

1. A schedule of compliance that leads to compliance with the appropriate Minnesota or federal statute or rule. The schedule of compliance must require compliance in the shortest reasonable period of time or by a specified deadline if required by Minnesota or federal statute or rule. If appropriate, the schedule of compliance must include interim dates, which in no case may be separated by more than one year. A permit with a schedule of compliance must require the submission to the director of progress reports. The progress reports must be submitted not later than 14 days after each interim and final date of compliance regarding the permittee's compliance or noncompliance with the schedule of compliance and they must explain any instance of noncompliance and state the actions that have been taken to correct the noncompliance.

2. Requirements for monitoring and testing and reporting of monitoring and testing results. Monitoring and testing requirements must specify the type, interval, and frequency of monitoring and testing activities that are sufficient to yield data representative of the pollutant or situation monitored or tested. As appropriate, the permit must contain requirements for the proper use, maintenance, and installation of monitoring and testing equipment or methods. The permit must require the permittee to keep accurate records of monitoring and testing activities and to submit to the director periodic reports of monitoring results required by the permit and, as requested by the director, the results of other monitoring and testing undertaken by the permittee that are related to compliance with the terms and conditions of the permit or compliance with

Minnesota and federal pollution control statutes and rules. Reporting of monitoring results must contain the certification in 6 MCAR § 4.4007.

3. A requirement that the permittee retain the following items for at least three years after which time this period must be automatically extended during the course of an unresolved enforcement action or at the request of the director:

a. copies of all reports required by the conditions of the permit;

b. calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation;

c. records of the date, exact location, and time of monitoring and testing which is related to compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules, the name of the individual who performed the sampling or measurements, the date the analysis was performed, the name of the individual who performed the analysis, the analytical techniques or methods used, and the results of the analysis; and

d. if applicable, reports required by 6 MCAR § 4.4223 B.5.

4. A requirement that all documents and reports, including monitoring reports, submitted to the agency for any reason by the permittee, are signed by the permittee or the duly authorized representative of the permittee. For hazardous waste facility permits, duly authorized representative is defined by 6 MCAR § 4.4223.

C. General conditions. Unless specifically exempted by statute or rule, each draft and final permit must include the following general conditions and the agency shall incorporate these conditions into all permits either expressly or by specific reference to this rule:

1. The agency's issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the permit.

2. The agency's issuance of a permit does not prevent the future adoption by the agency of pollution control rules, standards, or orders more stringent than those now in existence and does not prevent the enforcement of these rules, standards, or orders against the permittee.

3. The permit does not convey a property right or an exclusive privilege.

4. The agency's issuance of a permit does not obligate the agency to enforce local laws, rules, or plans beyond that authorized by Minnesota statutes.

5. The permittee shall perform the actions or conduct the activity authorized by the permit in accordance with the plans and specifications approved by the agency and in compliance with the conditions of the permit.

6. The permittee shall at all times properly operate and maintain the facilities and systems of treatment and control and the appurtenances related to them which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. The permittee shall install and maintain appropriate back-up or auxilliary facilities if they are necessary to achieve compliance with the conditions of the permit and, for all permits other than hazardous waste facility permits, if these back-up or auxiliary facilities are technically and economically feasible.

7. The permittee may not knowingly make a false or misleading statement, representation, or certification in a record, report, plan, or other document required to be submitted to the agency or to the director by the permit. The permittee shall immediately upon discovery report to the director an error or omission in these records, reports, plans, or other documents.

8. The permittee shall, when requested by the director, submit within a reasonable time the information and reports that are relevant to the control of pollution regarding the construction, modification, or operation of the facility covered by the permit or regarding the conduct of the activity covered by the permit.

9. When authorized by Minnesota Statutes, sections 115.04; 115B.17, subdivision 4; and 116.091, and upon presentation of proper credentials, the agency, or an authorized employee or agent of the agency, shall be allowed by the permittee to enter at reasonable times upon the property of the permittee to examine and copy books, papers, records, or memoranda pertaining to the construction, modification, or operation of the facility covered by the permit or pertaining to the activity covered by the

permit; and to conduct surveys and investigations, including sampling or monitoring, pertaining to the construction, modification, or operation of the facility covered by the permit or pertaining to the activity covered by the permit.

10. If the permittee discovers, through any means, including notification by the agency, that noncompliance with a condition of the permit has occurred, the permittee shall take all reasonable steps to minimize the adverse impacts on human health, public drinking water supplies, or the environment resulting from the noncompliance.

11. If the permittee discovers that noncompliance with a condition of the permit has occurred which could endanger human health, public drinking water supplies, or the environment, the permittee shall, within 24 hours of the discovery of the noncompliance, orally notify the director. Within five days of the discovery of the noncompliance, the permittee shall submit to the director a written description of the noncompliance; the cause of the noncompliance; the exact dates of the period of the noncompliance; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

12. The permittee shall report noncompliance with the permit not reported under 11. as a part of the next report which the permittee is required to submit under this permit. If no reports are required within 30 days of the discovery of the noncompliance, the permittee shall submit the information listed in 11. within 30 days of the discovery of the noncompliance.

13. The permittee shall give advance notice to the director as soon as possible of planned physical alterations or additions to the permitted facility or activity that may result in noncompliance with a Minnesota or federal pollution control statute or rule or a condition of the permit.

14. The permit is not transferable to any person without the express written approval of the agency after compliance with the requirements of 6 MCAR § 4.4019. A person to whom the permit has been transferred shall comply with the conditions of the permit.

15. The permit authorizes the permittee to perform the activities described in the permit under the conditions of the permit. In issuing the permit, the state and agency assume no responsibility for damage to persons, property, or the environment caused by the activities of the permittee in the conduct of its actions, including those activities authorized, directed, or undertaken under the permit. To the extent the state and agency may be liable for the activities of its employees, that liability is explicitly limited to that provided in the Tort Claims Act, Minnesota Statutes, section 3.736.

6 MCAR § 4.4016 Continuation of expired permit.

A person who holds an expired permit and who has submitted a timely and complete application for reissuance of the permit may continue to conduct the permitted activity until the agency takes final action on the application if the director determines that both of the following are true:

A. the permittee is in compliance with the terms and conditions of the expired permit; and

B. the agency, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

6 MCAR § 4.4017 Justification to commence modification of permit or revocation and reissuance of permit.

The following constitute justification for the director to commence proceedings to modify a permit or to revoke and reissue a permit:

A. alterations or modifications to the permitted facility or activity that will result in or have the potential to result in significant alteration in the nature or quantity of permitted materials to be stored, processed, discharged, emitted, or disposed of by the permittee;

B. the director receives information previously unavailable to the agency that shows that the terms and conditions of the permit do not accurately represent the actual circumstances relating to the permitted facility or activity;

C. the agency or the federal government promulgates a new or amended pollution standard, limitation, or guideline that is applicable to the permitted facility or activity;

D. a court of competent jurisdiction invalidates or modifies a Minnesota or federal statute or rule or federal guideline upon which a condition of the permit is based;

E. an event occurs that is beyond the control of the permittee that necessitates modification of a compliance schedule in the permit;

F. the director finds that the permitted facility or activity endangers human health or the environment and that a change in the operation of the permitted facility or in the conduct of the permitted activity would remove the danger to human health or the environment;

G. the director receives a request for transfer of the permit; and

H. if applicable, there exists any justification listed in 6 MCAR § 4.4224 A.

6 MCAR § 4.4018 Justification to commence revocation without reissuance of permit.

The following constitute justification for the director to commence proceedings to revoke a permit without reissuance:

A. existence at the permitted facility of unresolved noncompliance with applicable state and federal pollution statutes and rules or a condition of the permit, and refusal of the permittee to undertake a schedule of compliance to resolve the noncompliance;

B. the permittee fails to disclose fully the facts relevant to issuance of the permit or submits false or misleading information to the agency or to the director;

C. the operation of the permitted facility or activity terminates; and

D. the director finds that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit.

6 MCAR § 4.4019 Procedure for modification; revocation and reissuance; and revocation without reissuance of permits.

A. In general. If the permittee requests the modification or the revocation and reissuance of a permit, the director shall require and review a permit application as provided in 6 MCAR §§ 4.4004-4.4009. Except as provided in B. and C., in modifying permits and in revoking and reissuing permits the agency shall follow the procedures set forth in 6 MCAR §§ 4.4010-4.4013 to the same extent required for the issuance of the permit. In permit modification proceedings, only those portions of the permit that are proposed to be modified are open for comment and a contested case hearing. In proceedings to revoke and reissue a permit, the entire permit is open for comment and a contested case hearing.

B. Modification solely as to ownership or control. Upon obtaining the consent of the permittee, the agency may modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR §§ 4.4010-4.4013 if the agency finds that no other change in the permit is necessary and if the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification.

C. Minor modification. Upon obtaining the consent of the permittee, the director may modify a permit to make the following corrections or allowances without following the procedures in 6 MCAR §§ 4.4010-4.4013:

1. to correct typographical errors;

2. to change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the permit and does not interfere with the attainment of the final compliance date;

3. to change a provision in the permit that will not result in allowing an actual or potential increase in the emission or dischage of a pollutant into the environment, or that will not result in a reduction of the agency's ability to monitor the permittee's compliance with applicable statutes and rules; and

4. if applicable, to make a change as provided in 6 MCAR §§ 4.4224 C. and 4.4321.

D. Revocation without reissuance. The director shall give notice to the permittee of a proposal to revoke a permit without reissuance. This notice must state that within 30 days of the receipt of the notice the permittee may request a contested case hearing be held on the proposed action. If the permittee requests a contested case hearing, the agency shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.201 et seq.

6 MCAR § 4.4020 Mailing list.

A person who desires to receive copies of public notices issued by the director under 6 MCAR § 4.4010 D. shall submit to the director a written request that the person's name and address be placed on a mailing list kept by the director for the purpose of issuing public notices on permit applications. The person may request notice of all permit applications or may limit the request only to notice of permit applications for facilities or activities of a certain type or for facilities or activities in a defined geographical area. The director shall periodically update this list by mailing to persons on the list a notice asking whether the

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person wishes to continue to receive notices concerning permit applications. Failure to respond to the director's notice constitutes justification for the director to remove the person's name and address from the list. The director shall also annually publish in the public press and in the *State Register* notice of the opportunity to be placed on the mailing list.

6 MCAR § 4.4021 General permits.

A. Scope. This rule applies to the permits listed in 6 MCAR § 4.4002, except for agency permits required for the treatment, storage, and disposal of hazardous waste.

B. Determination by agency. If the agency finds that it is appropriate to issue a single permit to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar, the agency shall proceed under C.-F. This permit is known as a general permit.

C. Requirements. The agency shall not issue a general permit unless the agency finds that:

1. there are several permit applicants or potential permit applicants who have the same or substantially similar operations, emissions, activities, discharges, or facilities;

2. the permit applicants or potential permit applicants discharge, emit, process, handle, or dispose of the same types of waste;

3. the operations, emissions, activities, discharges, or facilities are subject to the same or substantially similar standards, limitations, and operating requirements; and

4. the operations, emissions, activities, discharges, or facilities are subject to the same or substantially similar monitoring requirements.

D. Notice of intent. The applicant and the agency shall follow the same procedures to issue a general permit as are required for the issuance of an individual permit. However, to comply with 6 MCAR § 4.4010 E.3., the agency shall publish notice of intent to issue a general permit in the *State Register*.

E. Geographical area. A general permit issued by the agency must state specifically the geographical area covered by the permit.

F. Issuance of individual permit. If a permit applicant who is eligible to be covered by a general permit requests an individual permit, the agency shall process the application as an application for an individual permit. If the agency finds that the operations, emissions, activities, discharges, or facilities of a permit applicant or a permittee covered by a general permit would be more appropriately controlled by an individual permit, the agency shall issue an individual permit to the applicant or the permittee. Upon issuance of the individual permit, a general permit previously applicable to the permittee no longer applies to that permittee. In considering whether it is appropriate to issue an individual permit under F., the agency shall consider:

1. whether the operations, emissions, activities, discharges, or facilities of the permit applicant or permittee have characteristics creating the potential for significant environmental effects;

2. whether the permittee has been in compliance with the terms of the general permit and applicable statutes and rules; and

3. whether the operations, emissions, activities, discharges, or facilities have been altered such that they no longer fit within the category covered by the general permit.

Repealer. Pollution Control Agency rule MPCA 5 is repealed.

Rules as Proposed (all new material)

6 MCAR § 4.4101 Scope and construction of rules.

Rules 6 MCAR §§ 4.4101-4.4111 govern the application procedures, the issuance, and the conditions of a National Pollutant Discharge Elimination System permit. Rules 6 MCAR §§ 4.3001-4.3011, 4.4001-4.4021, and 4.4101-4.111 shall be construed to complement each other.

6 MCAR § 4.4102 Satisfaction of requirement for two permits.

If a person who discharges a pollutant into the waters of the state is required by Minnesota Statutes or rules to obtain both a National Pollutant Discharge Elimination System permit and a state disposal system permit, the issuance of a National Pollutant Discharge Elimination System permit under these rules shall satisfy the requirement to obtain both permits.

6 MCAR § 4.4103 Definitions.

A. Scope. The definitions in Minnesota Statutes, section 115.01 and in 6 MCAR § 4.4001 apply to the terms used in 6 MCAR §§ 4.4101-4.4111 unless the terms are defined in this rule.

As used in 6 MCAR §§ 4.4101-4.4111, the terms in B.-EE. have the meanings given them.

B. Average monthly discharge limitation. "Average monthly discharge limitation" means the highest allowable average of daily discharge over a calendar month, calculated as the sum of all daily discharges measured during a calendar month, divided by the number of daily discharges during that month.

C. Average weekly discharge limitation. "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week, divided by the number of daily discharges measured during that week.

D. Best available technology. "Best available technology" means the application to a treatment facility of the best available technology economically achievable as required by Section 301(b)(2) of the Clean Water Act, United States Code, title 33, section 1311(b)(2) as amended.

E. Best management practices. "Best management practices" means practices to prevent or reduce the pollution of the waters of the state, including schedules of activities, prohibitions of practices, and other management practice, and also includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge, or waste disposal or drainage from raw material storage.

F. Bypass. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

G. Clean Water Act. "Clean Water Act" means the Federal Water Pollution Control Act as amended, commonly referred to as the Clean Water Act, United States Code, title 33, sections 1251 et seq.

H. Commencement of construction. "Commencement of construction" means:

1. to begin or cause to begin as a part of a continuous program the placement, assembly, or installation of facilities or equipment; or to conduct significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities, which site preparation is necessary for the placement, assembly, or installation of facilities or equipment; or

2. to enter into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used within a reasonable time in the operation of a new source. For the purpose of these rules, "binding contractual obligation" does not include an option to purchase or a contract which option or contract can be terminated without substantial financial loss, and does not include contracts for feasibility, engineering, or design studies.

I. Continuous discharge. "Continuous discharge" means a discharge of a pollutant that occurs throughout the operating hours of a facility without interruption, except for occasional shutdowns for maintenance, process changes, or similar activities.

J. Daily discharge. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the discharge during the calendar day for the purposes of sampling.

K. Direct discharge. "Direct discharge" means the "discharge of a pollutant."

L. Discharge of a pollutant. "Discharge of a pollutant" means the addition of any pollutant to surface waters of the state. "Discharge of a pollutant" does not include the addition of pollutants into the waters of the state by an "indirect discharger."

M. Effluent limitation. "Effluent limitation" means a restriction established by rule or permit condition on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into waters of the state.

N. Effluent limitation guideline. "Effluent limitation guideline" means a regulation adopted by the Environmental Protection Agency under Section 304(b) of the Clean Water Act, United States Code, title 33, section 1314(b), which provides for the establishment of effluent limitations.

O. Indirect discharger. "Indirect discharger" means a nondomestic discharger that introduces pollutants into a publicly owned treatment works.

P. Facilities, equipment. "Facilities" or "equipment" means buildings, structures, process or production equipment, or machinery that form a permanent part of a source and that will be used in the operation of the source such that the construction of these facilities or the installation of this equipment must represent a substantial commitment to the construction of the source. These terms do not include facilities or equipment used in connection with feasibility, engineering, and design studies.

Q. Maximum daily discharge. "Maximum daily discharge" means the highest allowable daily discharge.

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R. Municipality. "Municipality" means a county; a city; a town; the metropolitan waste control commission established in Minnesota Statutes, chapter 473; the metropolitan council when acting under the provisions of Minnesota Statutes, chapter 473; or other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in the state.

S. National Pollutant Discharge Elimination System. "National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402, and 405 of the Clean Water Act, United States Code, title 33, sections 1317, 1328, 1342, and 1345.

T. New discharger. "New discharger" means a building, structure, facility, or installation, including an indirect discharger which commences to discharge a pollutant and:

1. from which there is or may be a new or additional discharge of pollutants at a site at which on October 18, 1972, it had never before discharged pollutants;

2. which has not received a finally effective National Pollutant Discharge Elimination System permit for discharges at that site; and

3. which is not a new source as defined in U.

U. New source. "New source" means a source that is constructed on a site at which no other source is located, or that totally replaces an existing source, or construction of which results in a change in the nature or quantity of pollutants discharged, if construction of it commenced:

1. after the Environmental Protection Agency promulgated standards of performance under Section 306 of the Clean Water Act, United States Code, title 33, section 1316, that are applicable to the source;

2. after the Environmental Protection Agency has proposed standards of performance under Section 306 of the Clean Water Act, United States Code, title 33, section 1316, that are applicable to the source, but only if the standards are promulgated within 120 days of their proposal.

V. Noncontact cooling water. "Noncontact cooling water" means water used to reduce temperature which does not come into contact with a raw material, intermediate product, waste product other than heat, or finished product. "Noncontact cooling water" includes water used in air conditioning equipment.

W. Point source. "Point source" means a discernible, confined, and discrete conveyance, including, but not limited to, a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

X. Pollutant. "Pollutant" has the meaning given to it by Minnesota Statutes, section 115.01, subdivision 13.

Y. Primary industry category. "Primary industry category" means any of the following industry categories:

1. adhesives and sealants;
2. aluminum;
3. auto and other laundries;
4. battery manufacturing;
5. coal mining;
6. coil coating;
7. copper forming;
8. electrical and electronic components;
9. electroplating;
10. explosives manufacturing;
11. foundries;
12. gum and wood chemicals;
13. inorganic chemicals manufacturing;
14. iron and steel manufacturing;
15. leather tanning and finishing;
16. mechanical products manufacturing;

17. nonferrous metals manufacturing;
18. ore mining;
19. organic chemicals manufacturing;
20. paint and ink formulation;
21. pesticides;
22. petroleum refining;
23. pharmaceutical preparations;
24. photographic equipment and supplies;
25. plastics processing;
26. plastic and synthetic materials manufacturing;
27. porcelain enameling;
28. printing and publishing;
29. pulp and paper mills;
30. rubber processing;
31. soap and detergent manufacturing;
32. steam electric power plants;
33. textile mills; and
34. timber products processing.

Z. Process wastewater. "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of a raw material, intermediate product, finished product, byproduct, or waste product.

AA. Publicly owned treatment works. "Publicly owned treatment works" means a device or system used in the treatment, recycling, or reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works for treatment.

BB. Source. "Source" means a building structure, facility, or installation from which there is or may be a discharge of pollutants.

CC. Technology-based effluent limitation, standard, or prohibition. "Technology-based effluent limitation, standard, or prohibition" means an effluent limitation, standard, or prohibition promulgated by the Environmental Protection Agency at Code of Federal Regulations, title 40, parts 400-460, under Sections 301 and 306 of the Clean Water Act, United States Code, title 33, sections 1311 and 1316.

DD. Toxic pollutant. "Toxic pollutant" means a pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act, United States Code, title 33, section 1317(b)(1), or as defined by Minnesota Statutes, section 115.01, subdivision 14.

EE. Vessel. "Vessel" means a watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters of the state.

6 MCAR § 4.4104 Permit requirement and exemptions.

A. Permit required. Except as provided in B., no person may discharge a pollutant from a point source into the waters of the state without obtaining a National Pollutant Discharge Elimination System permit from the agency.

B. Exemptions. The following persons are not required to obtain a National Pollutant Discharge Elimination System permit:

1. persons who discharge sewage or effluent from a vessel;

2. persons discharging dredge or fill materials regulated by the federal government under Section 404 of the Clean Water Act, United States Code, title 33, section 1344;

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3. persons discharging pollutants to a publicly owned treatment works;

4. persons discharging pollutants who are in compliance with the instructions of an on-scene coordinator in accordance with Code of Federal Regulations, title 40, section 1510;

5. persons introducing pollutants from nonpoint source agricultural and silvicultural sources into privately owned treatment works;

6. persons causing return flows from irrigated agriculture;

7. persons discharging pollutants into privately owned treatment works;

8. persons injecting water, gas, or other material into a well to facilitate the production of oil or gas; and

9. persons disposing of water in a well if this water is associated with oil and gas production.

6 MCAR § 4.4105 Application deadline for new permits.

If a person proposes to construct a new facility or engage in a new activity for which a permit is required, the person shall submit a written permit application at least 180 days before the planned date of the commencement of facility construction or of the planned date of the commencement of the activity, whichever occurs first.

6 MCAR § 4.4106 Contents of NPDES permit application.

A. Publicly owned treatment works. If the applicant is requesting the issuance, modification, revocation and reissuance, or reissuance of a National Pollutant Discharge Elimination System permit for a publicly owned treatment works, the applicant shall submit the following information to the director:

1. the information required by 6 MCAR § 4.4005;

2. an identification, in terms of character and volume of pollutants, of all significant indirect dischargers into the publicly owned treatment works, which indirect dischargers are subject to pretreatment standards under Section 307(b) of the Clean Water Act, United States Code, title 33, section 1317(b), and under Code of Federal Regulations, title 40, part 403; and

3. a copy of any publicly owned treatment works pretreatment program prepared by the applicant under Code of Federal Regulations, title 40, section 403.8, unless the program has been previously submitted to the director and there have been no changes to the plan.

B. Manufacturing, commercial, mining, and silvicultural discharges. If the applicant is requesting the issuance, modification, revocation and reissuance, or reissuance of a National Pollutant Discharge Elimination System permit for a manufacturing, commercial, mining, or silvicultural discharge, the applicant shall submit the following information to the director:

1. The information required by 6 MCAR § 4.4005.

2. The name of the receiving water of the discharge.

3. The exact location of the outfall, including the latitude and longitude of the location to the nearest 15 seconds.

4. A line drawing of the water flow through the facility with a water balance, showing process and treatment operations contributing to the effluent. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant shall provide a pictorial description of the nature and amount of the sources of water and the collection and treatment measures.

5. A narrative identification of each type of process, operation, or production area which contributes or will contribute wastewater to the effluent for each outfall. This identification must include process wastewater, cooling water, and storm water runoff contributions to each outfall; the average flow that each process contributes; a description of the treatment the wastewater receives; a discussion of any disposal, other than by discharge, of solid or fluid wastes generated in the process; and the discharge frequency.

6. A statement as to the product that is or will be manufactured, processed, or produced at the facility and a statement as to the quantity of the product actually manufactured, processed, or produced at the facility. If a technology-based effluent guideline is applicable to the discharge, the applicant shall express the quantity of product in the same measure as that used in the applicable effluent limitation guideline.

7. If the applicant is subject to a requirement or compliance schedule for construction, upgrading, or operation of waste treatment equipment, an identification of the requirement, a description of the project, and a listing of the required and projected final compliance dates.

8. The results of analyses and other information required by 6 MCAR § 4.4107;

9. If the analyses required by 6 MCAR § 4.4107 were performed by a contract laboratory or consulting firm, the name and address of the laboratory or firm, and an identification as to which analyses were performed by the laboratory or firm.

10. A list of any toxic pollutants that the applicant uses or manufactures or expects that it will use or manufacture during the next five years, including manufacturing as an intermediate or final product or byproduct.

11. A description of the expected levels of and the reasons for any discharge of pollutants that the applicant knows or has reason to believe will in the next five years exceed two times the values reported under 6 MCAR § 4.4107.

12. An identification of biological toxicity tests that the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water related to the applicant's discharge.

13. If the applicant proposes to construct or operate a new or existing concentrated animal feeding operation or aquatic animal production facility, the information required in Code of Federal Regulations, title 40, section 122.21(h).

14. If the applicant wishes to request that the director, in establishing a technology-based effluent limitation to be included in the conditions of the permit, establish an effluent limitation which is different than the effluent limitation which would result from the normal application of the relevant effluent limitation guideline, then the applicant shall submit, either in the application or in a supplement to the application filed no later than the last day of the comment period established in 6 MCAR § 4.4010 D., the following information:

a. An identification of the relevant effluent limitation guideline and the effluent limitation requested by the applicant.

b. If the request is based on the claim that there are factors to be considered which are fundamentally different from the factors on which the Environmental Protection Agency based the applicable effluent limitation guideline, the applicant shall submit an explanation and documentation supporting this claim.

c. If the request is based on the claim that there is no reasonable relationship between the economic and social costs and the benefits to be obtained from the effluent limitation which would result from the normal application of the effluent limitation guideline, the applicant shall submit an explanation and documentation of this claim.

d. If the applicant's discharge contains a pollutant subject to the best available technology requirements of Section 301(b)(2)(F) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(F), and if the applicant's request is based on the claim that the technology being requested represents the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the elimination of the discharge of pollutants, the applicant shall submit an explanation and documentation supporting this claim. The applicant's right to make this request expires 250 days after the promulgation by the Environmental Protection Agency of an effluent limitation guideline that pertains to the pollutant discharged by the applicant that is subject to the best available technology requirement, or at the close of the public comment period established under 6 MCAR § 4.4010 D., whichever is earlier.

e. If the applicant's discharge contains a pollutant that is subject to the best available technology requirements of Section 301(b)(2)(F) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(F), and if the applicant's request is based on the claim that the requested effluent limitation will meet the standards in Section 301(g) of the Clean Water Act, United States Code, title 33, section 1311(g), the applicant shall submit an explanation and documentation supporting this claim. The applicant's right to make this request expires 270 days after the promulgation by the Environmental Protection Agency of an effluent limitation guideline that pertains to the pollutant discharged by the applicant that is subject to the best available technology requirement, or at the close of the public comment period established under 6 MCAR § 4.4010 D., whichever is earlier.

15. If the applicant desires to request an extension from the statutory deadline established in Section 301(b)(2)(A) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(A), on the grounds that the applicant proposes to replace existing production capacity with an innovative production process which will meet the standards in Section 301(k) of the Clean Water Act, United States Code, title 33, section 1311(k), the applicant shall submit an explanation and documentation supporting this claim.

6 MCAR § 4.4107 Effluent analysis by existing manufacturing, commercial, mining, and silvicultural dischargers.

A. Requirement. If the applicant is an existing manufacturing, commercial, mining, or silvicultural discharger, the applicant shall perform an analysis of a sample of its effluent from each of its outfalls, except that if the director finds that two or more of such outfalls have substantially identical effluents, the director shall allow the applicant to analyze a sample from one of the identical effluents. The applicant shall perform the analyses according to B.-J.

B. Methods of sampling and analysis. The sampling method for pH, temperature, cyanide, total phenols, residual chlorine,

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oil and grease, and fecal coliform must be the grab sampling method. For all other pollutants the applicant shall use 24-hour composite samples unless otherwise approved by the director. The applicant shall perform the analysis by using the appropriate analytical techniques in Code of Federal Regulations, title 40, part 136, or by using techniques found by the director to be appropriate considering the circumstances and the parameters which are to be analyzed.

C. Parameters. The applicant shall analyze for the following parameters:

1. Unless the director grants a written exemption to the applicant after making a finding that a given pollutant is not likely to be present in the effluent, the applicant shall analyze for biochemical oxygen demand, chemical oxygen demand, total organic carbon, total suspended solids, ammonia (as N), temperature (both winter and summer), and pH.

2. Except as provided in 6., an applicant who has processes in one or more of the primary industry categories shall:

a. analyze, using the specified Gas Chromatograph/Mass Spectrometer (GC/MS) analysis for the organic toxic pollutants listed in D.-G. for the applicable industry category indicated in Exhibit 6 MCAR § 4.4107-1.; and

b. analyze for the pollutants listed in H.-I.

3. Except as provided in 6., an applicant who has processes not included in one of the primary industry categories and who has reason to believe that the pollutants listed in D.-I. may be present in the effluent shall identify these pollutants and shall analyze for these pollutants except those that are present in the effluent solely as the result of their presence in the intake water.

4. The applicant shall identify each pollutant listed in J. which the applicant knows or has reason to believe is present in the effluent and shall state the reason why the applicant knows or has reason to believe that the pollutant is present. The applicant shall analyze for each identified pollutant except those that are present in the effluent solely as the result of their presence in the intake water.

5. The applicant shall analyze, using a screening procedure not calibrated with analytical standards, for 2.3.7.8-tetrachlorodibenzo-p-dioxin if:

a. the applicant uses or manufactures 2.4.5-trichlorophenoxy acetic acid (2.4.5.-T); 2-(2.4.5-trichlorophenoxy) propanoic acid (Silvex, 2.4.5.TP); 2-(2.4.5-trichlorophenoxy) ethyl 2.2-dichloroproprionate (Erbon); 0.0-dimethyl 0-(2.4.5-trichlorophenyl) phosphorothicate (Ronnel); 2.4.5-trichlorophenol (TCP); or hexachlorophene (HCP); or

b. the applicant knows or has reason to believe that tetrachlorodibenzo-p-dioxin is or may be present in an effluent.

6. An applicant is exempt from the requirements of 2. and 3. to analyze for the pollutants listed in D.-G. if the facility which is the subject of the application has gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars) for the three-year period prior to submittal of the application.

D. Volatile substances. The following volatile substances must be analyzed under C.2. and 3.:

1. acrolein;
2. acrylonitrile;
3. benzene;
4. bis(chloromethyl)ether;
5. bromoform;
6. carbon tetrachloride;
7. chlorobenzene;
8. chlorodibromomethane;
9. chloroethane;
10. 2-chloroethylvinyl ether;
11. chloroform;
12. dichlorobromomethane;
13. dichlorodifluoromethane;
14. 1,1-dichloroethane;
15. 1,2-dichloroethane;
16. 1,1-dichlorethylene;
17. 1,2-dichloropropane;

18. 1,2-dichloropropylene;
19. ethylbenzene;
20. methyl bromide;
21. methyl chloride;
22. methylene chloride;
23. 1,1,2,2-tetrachloroethane;
24. tetrachloroethylene;
25. toluene;
26. 1,2-trans-dichloroethylene;
27. 1,1,1-trichloroethane;
28. 1,1,2-trichloroethane;
29. trichloroethylene;
30. trichlorofluoromethane; and
31. vinyl chloride.

E. Acid compounds. The following acid compounds must be analyzed under C.2. and 3.:

1. 2-chlorophenol;
2. 2,4-dichlorophenol;
3. 2,4-dimethylphenol;
4. 4,6-dinitro-o-cresol;
5. 2,4-dinitrophenol;
6. 2-nitrophenol;
7. 4-nitrophenol;
8. p-chloro-m-cresol;
9. pentachlorophenol;
10. phenol; and
11. 2,4,6-trichlorophenol.

F. Base/neutral substances. The following base/neutral substances must be analyzed under C.2. and 3.:

1. acenaphthene;
2. acenaphthylene;
3. anthracene;
4. benzidine;
5. benzo(a)anthracene;
6. benzo(a)pyrene;
7. 3,4-benzofluoranthene;
8. benzo(ghi)perylene;
9. benzo(k)fluoroanthene;
10. bis(2-chloroethoxy)methane;
11. bis(2-chloroethyl)ether;

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12. bis(2-chloroisopropyl)ether;
13. bis(2-ethylhexyl)phthalate;
14. 4-bromophenyl phenyl ether;
15. butylbenzyl phthalate;
16. 2-chloronaphthalene;
17. 4-chlorophenyl phenyl ether;
18. chrysene;
19. dibenzo(a,h)anthracene;
20. 1,2-dichlorobenzene;
21. 1,3-dichlorobenzene;
22. 1,4-dichlorobenzene;
23. 3,3'-dichlorobenzidine;
24. diethyl phthalate;
25. dimethyl phthalate;
26. di-n-butyl phthalate;
27. 2,4-dinitrotoluene;
28. 2,6-dinitrotoluene;
29. di-n-octyl phthalate;
30. 1,2-diphenylhydrazine (as azobenzene);
31. fluoranthene;
32. fluorene;
33. hexachlorobenzene;
34. hexachlorobutadiene;
35. hexachlorocyclopentadiene;
36. hexachloroethane;
37. indeno(1,2,3-cd)pyrene;
38. isophorone;
39. naphthalene;
40. nitrobenzene;
41. N-nitrosodimenthylamine;
42. N-nitrosodi-n-propylamine;
43. N-nitrosodiphenylamine;
44. phenathrene;
45. pyrene; and
46. 1,2,4-trichlorobenzene.

G. Pesticides. The following pesticides must be analyzed under C.2. and 3.:

1. aldrin;
2. α-BHC;
3. β-BHC;
4. γ-BHC;
5. δ-BHC;
6. chlordane;

7. 4,4'-DDT;
8. 4,4'-DDD;
9. 4,4'-DDE;
10. dieldrin;
11. α-endosulfan;
12. β-endosulfan;
13. endosulfan sulfate;
14. endrin;
15. endrin aldehyde;
16. heptachlor;
17. heptachlor epoxide;
18. PCB-1242;
19. PCB-1254;
20. PCB-1221;
21. PCB-1232;
22. PCB-1248;
23. PCB-1260;
24. PCB-1016; and
25. toxaphene.

H. Metals, cyanides, and phenols. The following metals, cyanide, and phenols must be analyzed for quantity present under C.2. and 3.:

1. antimony;
2. arsenic;
3. beryllium;
4. cadmium;
5. chromium;
6. copper;
7. lead;
8. mercury;
9. nickel;
10. selenium;
11. silver;
12. thallium;
13. zinc;
14. total cyanide; and
15. total phenols.

I. Conventional and nonconventional pollutants. The following conventional and nonconventional pollutants must be analyzed under C.2. and 3.:

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1. aluminum;
2. barium;
3. boron;
4. bromide;
5. total residual chlorine;
6. cobalt;
7. color;
8. fecal coliform;
9. fluoride;
10. iron;
11. magnesium;
12. manganese;
13. molybdenum;
14. nitrate-nitrite;
15. total organic nitrogen;
16. oil and grease;
17. total phosphorus;
18. radioactivity;
19. sulfate;
20. sulfide;
21. sulfite;
22. surfactants;
23. total tin; and
24. total titanium.

J. Toxic pollutants and hazardous substances. The following toxic pollutants and hazardous substances must be analyzed under C.4.:

1. asbestos;
2. acetaldehyde;
3. allyl alcohol;
4. allyl chloride;
5. amyl acetate;
6. aniline;
7. benzonitrile;
8. benzyl chloride;
9. butyl acetate;
10. butylamine;
11. captan;
12. carbaryl;
13. carbofuran;
14. carbon disulfide;
15. chlopyrifos;
16. coumaphos;

17. cresol;
18. crotonaldehyde;
19. cyclohexane;
20. 2,4-D (2,4-dichlorophenoxy acetic acid)
21. diaxinon;
22. dicamba;
23. dichlobenil;
24. dichlone;
25. 2,2-dichloropropionic acid;
26. dichlorvos;
27. diethyl amine;
28. dimethyl amine;
29. dinitrobenzene;
30. diquat;
31. disulfoton;
32. diuron;
33. epichlorohydrin;
34. ethanolamine;
35. ethion;
36. ethylene diamine;
37. ethylene dibromide;
38. formaldehyde;
39. furfural;
40. guthion;
41. isoprene;
42. isopropanolamine;
43. kelthane;
44. kepone;
45. malathion;
46. mercaptodimethur;
47. methoxychlor;
48. methyl mercaptan;
49. methyl methacrylate;
50. methyl parathion;
51. mevinphos;
52. mexacarbate;
53. monoethyl amine;
54. monomethyl amine;

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55. naled;
56. napthenic acid;
57. nitrotoluene;
58. parathion;
59. phenolsulfanate;
60. phosgene;
61. propargite;
62. propylene oxide;
63. pyrethrins;
64. quinoline;
65. resorcinol;
66. strontium;
67. strychnine;
68. styrene;
69. 2,4,5-T (2,4,5-trichlorophenoxy acetic acid);
70. TDE (tetrachlorodiphenylethane);
71. 2,4,5-TP [2-(2,4,5-trichlorophenoxy) propanoic acid];
72. trichlorofon;
73. triethylamine;
74. trimethylamine;
75. uranium;
76. vanadium;
77. vinyl acetate;
78. xylene;
79. xylenol; and
80. zirconium.

Exhibit 6 MCAR § 4.4107-1.

Testing Requirements for Organic Toxic Pollutants by Industrial Category for Existing Dischargers

Industrial Category	GC/MS fraction[1]			
	Volatile	Acid	Base/ neutral	Pesticide
Adhesives and Sealants	*	*	*	. . .
Aluminum Forming	*	*	*	. . .
Auto and Other Laundries	*	*	*	*
Battery Manufacturing	*	. . .	*	. . .
Coal Mining	*	*	*	*
Coil Coating	*	*	*	. . .
Copper Forming	*	*	*	. . .
Electric and Electronic Components	*	*	*	*
Electroplating	*	*	*	. . .
Explosives Manufacturing	. . .	*	*	. . .
Foundries	*	*	*	. . .
Gum and Wood Chemicals	*	*	*	*

Inorganic Chemicals Manufacturing	*	*	*	. . .
Iron and Steel Manufacturing	*	*	*	. . .
Leather Tanning and Finishing	*	*	*	*
Mechanical Products Manufacturing	*	*	*	. . .
Nonferrous Metals Manufacturing	*	*	*	*
Ore Mining**	. . .	*	. . .	. . .
Organic Chemicals Manufacturing	*	*	*	*
Paint and Ink Formulation	*	*	*	*
Pesticides	*	*	*	*
Petroleum Refining	*	*	*	*
Pharmaceutical Preparation	*	*	*	. . .
Photographic Equipment and Supplies	*	*	*	*
Plastic and Synthetic Materials Manufacturing	*	*	*	*
Plastic Processing	*	. . .	. . .	. . .
Porcelain Enameling	*	. . .	*	*
Printing and Publishing	*	*	*	*
Pulp and Paper Mills	*	*	*	*
Rubber Processing	*	*	*	. . .
Soap and Detergent Manufacturing	*	*	*	. . .
Steam Electric Power Plants	*	*	*	. . .
Textile Mills	*	*	*	*
Timber Products Processing	*	*	*	*

6 MCAR § 4.4108 Preliminary determination, draft permit, and public comments.

A. Scope. The provisions of 6 MCAR §§ 4.4010 and 4.4011 apply to the public notice of draft permits and preliminary determinations and the use of fact sheets concerning draft permits and public comments, except as specifically otherwise provided in B. and C.

B. Fact sheets. The director shall prepare a fact sheet for each draft permit for a facility that the director finds to be major based on a review of the potential impacts of the facility on the environment.

C. Response to public comments. The director shall respond to all significant comments received under 6 MCAR § 4.4011 during the public comment period. The response may be made either orally or in writing.

6 MCAR § 4.4109 Establishment of special conditions for National Pollutant Discharge Elimination System permits.

A. Requirement. According to 6 MCAR § 4.4015 B., a National Pollutant Discharge Elimination System permit issued by the agency must contain conditions necessary for the permittee to achieve compliance with all Minnesota or federal statutes or rules. These conditions must be initially established by the director in the draft permit but are subject to final issuance by the agency. The conditions to be included are given in B.

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[1] The toxic pollutants in each fraction are listed in 6 MCAR § 4.4107 D.-G. * Testing required. ** Applies only to base and precious metals.

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B. Effluent limitations, standards, or prohibitions. Except as provided in C., the director shall establish effluent limitations, standards, or prohibitions for each pollutant to be discharged from each outfall or discharge point of the permitted facility; except that if the director finds that as a result of exceptional circumstances it is not feasible to establish effluent limitations, standards, or prohibitions which are applicable at the point of discharge, the director shall establish effluent limitations, standards, or prohibitions for pollutants in internal waste streams at the point prior to mixing with other waste streams or cooling water streams. In determining the appropriate effluent limitations, standards, or prohibitions the director shall comply with the following requirements:

1. Effluent limitations, standards, or prohibitions must be expressed in terms of weight or mass, where applicable, and in the following terms:

a. for continuous discharges from a publicly owned treatment works, in terms of average weekly and maximum monthly discharge limitations;

b. for continuous discharges from a facility which is not a publicly owned treatment works, in terms of maximum daily and average monthly discharge limitations;

c. for noncontinuous discharges, in terms which most appropriately limit the discharge, such as frequency, total mass, concentration, or maximum rate of discharge;

d. for metals, in terms of total metal, which is the sum of the dissolved and suspended fractions of the metal. This requirement does not apply if a federal or state rule requires that an effluent limitation, standard, or prohibition be expressed in terms of the dissolved or valent form of the metal; or if the director determines that the expression of the effluent limitation, standard, or prohibition in a different manner would better enable the agency to determine compliance by the permittee with all applicable Minnesota or federal statutes or rules.

2. In establishing effluent limitations, standards, or prohibitions the director shall consider the following:

a. technology-based effluent limitation guidelines that apply to the permittee;

b. effluent standards or limitations applicable to the permittee; promulgated by the Environmental Protection Agency under Sections 302, 303, 304, 307, 318, 402(a), and 405 of the Clean Water Act, United States Code, title 33, sections 1312, 1313, 1314, 1317, 1328, 1342, and 1345 as amended; and published in Code of Federal Regulations, title 40, parts 400-460, which are applicable to the permittee;

c. the applicable water quality standards in 6 MCAR §§ 4.8001, 4.8014, 4.8015, 4.8024, 4.8025, 4.8027, 4.8028, 4.8030, 4.8041, and 4.8043;

d. the requirements of the water quality management plan adopted by the state and approved by the Environmental Protection Agency under Section 208(b) of the Clean Water Act, United States Code, title 33, section 1288(b) as amended; and

e. the requirements of the National Environmental Policy Act, United States Code, title 42, sections 4321 et seq. as amended, and the Minnesota Environmental Policy Act, Minnesota Statutes, chapter 116D.

3. If the establishment of an effluent limitation, standard, or prohibition requires the making of a calculation, the director shall comply with the following, if applicable:

a. for a publicly owned treatment works, calculations must be based on the design flow of the facility;

b. for a facility which is not a publicly owned treatment works, calculations of technology-based effluent limitations must be based on a reasonable measure of the actual quantity of the product manufactured, processed, or produced at the facility, or, for a new source or new discharger, the projected measure of the quantity of product;

c. for a facility which is not a publicly owned treatment works, calculations of effluent limitations other than technology-based effluent limitations must be based on a reasonably representative quantity of flow from the facility; and

d. for a facility which disposes of any part of its wastewater in a manner which does not involve a discharge of a pollutant into the waters of the state, calculations of effluent limitations, standards, or prohibitions expressed in terms of mass must be based only upon that portion of the wastewater which is discharged into the waters of the state.

4. If a permit issued to a new source or a new discharger contains technology-based effluent limitations, standards, or prohibitions for pollutants other than toxic pollutants or hazardous substances, the source or discharger must not be subject to more stringent technology-based limitations, standards, or prohibitions for the following periods of time, whichever is less:

a. for new sources, ten years from the date that construction of the source is completed;

b. ten years from the date that the source begins to discharge process or other nonconstruction related wastewater; or

c. the period of depreciation or amortization of the facility for the purposes of Section 167 or 169, or both, of the Internal Revenue Code of 1954, United States Code, title 26.

C. Best management practices. If the director finds that it is not feasible to establish an effluent limitation, standard, or prohibition using a numerical value, the director shall establish permit conditions requiring the implementation by the permittee of best management practices. The director may also require implementation of best management practices if the director finds that this requirement is necessary to achieve compliance with Minnesota or federal statutes or rules, including requirements for the control of toxic pollutants and hazardous substances from ancillary activities.

D. Reporting violations. The director shall include as a condition of the permit that the permittee shall report, in accordance with 6 MCAR § 4.4015 C.11., all violations of maximum daily discharge limitations for certain pollutants. The pollutants must be listed in the permit.

E. Monitoring requirements. In addition to the requirements in 6 MCAR § 4.4015 B., the director shall establish appropriate monitoring and reporting of monitoring requirements to ensure compliance with permit limitations. These requirements must include:

1. a specification of the appropriate measurement to be reported for each pollutant limited in the permit;

2. the volume of effluent discharged from each outfall;

3. any other measurement needed to determine compliance with a permit condition;

4. specification as to any test procedures which the permittee is required to use which differ from those set forth in Code of Federal Regulations, title 40, part 136; and

5. specification of the frequency of monitoring and monitoring reporting. In no case may the frequency of monitoring and monitoring reporting be less than once per year.

F. Pretreatment requirements for publicly owned treatment works. If the applicant proposes to own or operate a publicly owned treatment works and if the applicant is required by Code of Federal Regulations, title 40, section 403.8 to develop a publicly owned treatment works pretreatment program, the director shall incorporate the provisions of the publicly owned treatment works pretreatment program into the permit and shall require the permittee to submit the information set forth in Code of Federal Regulations, title 40, section 403.12.

G. Conditions imposed in construction grants. If the applicant is using construction grant funds to construct or operate its wastewater treatment facility, the director shall incorporate into the permit any provisions of the grant that relate to the achievement of compliance with effluent limitations, standards, or prohibitions or with water quality standards.

H. Conditions related to navigation. The director shall incorporate into the permit conditions that are necessary to ensure that navigation and anchorage will not be substantially impaired.

I. Conditions in reissued permits. In a reissued permit the director shall establish effluent limitations, standards, or prohibitions that are at least as stringent as the effluent limitations, standards, or prohibitions or conditions in the previous permit unless the director makes the finding in 1.-3. In no event may the director establish an effluent limitation, standard, or prohibition that is less stringent than that allowed by the applicable effluent limitation guideline in effect at the date of the renewal or reissuance of the permit. Less stringent effluent limitations, standards, prohibitions, or conditions may only be established if the director finds:

1. the circumstances upon which the previous permit was based have materially and substantially changed since the time the previous permit was issued and this change would constitute cause for permit modification or revocation and reissuance under 6 MCAR § 4.4019; .

2. the permittee has installed the treatment facilities required to meet the effluent limitations, standards, or prohibitions in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve compliance with these effluent limitations, standards, or prohibitions; and that the effluent limitation guideline upon which the original effluent limitation, standard, or prohibition was based has been amended by the Environmental Protection Agency to allow the establishment of a less stringent effluent limitation, standard, or prohibition. The revised effluent limitation, standard, or prohibition must not be less stringent than the level of pollutant control actually achieved by the permittee;

3. that the Environmental Protection Agency has amended the effluent limitation guideline applicable to the permittee and that the amended effluent guideline is based upon best conventional pollutant control technology under Section 301(b)(2)(E) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(E) as amended; or

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4. that the permittee has increased production at the facility to cause a significant reduction in treatment efficiency; and that the effluent limitation guideline upon which the original effluent limitation, standard, or prohibition was based has been amended by the Environmental Protection Agency to allow the establishment of a less stringent effluent limitation, standard, or prohibition.

6 MCAR § 4.4110 General conditions of National Pollutant Discharge Elimination System permits.

A. Conditions for all permits. National Pollutant Discharge Elimination System permit issued by the agency must contain the general conditions set forth in 6 MCAR § 4.4015 and the general conditions as follows:

1. Notwithstanding the absence in this permit of an effluent limitation for any toxic pollutant, the permittee shall not discharge a toxic pollutant except according to Code of Federal Regulations, title 40, sections 400-460 and 6 MCAR §§ 4.8014-4.8015 and any other applicable agency rules.

2. Noncompliance with a term or condition of this permit subjects the permittee to penalties provided by federal and state law set forth in Section 309 of the Clean Water Act, United States Code, title 33, section 1319 as amended, and in Minnesota Statutes, section 115.071, including monetary penalties, imprisonment, or both.

3. In the event of a reduction or loss of effective treatment of wastewater at the facility, the permittee shall control production or curtail its discharges to the extent necessary to maintain compliance with the terms and conditions of this permit. The permittee shall continue this control or curtailment until the wastewater treatment facility has been restored or until an alternative method of treatment is provided.

4. The permittee shall submit monitoring data, calculations, and results on a form provided by the director, known as a discharge monitoring report.

5. If the permittee monitors a pollutant more frequently than required by the permit, the permittee shall include data, calculations, and results of this monitoring in the discharge monitoring report.

6. Calculations of monitoring results that require averaging of measurements must utilize an arithmetic mean unless otherwise specified by the permit.

7. A person who falsifies, tampers with, or knowingly renders inaccurate a monitoring device or method required to be maintained under this permit is subject to penalties provided by federal and state law, set forth in Section 309 of the Clean Water Act, United States Code, title 33, section 1319 as amended and Minnesota Statutes, section 115.071, subdivision 2, clause (2).

8. A person who knowingly makes a false statement, representation, or certification in a record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance is subject to penalties provided by federal and state law set forth in Section 309 of the Clean Water Act, United States Code, title 33, section 1319, and Minnesota Statutes, section 115.071, subdivision 2, clause (2).

9. In addition to other facts or incidents required by the permit to be reported within 24 hours, the permittee shall report in accordance with 6 MCAR § 4.4015 C.11. any unanticipated bypass or upset that causes an exceedance of an applicable effluent limitation. The permittee need not submit a written report if the director finds that the written report is unnecessary.

10. The permittee may allow a bypass to occur if the bypass will not cause the excedance of an effluent limitation but only if the bypass is necessary for essential maintenance to assure efficient operation of the facility. The permittee shall submit notice of the need for the bypass at least ten days before the date of the bypass or as soon as possible under the circumstances.

11. The permittee shall not allow an anticipated bypass to occur that will cause an excedance of an applicable effluent limitation unless the following conditions are met:

a. The bypass is unavoidable to prevent loss of life, personal injury, or severe property damage. For the purposes of this paragraph, "severe property damage" means substantial damage to property of the permittee or of others; damage to the wastewater treatment facilities that may cause them to become inoperable; or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss as a result of a delay in production.

b. There is no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or performance of maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance.

c. The permittee has notified the director of the anticipated bypass and the director has approved the bypass. The director shall approve the bypass if the director finds that the conditions set forth in 1. and 2. are met.

12. In the event of temporary noncompliance by the permittee with an applicable effluent limitation resulting from an upset at the permittee's facility due to factors beyond the control of the permittee, the permittee has an affirmative defense to an

enforcement action brought by the agency as a result of the noncompliance if the permittee demonstrates by a preponderance of competent evidence:

a. the specific cause of the upset;

b. that the upset was unintentional;

c. that the upset resulted from factors beyond the control of the permittee and did not result from operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or increases in production which are beyond the design capability of the treatment facilities;

d. that at the time of the upset the facility was being properly operated;

e. that the permittee properly notified the director of the upset in accordance with 9.; and

f. that the permittee implemented the remedial measures required by 6 MCAR § 4.4015 C.10.

B. Permits to manufacturing, commercial, mining, or silvicultural dischargers. A National Pollutant Discharge Elimination System permit issued by the agency to a manufacturing, commercial, mining, or silvicultural discharger must contain the following additional conditions:

1. The permittee shall notify the director immediately of any knowledge or reason to believe that an activity has occurred that would result in the discharge of a toxic pollutant listed in 6 MCAR § 4.4107 D.-J. or listed below that is not limited in the permit, if the discharge of this toxic pollutant has exceeded or is expected to exceed the following levels:

a. for acrolein and acrylonitrile, 200 micrograms per liter;

b. for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol, 500 micrograms per liter;

c. for antimony, one milligram per liter;

d. for any other toxic pollutant listed in 6 MCAR § 4.4107 D.-J., 100 micrograms per liter; or

e. five times the maximum concentration value identified and reported for that pollutant in the permit application.

2. The permittee shall notify the director immediately if the permittee has begun or expects to begin to use or manufacture as an intermediate or final by-product a toxic pollutant that was not reported in the permit application under 6 MCAR § 4.4106 I.

C. Permits for publicly owned treatment works. A National Pollutant Discharge Elimination System permit issued by the agency to a publicly owned treatment works must require the permittee to report the following to the director as soon as possible:

1. the new introduction of pollutants into the publicly owned treatment works from an indirect discharger that would be subject to the requirements of Section 301 or 306 of the Clean Water Act, United States Code, title 33, section 1311 or 1316 as amended if it were directly discharging those pollutants;

2. a substantial change in the volume or character of pollutants being introduced into the publicly owned treatment works by a source that was introducing pollutants into the publicly owned treatment works at the time the permit was issued; and

3. the quantity and quality of the additional or changed effluent being received by the publicly owned treatment works and the anticipated impact on the effluent to be discharged by the publicly owned treatment works.

6 MCAR § 4.4111 Final determination.

A. Issuance of permit. Except as provided in B.-D., the agency shall issue a National Pollutant Discharge Elimination System permit in accordance with 6 MCAR § 4.4014.

B. Certification. If the applicant is required to obtain a certification under Section 401 of the Clean Water Act, United States Code, title 33, section 1341 as amended, no permit may be issued by the agency unless the agency finds that the certification has been obtained by the applicant.

C. Violation of adjoining state's water quality standard. The agency shall not issue a permit if it finds that the applicant's discharge will result in the violation of water quality standards adopted by a state that adjoins the receiving water of the applicant's discharge.

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D. Warfare agents. The agency shall not issue a permit if it finds that the issuance will result in the discharge of a radiological, chemical, or biological warfare agent.

Repealer. Pollution Control Agency Rule WPC 36 is repealed.

Rules as Proposed (all new material)

6 MCAR § 4.4201 Scope.

Rules 6 MCAR §§ 4.4001-4.4021 and 4.4201-4.4224 govern the application procedures, the issuance, and the conditions of hazardous waste facility permits. Rules 6 MCAR §§ 4.3001-4.3011, 4.4001-4.4021, and 4.4201-4.4224 shall be construed to complement each other.

6 MCAR § 4.4202 Definitions.

The definitions in 6 MCAR §§ 4.4001, 4.9100, and 4.9380 B. apply to the terms used in 6 MCAR §§ 4.4201-4.4224.

6 MCAR § 4.4203 Permit requirements.

A. Permit required. Except as provided in B., no person may do any of the following without obtaining a hazardous waste facility permit from the agency:

1. treat, store, or dispose of hazardous waste;

2. establish, construct, operate, or close a hazardous waste facility;

3. make an expansion, a production increase, or a process modification that results in new or increased capabilities of a permitted hazardous waste facility; or

4. operate a permitted hazardous waste facility or part of a facility that has been changed, added to, or extended, or that has new or increased capabilities.

B. Exclusions. A person who conducts any of the following activities is not required to obtain a hazardous waste facility permit for that activity:

1. The accumulation by generators of hazardous waste on site for fewer than 90 days as provided in 6 MCAR § 4.9216.

2. The disposal by farmers of hazardous wastes that have been generated by their own use of pesticides as provided in 6 MCAR § 4.9222.

3. The ownership or operation of a totally enclosed treatment facility as defined in 6 MCAR § 4.9100.

4. The storage by transporters of manifested shipments of hazardous waste in containers that meet the requirements of 6 MCAR § 4.9414 A. at a transfer facility for a period of ten days or fewer as provided in 6 MCAR § 4.9253.

5. An activity conducted to immediately contain or treat a spill or an imminent and substantial threat of a spill of hazardous waste or a material that, when spilled, becomes a hazardous waste. This exclusion does not apply to a person who treats, stores, or disposes of the spilled material or spill residue or debris after the immediate response activities have been completed.

6. The addition of absorbent material to hazardous waste in a container, or the addition of hazardous waste to absorbent material in a container, if the addition occurs at the time waste is first placed in the container, and if the addition is accomplished in accordance with 6 MCAR §§ 4.9283 B. and 4.9315 B. and C.

7. The ownership or operation of a facility that is used to manage hazardous waste described in 6 MCAR § 4.9129 B.1. or 2. that is to be beneficially used, reused, recycled, or reclaimed, unless 6 MCAR § 4.9129 B.1.i. provides otherwise.

8. To the extent provided by 6 MCAR § 4.9129 B.3., 4., or 5., the ownership or operation of a facility that beneficially uses, reuses, recycles, or reclaims hazardous waste.

9. The management of hazardous waste as provided in 6 MCAR §§ 4.9128 C.12.; 4.9130 A.; 4.9134 E.3. and 5.; 4.9209; or 4.9210 B.

C. Permits by rule. The owner or operator of the following facilities shall be deemed to have obtained a hazardous waste facility permit without making application for it unless the director finds that the following conditions are not met:

1. Barges or vessels operating in Minnesota that are intended to be operated elsewhere as ocean disposal facilities, if the owner or operator:

a. has obtained a permit for ocean disposal under Code of Federal Regulations, title 40, part 220;

b. complies with the conditions of the permit for ocean disposal; and

c. complies with 6 MCAR §§ 4.9281 B.; 4.9292; 4.9293; 4.9294 A., B., and C.1.-3.; and 4.9296 A., B., and C.

2. Publicly owned treatment works that accept hazardous waste for treatment, if the owner or operator:

a. has obtained a National Pollutant Discharge Elimination System permit, a state disposal system permit, or both, from the agency;

b. complies with the conditions of the National Pollutant Discharge Elimination System permit or the state disposal system permit;

c. complies with 6 MCAR §§ 4.9281 B.; 4.9292; 4.9293; 4.9294 A., B., and C.1-3.; and 4.9296 A., B., and C.; and

d. accepts a waste that meets all applicable federal, Minnesota, and local pretreatment requirements for that waste if it were to be discharged into the publicly owned treatment works through a sewer, pipe, or other conveyance.

3. Elementary neutralization, pretreatment, or wastewater treatment units, provided that:

a. the unit does not receive hazardous waste from generators other than the owner or operator of the unit;

b. the owner or operator complies with the requirements of 6 MCAR §§ 4.9480-4.9481; and

c. the owner or operator's eligibility to be permitted under this rule has not been terminated under D.

4. That portion of a combustion waste facility that is used to manage hazardous wastes produced in conjunction with the combustion of fossil fuels, if:

a. the wastes are generated on-site;

b. the wastes traditionally have been and actually are mixed with and co-disposed or co-treated with fly ash, bottom ash, boiler slag, or flue gas emission control wastes resulting from coal combustion;

c. the wastes are necessarily associated with the production of energy, such as boiler cleaning solutions, boiler blowdown, demineralizer regenerant, pyrites, and cooling tower blowdown;

d. the owner or operator complies with the requirements of 6 MCAR §§ 4.9480-4.9481; and

e. the owner or operator's eligibility to be permitted under this rule has not been terminated under D.

D. Termination of eligibility for permit by rule. The eligibility of an owner or operator of an elementary neutralization unit, a pretreatment unit, a wastewater treatment unit, or a combustion waste facility to be permitted under this rule is subject to termination by the agency after notice and opportunity for a contested case hearing or a public informational meeting if the agency makes any of the findings set forth in 1.-4. An owner or operator whose eligibility to be permitted under this rule has been terminated shall apply for and obtain an individual permit under these rules. The following findings constitute justification for the director to commence proceedings to terminate eligibility:

1. that any applicable conditions set forth in C.3. or 4. are not met;

2. that the owner or operator has violated a requirement of 6 MCAR §§ 4.9480-4.9481;

3. that the owner or operator is conducting other activities that are required to be covered by a hazardous waste facility permit; or

4. that under the circumstances, in order to protect human health or the environment, the permitted facility should be subject to the requirements of 6 MCAR §§ 4.9281-4.9322.

6 MCAR § 4.4204 Hazardous waste facility permit application.

A. Form. The application for a hazardous waste facility permit consists of Part A and Part B. The information requirements of Part A are set forth in 6 MCAR § 4.4206. The information requirements of Part B are set forth in 6 MCAR §§ 4.4207-4.4215. A person who submits Part B of the application shall submit the information required by 6 MCAR § 4.4207 and shall also submit any information required by 6 MCAR §§ 4.4208-4.4215 that is applicable to the facility which is the subject of the application.

B. Timing of application. Deadlines for the submission of a permit application for existing and new hazardous waste facilities and for reissuance of existing permits are as follows:

1. The owner or operator of an existing hazardous waste facility shall submit Part A of the application to the director on or before the 90th day after the effective date of 6 MCAR §§ 4.4201-4.4224. An owner or operator who has already submitted Part A of the application to the Environmental Protection Agency need not submit Part A of the application to the director if the

information submitted to the Environmental Protection Agency is complete with respect to all portions of the facility and all wastes stored, treated, or disposed of at the facility that are subject to regulation under 6 MCAR §§ 4.9100-4.9560. If the information submitted to the Environmental Protection Agency is not complete, the owner or operator shall submit an amended Part A of the application to the director on or before the 90th day after the effective date of this rule. The owner or operator may submit Part B of the application at any time except that upon the request of the director the owner or operator shall submit Part B of the application not later than six months after the date of receipt of the director's request. A later date for submission of Part B for a thermal treatment facility may be made under 6 MCAR § 4.4221 K.

2. If a person proposes to construct a new hazardous waste facility, the person shall submit Part A and Part B of the application at least 180 days before the planned date of the commencement of facility construction.

3. Rule 6 MCAR § 4.4004 C. governs the application for the reissuance of existing permits except as provided in this rule. When the director receives a written request that shows good cause for an extension of time to file the application for permit reissuance, the director shall grant the extension if the final date for filing the application does not extend beyond the expiration date of the permit. The application must contain Part B of the application, completed to show all information that is new or different from that contained in previously submitted applications.

C. Updating permit applications. An owner or operator of an existing hazardous waste facility who has submitted Part A of the application but has not yet submitted Part B of the application shall submit to the director an amended Part A of the application under the following circumstances:

1. if the submission of an amended application is necessary to comply with 6 MCAR § 4.4216 E.; or

2. if 6 MCAR §§ 4.9128-4.9137 is amended to list or designate as hazardous a waste being treated, disposed of, or stored by the owner or operator which was not listed or designated as hazardous at the time the original Part A was submitted.

The owner or operator shall file the amended Part A not later than 90 days after the effective date of the amendment to 6 MCAR §§ 4.9128-4.9137. An owner or operator who fails to submit an amended Part A when required to do so shall not receive interim status for any wastes not covered by a submitted Part A application.

6 MCAR § 4.4205 Certification of permit applications and reports.

A person who signs a permit application or any portion of it or any report required by a permit to be submitted to the director or to the agency shall make the certification required by 6 MCAR § 4.4007 and shall make the following additional certification: "I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." Technical documents, such as design drawings and specifications and engineering studies required to be submitted as part of a permit application or by permit conditions, must be certified by a registered professional engineer.

6 MCAR § 4.4206 Contents of Part A of application.

Part A of the application must contain the following information:

A. the information set forth in 6 MCAR § 4.4005;

B. on the topographic map submitted under 6 MCAR § 4.4005, an identification of all wells, springs, and surface water bodies listed in public records or otherwise known to the applicant to exist within one-quarter mile of the property boundaries of the hazardous waste facility;

C. the name, mailing address, and exact location of the hazardous waste facility, including the latitude and longitude of the location;

D. an identification by use of up to four standard industrial classification codes that best reflect the principal products or services provided by the applicant;

E. a list of the wastes designated under 6 MCAR §§ 4.9128-4.9137 as hazardous to be treated, stored, or disposed of by the applicant and an estimate of the quantity of each hazardous waste to be treated, stored, or disposed of annually by the applicant;

F. a description of the processes to be used for treating, storing, or disposing of hazardous waste, and the design capacity of the facility;

G. whether the facility is new or existing and whether the application is an initial or amended application;

H. if the facility is an existing facility, a scale drawing of the facility showing the location of all past, present, and proposed future treatment, storage, and disposal areas;

I. if the facility is an existing facility, photographs of the facility clearly showing all existing structures; existing treatment, storage, and disposal areas; and sites of proposed future treatment, storage, and disposal areas; and

J. a statement as to which, if any, of the following permits the applicant has applied for or received that pertains to the facility or a portion of the facility that is the subject of the application:

1. a hazardous waste facility permit required by 6 MCAR § 4.4203, other than the permit that is the subject of the current application, or a hazardous waste facility permit issued by the United States Environmental Protection Agency;

2. a National Pollutant Discharge Elimination System permit required by 6 MCAR § 4.4104;

3. an air emission facility permit required by 6 MCAR § 4.4303; or

4. a dredge or fill permit issued under section 404 of the Clean Water Act, United States Code, title 33, section 1344.

6 MCAR § 4.4207 General information requirements for Part B of application.

Part B of the application must contain the following information:

A. A general description of the facility, unless an accurate and complete Part A of the application has been submitted.

B. Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses must contain all information that is necessary in order to treat, store, or dispose of the wastes properly in accordance with 6 MCAR §§ 4.9280-4.9322.

C. A copy of the waste analysis plan required by 6 MCAR § 4.9284 B.

D. A description of the security procedures and equipment required by 6 MCAR § 4.9281 D. or a justification as to why these security procedures are unnecessary at the facility.

E. A copy of the inspection schedule required by 6 MCAR § 4.9281 E.2., including, if applicable, the information set forth in 6 MCAR §§ 4.9315 E.; 4.9316 D.; 4.9317 E.; 4.9318 E. and F.; 4.9319 D.; 4.9320 E.; and 4.9321 G.

F. A description of procedures, structures, or equipment used at the facility as required to comply with 6 MCAR §§ 4.9286 and 4.9287. If the applicant is requesting a waiver of any of the requirements of 6 MCAR § 4.9286, the applicant shall include a justification for the request.

G. A copy of the contingency plan required by 6 MCAR § 4.9288, including, if applicable, the specific information set forth in 6 MCAR § 4.9317 F.

H. A description of procedures, structures, or equipment used at the facility to:

1. prevent hazards in unloading operations, such as ramps or special forklifts;

2. prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, such as berms, dikes, or trenches;

3. prevent contamination of water supplies;

4. mitigate effects of equipment failure and power outages; and

5. prevent undue exposure of personnel to hazardous waste, such as protective clothing.

I. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with 6 MCAR § 4.9283 and documentation of the applicant's compliance with 6 MCAR § 4.9283 C.

J. A description of the traffic patterns and traffic control at the facility, including a drawing showing traffic lanes, location of traffic control signals, turns across traffic lanes, and location of stacking lanes; estimated traffic volume at the facility; types of vehicles expected to use the facility; and a description of access road surfacing and load bearing capacity.

K. An outline of both introductory and continuing training programs to be conducted by the applicant that are designed in accordance with 6 MCAR § 4.9282 to prepare persons to operate or maintain the hazardous waste facility in a safe manner and a description of how training will be designed in accordance with 6 MCAR § 4.9282 C. to meet actual job tasks.

L. A copy of the closure plan and, where applicable, the post-closure plan required by 6 MCAR §§ 4.9298 and 4.9300, including, if applicable, the specific information set forth in 6 MCAR §§ 4.9315 I.; 4.9316 F.; 4.9317 G.; 4.9318 G.; 4.9319 H.; 4.9320 G.; and 4.9321 H.

M. For existing disposal facilities, documentation that a notice has been placed in the deed or appropriate alternative instruments as required by 6 MCAR § 4.9303.

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N. The most recent closure cost estimate for the facility prepared in accordance with 6 MCAR § 4.9305 and a copy of the financial assurance mechanism adopted in compliance with 6 MCAR § 4.9306.

O. If applicable, the most recent post-closure cost estimate for the facility prepared in accordance with 6 MCAR § 4.9307 and a copy of the financial assurance mechanism adopted in compliance with 6 MCAR § 4.9308.

P. If applicable, the most recent corrective action cost estimate for the facility prepared in accordance with 6 MCAR § 4.9309 and a copy of the financial assurance mechanism adopted in compliance with 6 MCAR § 4.9310.

Q. If applicable, a copy of the insurance policy or other documentation showing compliance with the requirements of 6 MCAR § 4.9312. For a new facility, the application must contain documentation showing the amount of insurance that meets the specifications of 6 MCAR § 4.9312 A. and if applicable 6 MCAR § 4.9312 B., that the applicant plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. If the applicant desires to request a variance from the insurance requirements under 6 MCAR § 4.9312 C., the applicant shall include all information required by 6 MCAR § 4.9312 C. in support of this request.

R. A topographic map showing the facility and the area surrounding the facility for a distance of at least 1,000 feet, using a scale of either 2.5 centimeters equal to not more than 61 meters or one inch equal to not more than 200 feet. The map must include contours having intervals sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. The map must clearly show the following:

1. date the map was prepared;

2. map scale;

3. 100-year floodplain area;

4. surface waters, including intermittent streams;

5. wetlands;

6. shorelands;

7. zoning of surrounding lands and uses of surrounding lands, including residential, commercial, agricultural, and recreational;

8. wind rose, including windspeed and direction;

9. arrows indicating map directions;

10. legal boundaries of the hazardous waste facility site;

11. county, township, and municipal boundaries;

12. township, range, and section numbers;

13. boundaries of parks and wildlife refuges;

14. location of fences, gates, and other access control measures;

15. wells, both on-site and off-site;

16. all structures and buildings, and roads on the hazardous waste facility site, including those used in treatment, storage, or disposal operations; runoff control systems; access and internal roads; storm, sanitary, and process sewerage systems; loading and unloading areas; and fire control systems;

17. barriers for drainage or flood control; and

18. location of operational units within the hazardous waste facility site, areas where hazardous waste is, or will be, treated, stored, or disposed of, including equipment cleanup areas.

S. A statement as to whether the hazardous waste facility is located within a 100-year floodplain, an identification of the source of the data used to make this determination, and copy of the relevant Federal Insurance Administration flood map or other map used to make the determination, and any calculations done to make the determination. If the hazardous waste facility is located within a 100-year floodplain, the applicant shall furnish the following information:

1. any known special flooding factors, such as wave action, which must be considered in designing, constructing, operating, or maintaining the facility to prevent washout from a 100-year flood;

2. engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a result of a 100-year flood;

3. structural or other engineering studies showing the design of operational units, such as tanks or incinerators;

4. structural or other engineering studies showing the design of flood protection devices at the facility, such as floodwalls or dikes, and an explanation as to how these devices will prevent washout;

5. if flood protection devices are not proposed to be utilized at the facility, the applicant shall provide, in lieu of the information set forth in 2.-4., a detailed description of procedures which the applicant will follow to remove hazardous waste to safety before the facility is flooded, including:

a. the timing of the removal relative to flood levels, showing that removal can be completed before floodwaters reach the facility;

b. a description of the facility or facilities to which the hazardous waste will be moved and a demonstration that these facilities will be eligible to receive hazardous waste in accordance with these rules and 6 MCAR §§ 4.9280-4.9481;

c. the planned procedures, equipment, and personnel to be used and the methods that will be implemented to ensure that these resources will be available when needed; and

d. a description of the potential for accidental discharges of hazardous waste during the movement of such waste;

6. if the permit application relates to an existing facility and the applicant is not in compliance with 6 MCAR § 4.9285 A. at the time of the application, the applicant shall provide a plan showing how the facility will be brought into compliance with 6 MCAR § 4.9285 A. and a proposed schedule for the implementation of this plan.

T. Any additional geologic and other location information required to demonstrate compliance with 6 MCAR § 4.9285 B.

U. Any additional information that the director determines is relevant to a decision on permit issuance, including but not limited to plans, specifications, and waste analyses that are necessary to determine whether the facility will meet all applicable Minnesota and federal statutes and rules.

6 MCAR § 4.4208 Part B information requirements for facilities that store containers of hazardous waste.

Except as provided in 6 MCAR § 4.9315 A., if the applicant proposes to store containers of hazardous waste, the applicant shall furnish the following information in addition to the information required by 6 MCAR § 4.4207:

A. A description of the proposed area where the containers will be stored demonstrating that the area complies with 6 MCAR § 4.9315 F. At a minimum, the description must include:

1. basic design parameters, dimensions, and construction materials;

2. the manner in which the design promotes drainage or prevents contact between hazardous waste containers and standing liquids;

3. the capacity of the containment system in terms of the number and volume of containers to be stored;

4. provisions for preventing or managing run-on; and

5. the manner in which accumulated liquids can be removed to prevent overflow and can be analyzed to determine proper management of the removed liquids.

B. Information on the type of containers to be used and waste types stored in each type of container, including information on size, capacity, construction material of containers, compatibility of waste with the container, and the number and volume of containers to be stored.

C. An operations manual that describes operational and maintenance procedures to be used at the facility to ensure proper management of hazardous waste containers.

D. For storage areas for containers holding wastes that do not contain free liquids, a demonstration of compliance with 6 MCAR § 4.9315 F.4., including:

1. test procedures and results or other documentation or information to show that the wastes do not contain free liquids, and

2. a description of how the storage area is designed or operated to drain and remove liquids or how to contact between containers and standing liquids is prevented.

E. For any ignitable, reactive, or incompatible wastes, sketches, drawings, or data that demonstrate compliance with 6 MCAR § 4.9315 G. and H., if applicable.

F. For incompatible wastes, a description of the procedures to be used to ensure compliance with 6 MCAR §§ 4.9315 H. and 4.9283.

6 MCAR § 4.4209 Part B information requirements for storage or treatment tanks.

Except as otherwise provided in 6 MCAR § 4.9316 A., if the applicant proposes to use tanks to store or treat hazardous waste, the applicant shall furnish the information designated in A. and B. in addition to the information required by 6 MCAR § 4.4207:

A. A description of the design and operation procedures of the tank that demonstrate compliance with the requirements of 6 MCAR § 4.9316 B., C., G., and H. This description must include:

1. references to design standards or other available information used, or to be used, in the design and construction of the tank;

2. a description of the design specifications, including identification of construction materials and lining materials and any pertinent characteristics of these materials, such as corrosion or erosion resistance;

3. a description of design specifications and operational procedures that demonstrate compliance with 6 MCAR § 4.9316 B.3. for underground tanks;

4. tank dimensions, capacity, and shell thickness;

5. a diagram of piping, instrumentation, and process flow;

6. a description of feed systems, safety cutoff and bypass systems, and pressure controls, such as vents;

7. a description of waste types and volumes to be stored in each tank; and

8. a description of operational procedures that demonstrate compliance with the requirements of 6 MCAR §§ 4.9283 and 4.9316 G. and H. regarding the procedures for handling ignitable, reactive, or incompatible wastes.

B. A description of the system to be used to contain the tank and any spills or releases of hazardous waste from the tank, demonstrating compliance with 6 MCAR § 4.9316 E., including at a minimum the following:

1. basic design parameters, dimensions, and construction materials;

2. the manner in which the design promotes drainage or prevents contact between the tank and standing liquids;

3. the capacity of the system in terms of number and volume of tanks to be held;

4. provisions for preventing or managing run-on; and

5. the manner in which accumulated liquids can be removed to prevent overflow and can be analyzed to determine proper management of the removed liquids.

6 MCAR § 4.4210 Part B information requirements for surface impoundments.

Except as otherwise provided in 6 MCAR § 4.9317 A., if the applicant proposes to store, treat, or dispose of hazardous waste in surface impoundment facilities, the applicant shall submit detailed plans and specifications accompanied by an engineering report which collectively includes the following information in addition to the information required by 6 MCAR § 4.4207:

A. A list of the hazardous wastes placed or to be placed in each surface impoundment.

B. Geologic and hydrogeologic information necessary to demonstrate compliance with 6 MCAR § 4.9317 B.

C. Detailed plans and an engineering report that describes how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of 6 MCAR § 4.9317 C. This submission must address the following items as specified in 6 MCAR § 4.9317 C.: the double liner system and leak detection, collection, and removal system; prevention of overtopping; and structural integrity of dikes.

D. A description of how each surface impoundment, including the double liner, leak detection, collection and removal, and cover systems and appurtenances for control of overtopping, will be inspected in order to meet the requirements of 6 MCAR § 4.9317 E.1. and 2. This information must be included in the inspection plan submitted under 6 MCAR § 4.4207 E.

E. A certification by a registered professional engineer that attests to the structural integrity of each dike, as required under 6 MCAR § 4.9317 E.3. For new units, the owner or operator shall submit a statement by a qualified engineer that he or she will provide this certification upon completion of construction in accordance with the plans and specifications as required under 6 MCAR § 4.9317 E.3.

F. A certification by a registered professional engineer that attests that the uppermost liner and leak detection, collection, and removal system is intact and remains at design specifications, as required under 6 MCAR § 4.9317 E.4. For new units, the

owner or operator shall submit a statement by a qualified engineer that he or she will provide this certification upon completion of construction in accordance with the plans and specifications as required under 6 MCAR § 4.9317 E.4.

G. A description of the procedure to be used for removing a surface impoundment from service as required under 6 MCAR § 4.9317 F.2. and 3. This information must be included in the contingency plan submitted under 6 MCAR § 4.4207 G.

H. A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under 6 MCAR § 4.9317 G.1.a. For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report to demonstrate compliance with 6 MCAR § 4.9317 G.1.b. and 2. This information must be included in the closure plan and, where applicable, in the post-closure plan submitted under 6 MCAR § 4.4207 L.

I. If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of compliance with 6 MCAR § 4.9317 H.

J. If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of compliance with 6 MCAR § 4.9317 I.

6 MCAR § 4.4211 Part B information requirements for waste piles.

Except as otherwise provided by 6 MCAR § 4.9318 A., if the applicant proposes to store or treat hazardous waste in waste piles, the applicant shall furnish the information required by A.-K. in addition to the information required by 6 MCAR § 4.4207:

A. A list of hazardous wastes placed or to be placed in each waste pile.

B. If an exemption is sought to 6 MCAR §§ 4.9318 B.1. and 2. and C. and 4.9297 as provided by 6 MCAR § 4.9318 A., an explanation of compliance with 6 MCAR § 4.9318 A.1.-4.

C. Geologic and hydrogeologic information necessary to demonstrate compliance with 6 MCAR § 4.9318 B.

D. Detailed plans and an engineering report describing how the pile is or will be designed, constructed, operated, and maintained to meet the requirements of 6 MCAR § 4.9318 C. This submission must address the following items as specified in 6 MCAR § 4.9318 C.:

1. the liner system, leachate collection and removal system, and if applicable, the leak detection, collection, and removal system;

2. control of run-on;

3. control of run-off;

4. management of collection and holding units associated with run-on and run-off control systems;

5. control of wind dispersal of particulate matter, if applicable; and

6. treatment and disposal of collected runoff and leachate.

E. If an exemption from 6 MCAR § 4.9297 K.5. is sought as provided by 6 MCAR § 4.9318 D., detailed plans and an engineering report that describes compliance with 6 MCAR § 4.9318 D.1.

F. If an exemption from 6 MCAR § 4.9297 is sought as provided by 6 MCAR § 4.9318 E., detailed plans and an engineering report that describes compliance with 6 MCAR § 4.9318 E.1.

G. A description of how each waste pile, including the liner system and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of 6 MCAR § 4.9318 F. This information must be included in the inspection plan submitted under 6 MCAR § 4.4207 E. If an exemption is sought to 6 MCAR § 4.9297 under 6 MCAR § 4.9318 E., describe in the inspection plan how the inspection requirements comply with 6 MCAR § 4.9318 E.1.b.

H. If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals.

I. If ignitable or reactive wastes are to be placed in a waste pile, an explanation of compliance with the requirements of 6 MCAR § 4.9318 H.

J. If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of compliance with 6 MCAR § 4.9318 I.

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K. A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under 6 MCAR § 4.9318 G.1. For any waste not to be removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing compliance with 6 MCAR § 4.9310 G.1. and 2. This information must be included in the closure plan and, where applicable, the post-closure plan submitted under 6 MCAR § 4.4207 L.

6 MCAR § 4.4212 Part B information requirements for land treatment.

Except as otherwise provided by 6 MCAR § 4.9319 A., if the applicant proposes to use land treatment to dispose of hazardous waste, the applicant shall furnish the information designated in A.-H. in addition to the information required by 6 MCAR § 4.4207:

A. A description of plans to conduct a treatment demonstration as required under 6 MCAR § 4.9319 C. The description must include the following information:

1. the wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

2. the data sources to be used to make the demonstration, such as literature, laboratory data, field data, or operating data;

3. any specific laboratory or field test that will be conducted, including the type of test such as column leaching or degradation; materials and methods, including analytical procedures; expected time for completion; and characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, dimensions, climatic conditions, and operating practices; and

4. statistical methods for interpreting results.

B. A description of a land treatment program as required under 6 MCAR § 4.9319 B. This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items:

1. the wastes to be land treated;

2. design measures and operating practices necessary to maximize treatment in accordance with 6 MCAR § 4.9319 D.1. including waste application method and rate, measures to control soil pH, enhancement of microbial or chemical reactions, and control of moisture content;

3. provisions for unsaturated zone monitoring, including:

a. sampling equipment, procedures, and frequency;

b. procedures for selecting sampling locations;

c. analytical procedures;

d. chain of custody control;

e. procedures for establishing background values;

f. statistical methods for interpreting results; and

g. the justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for this selection in 6 MCAR § 4.9319 F.1.;

4. a list of hazardous constituents and their concentrations that are reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to 6 MCAR § 4.9284; and

5. the proposed dimensions of the treatment zone.

C. A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of 6 MCAR § 4.9319 D. This submission must address the following items:

1. control of run-on;

2. collection and control of run-off;

3. minimization of run-off of hazardous constituents from the treatment zone;

4. management of collection and holding facilities associated with run-on and run-off control systems;

5. treatment and disposal of run-off collected in the run-off control system;

6. control of wind dispersal; and

7. periodic inspection of the unit. This information must be included in the inspection plan submitted under 6 MCAR § 4.4207 E.

D. If food chain crops might be grown in or on the treatment zone of the land treatment unit, a description of how the demonstrations required under 6 MCAR § 4.9319 E. will be conducted including:

1. characteristics of the food chain crop for which the demonstrations will be made;
2. characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstrations;
3. procedures for crop growth, sample collection, sample analysis, and data evaluation;
4. characteristics of the comparison crop including the location and conditions under which it was or will be grown;
5. description of the soil core and soil pore liquid sampling and analysis procedures; and
6. statistical methods for interpreting results.

E. If food chain crops are to be grown after closure, a description of compliance with the requirements of 6 MCAR § 4.9319 E.

F. A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining this cover during the post-closure care period as required under 6 MCAR § 4.9319 H.1.h. and 3.b. This information must be included in the closure plan and, where applicable, in the post-closure care plan submitted under 6 MCAR § 4.4207 L.

G. If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of compliance with the requirements of 6 MCAR § 4.9319 I.

H. If incompatible wastes or incompatible wastes and materials will be placed in or on the same treatment zone, an explanation of compliance with 6 MCAR § 4.9319 J.

6 MCAR § 4.4213 Part B information requirements for landfills.

Except as otherwise provided by 6 MCAR § 4.9320 A., if the applicant proposes to dispose of hazardous waste in a landfill, the applicant shall furnish the information designated in A.-I. in addition to the information required by 6 MCAR § 4.4207:

A. A list of the hazardous wastes placed or to be placed in each landfill or landfill cell.

B. Geologic and hydrogeologic information necessary to demonstrate compliance with 6 MCAR § 4.9320 B.

C. Detailed plans and an engineering report describing how the landfill is or will be designed, constructed, operated, and maintained to comply with the requirements of 6 MCAR § 4.9320 C. This submission must address the following items as specified in 6 MCAR § 4.9320 C.:

1. the double liner system, leak detection, collection, and removal system, and leachate collection and removal system;
2. control of run-on;
3. control of run-off;
4. management of collection and holding facilities associated with run-on and run-off control systems;
5. control of wind dispersal of particulate matter, where applicable;
6. the phased development plan in accordance with the requirements of 6 MCAR § 4.9320 C.7.; and
7. treatment and disposal of collected run-off and leachate.

D. A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of 6 MCAR § 4.9320 E. This information must be included in the inspection plan submitted under 6 MCAR § 4.4207 E.

E. Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with 6 MCAR § 4.9320 G.1. and a description of how each landfill will be maintained and monitored after closure in accordance with 6 MCAR § 4.9320 G.2. This information must be included in the closure and post-closure plans submitted under 6 MCAR § 4.4207 L.

F. If ignitable or reactive wastes will be landfilled, an explanation of compliance with the requirements of 6 MCAR § 4.9320 H.

G. If incompatible wastes or incompatible wastes and materials will be landfilled, an explanation of compliance with 6 MCAR § 4.9320 I.

H. If liquid waste or waste containing free liquids is to be landfilled, an explanation of compliance with the requirements of 6 MCAR § 4.9320 J.

I. If containers of hazardous waste are to be landfilled, an explanation of compliance with the requirements of 6 MCAR § 4.9320 K. or L., as applicable.

6 MCAR § 4.4214 Part B information and special procedural requirements for thermal treatment facilities.

Except as provided in 6 MCAR § 4.9321 A., if the applicant proposes to treat or dispose of hazardous waste by using thermal treatment, the applicant shall fulfill the requirements of A., B., or C. as follows in addition to the information requirements of 6 MCAR § 4.4207, and the director shall fulfill the requirements of D. as follows:

A. If the applicant is seeking the exemption provided by 6 MCAR § 4.9321 A.2. or 3. relating to ignitable, corrosive, or reactive wastes, the applicant shall submit documentation showing that the waste includes none or insignificant concentrations of the hazardous constituents listed in 6 MCAR § 4.9137, and one of the following:

1. that the waste is listed as a hazardous waste in 6 MCAR § 4.9134 only because it is ignitable according to Hazard Code I, because it is corrosive according to Hazard Code C, or because it is both ignitable and corrosive;

2. that the waste is listed as a hazardous waste in 6 MCAR § 4.9134 only because it is reactive for characteristics other than those listed in 6 MCAR § 4.9132 E.1.d. and e., and will not be treated when other hazardous wastes are present in the combustion zone;

3. that the waste has been tested for the characteristics of hazardous waste set forth in 6 MCAR § 4.9132 and that its only hazardous characteristic is ignitability, corrosivity, or both; or

4. that the waste has been tested for the characteristics of hazardous waste set forth in 6 MCAR § 4.9132 and that its only hazardous characteristic is reactivity as described by 6 MCAR § 4.9132 E.1.a., b., c., f., g., or h., and will not be treated when other hazardous wastes are present in the combustion zone.

B. The applicant shall submit results of a trial burn conducted in accordance with 6 MCAR § 4.4221, including all the determinations required by 6 MCAR § 4.4221 F.

C. The applicant shall perform an analysis of each waste or mixture of waste to be treated by using the analytical techniques set forth in the Environmental Protection Agency document SW 846 as referenced in 6 MCAR § 4.9102, or by using techniques found by the director to be equivalent to them. The applicant shall submit all of the following information:

1. The results of each waste analysis performed, including:

a. the heat value of the waste in the form and composition in which it will be burned;

b. a description of the form and composition of the waste and, if applicable, viscosity of the waste;

c. any hazardous organic constituents listed in 6 MCAR § 4.9137 that are reasonably expected to be found in the waste;

d. all waste constituents listed in 6 MCAR § 4.9137 for which no analysis was done and an explanation of why this analysis was not done;

e. an approximate quantification of the hazardous constituents identified in the waste, within the precision specified by Environmental Protection Agency document SW 846;

f. a quantification of those hazardous constituents in the waste that may be designated as principal organic hazardous constituents based on data submitted from other trial or operational burns which demonstrated compliance with the performance standards set forth in 6 MCAR § 4.9321 D.; and

g. waste analysis data sufficient to allow the director to specify as permit principal organic hazardous constituents those constituents for which destruction and removal efficiencies will be required.

2. A detailed engineering description of the thermal treatment unit, including:

a. the manufacturer's name and model number;

b. the type of thermal treatment unit;

c. the linear dimensions of the thermal treatment unit, including the cross sectional area of the combustion chamber;

d. a description of the auxiliary fuel system, including type and feed rate;

e. the capacity of the prime mover;

f. a description of any automatic waste feed cutoff system;

g. nozzle and burner design;

h. construction materials; and

i. location and description of temperature, pressure, and flow indicating devices and control devices.

3. A detailed engineering description of air pollution control equipment and stack gas monitoring and pollution control monitoring systems, including:

a. manufacturer's name and model numbers;

b. physical dimensions; and

c. if applicable, specifications as to air flow, pressure drop, discharge, voltage, and water flow.

4. A description and comparison of the waste to be burned with waste for which data has been obtained from previous operational or trial burns, including the data listed in 1., and a comparison of the principal organic hazardous constituents found in the wastes being compared.

5. A description and comparison of the design and operating conditions of the proposed thermal treatment unit with the design and operating conditions of the thermal treatment unit used in the previous operational or trial burn. For the previous operational or trial burn, the applicant shall submit a description of the results of such previously conducted operational or trial burn, including:

a. sampling and analysis techniques used to calculate compliance with the performance standards set forth in 6 MCAR § 4.9321 D.;

b. monitoring methods and results for temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the precision and accuracy of this measurement;

c. identification of any hazardous combustion by-products detected; and

d. the certification and results required by 6 MCAR § 4.4221 G.

6. A description of the operating procedures proposed by the applicant, in sufficient detail to allow the director to determine whether the proposed thermal treatment unit will meet the performance and operating standards of 6 MCAR § 4.9321 D. and F., including:

a. expected carbon monoxide level in the stack exhaust gas;

b. waste feed rate;

c. combustion zone temperature;

d. indication of combustion gas velocity;

e. stack gas volumes, flow rate, and temperature;

f. computed residence time for waste in the combustion zone;

g. expected hydrochloric acid removal efficiency;

h. expected fugitive emissions and control procedures; and

i. proposed waste feed cutoff limits based on the identified significant operating parameters.

7. Estimated emissions, in tons per year, of particulates and sulfur dioxide.

8. Any other additional information that the director determines is relevant to a decision to permit issuance.

D. Review of Part B application for thermal treatment facilities.

If the applicant has proceeded under A. or B., the director shall review the Part B application for completeness in accordance with 6 MCAR § 4.4009.

If the applicant has proceeded under C., the director shall review the Part B application for completeness. The director shall find the application complete if the director finds:

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1. that the applicant has submitted all the information required by C.;

2. that the wastes compared under C. are substantially similar;

3. that the thermal treatment units compared under C. are substantially similar; and

4. that the data from other trial burns is adequate to enable the director to specify under 6 MCAR § 4.9321 F. the operating conditions that will ensure that the performance standards in 6 MCAR § 4.9321 D. will be met by the proposed thermal treatment unit.

6 MCAR § 4.4215 Additional Part B information requirements for surface impoundments, waste piles, land treatment units, and landfills.

A. Groundwater protection. The additional information designated in 1.-7. regarding protection of groundwater is required from owners or operators of hazardous waste surface impoundments, waste piles, land treatment units, and landfills, except as otherwise provided in 6 MCAR § 4.9297 A.2., and must be submitted with Part B of the permit application. The following information is in addition to the information requirements of 6 MCAR §§ 4.4207, 4.4210, 4.4211, 4.4212, and 4.4213:

1. A summary of the groundwater monitoring data obtained during the interim status period under 6 MCAR § 4.9397 and 4.9398, if applicable.

2. Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow directions and rates, and the basis for the identification, such as the information being obtained from hydrogeologic investigations of the facility area.

3. On the topographic map required under 6 MCAR § 4.4207 R., a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under 6 MCAR § 4.9297 H., the proposed location of groundwater monitoring wells as required under 6 MCAR § 4.9297 J. and, to the extent possible, the information required in 2.

4. A description of any plume of contamination that has entered the groundwater from a regulated unit at the time that the application is submitted that:

a. delineates the extent of the plume on the topographic map required under 6 MCAR § 4.4207 R.; and

b. identifies the concentration of each constituent listed in 6 MCAR § 4.9137 throughout the plume or identifies the maximum concentrations of each such constituent in the plume. The director may require this information on additional constituents if waste managed at the facility has met the characteristic of toxicity as defined in 6 MCAR § 4.9132 F.

5. Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of 6 MCAR § 4.9297 J.

6. Sufficient information, supporting data, and analyses to establish a detection monitoring program that meets the requirements of 6 MCAR § 4.9297 K., including:

a. a proposed list of monitoring parameters that complies with the requirements of 6 MCAR § 4.9297 K.1. or 5., whichever is applicable;

b. a proposed groundwater monitoring system;

c. background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

d. a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

7. Sufficient information, supporting data, and analyses to establish a compliance monitoring program that meets the requirements of 6 MCAR § 4.9297 L., including:

a. a description of the wastes previously handled at the facility, if applicable;

b. if the presence of hazardous constituents has been detected in the groundwater at the point of compliance at the time of permit application, a characterization of the contaminated groundwater including concentrations of hazardous constituents;

c. a list of hazardous constituents for which compliance monitoring will be undertaken in accordance with 6 MCAR § 4.9297 J. and L.;

d. proposed concentration limits for each hazardous constituent, based on the criteria set forth in 6 MCAR § 4.9297 F., including a justification for establishing alternate concentration limits in accordance with 6 MCAR § 4.9297 G.;

e. detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of 6 MCAR § 4.9297 J.; and

f. a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

B. Corrective action program. The owner or operator of a hazardous waste surface impoundment, waste pile, land treatment unit, or landfill shall submit to the director with Part B of the permit application sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of 6 MCAR § 4.9297 M. The submittal must demonstrate that corrective action is feasible if the groundwater protection standard is exceeded. To demonstrate compliance with 6 MCAR § 4.9297 M., the owner or operator shall address the following items:

1. a characterization of any contaminated groundwater, including concentrations of hazardous constituents;
2. the concentration limit for each hazardous constituent as set forth in 6 MCAR § 4.9297 F. and G.;
3. detailed plans and an engineering report describing the corrective action to be taken;
4. a description of how the groundwater monitoring program will assess the adequacy of the corrective action;
5. an estimate of the time which may be necessary to complete corrective action; and
6. an estimate of the cost for completing such corrective action.

6 MCAR § 4.4216 Interim status.

A. Qualifying for interim status. Except as provided in B., during the period after the submission of Part A of a hazardous waste facility permit application to the Environmental Protection Agency or to the director and prior to a final determination by the agency on the permit application, the owner or operator of an existing hazardous waste facility shall be considered to be in compliance with the requirement to obtain a permit if the director finds that the Environmental Protection Agency has granted the owner or operator interim status or if the director finds:

1. that the owner or operator has submitted a complete Part A of the hazardous waste facility permit application to the Environmental Protection Agency or to the director; and
2. that the owner or operator is in compliance with 6 MCAR §§ 4.9380-4.9422.

B. Failure to obtain interim status from EPA. Notwithstanding the provisions of A., an owner or operator of a hazardous waste facility who, prior to the effective date of 6 MCAR §§ 4.4201-4.4224, was required to apply for and obtain interim status from the Environmental Protection Agency but who failed to obtain this interim status is not eligible to obtain interim status from the agency for that facility.

C. Notification of failure to qualify for interim status. If the director determines that an owner or operator of an existing hazardous waste facility does not qualify for interim status under A., the director shall notify the owner or operator in writing of the failure to qualify for interim status and the reason for the failure. The notification must also include a statement that the owner or operator is subject to agency remedies for violation of agency rules, including the requirement of 6 MCAR § 4.4203 to obtain a permit.

D. Prohibitions. During the interim status period, an owner or operator shall not:

1. treat, store, or dispose of a hazardous waste not specified in Part A of the application;
2. employ processes not specified in Part A of the permit application;
3. exceed the design capacities specified in Part A of the application; or
4. alter a hazardous waste facility in a manner that amounts to a reconstruction of the facility. For the purpose of this rule, reconstruction occurs when the capital investment in the modification of the facility exceeds 50 percent of the capital cost of a comparable new hazardous waste facility.

E. Changes during interim status. An owner or operator who has interim status may conduct the following activities as prescribed:

1. The owner or operator may treat, store, or dispose of hazardous wastes not previously specified in Part A of the application if the owner or operator submits a revised Part A of the permit application prior to the commencement of the treatment, storage, or disposal.
2. The owner or operator may increase the design capacity of the facility if, prior to the implementation of the increase,

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the owner or operator submits a revised Part A of the permit application and an explanation of the need for the change, and if the director approves the increase in writing. The director shall approve the change if the director finds that there is a lack of available treatment, storage, or disposal capacity at other permitted hazardous waste facilities.

3. The owner or operator may add new processes or change the processes for the treatment, storage, or disposal of hazardous waste if, prior to the implementation of the addition or change, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the addition, and if the director approves the addition or change in writing. The director shall approve the addition or change if the director finds that:

a. the addition or change is necessary to prevent a threat to human health or the environment as a result of an emergency situation; or

b. the addition or change is necessary for the owner or operator to comply with federal, Minnesota, or local requirements, including the interim status standards set forth in 6 MCAR §§ 4.9380-4.9422.

4. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A of the permit application not later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the former owner or operator shall comply with the requirements of 6 MCAR §§ 4.9405-4.9413 that relate to financial requirements, until the new owner or operator has provided to the director a demonstration of compliance with 6 MCAR §§ 4.9405-4.9413. All other interim status duties must be transferred immediately upon the change of ownership or operational control of the facility. If the director finds that the new owner or operator has complied with 6 MCAR §§ 4.9405-4.9413, the director shall notify the former owner or operator in writing that the required demonstration by the new owner or operator has been made.

F. Compliance with interim status standards. During the interim status period the owner or operator shall comply with the interim status standards set forth in 6 MCAR §§ 4.9380-4.9422.

G. Termination of interim status. Interim status terminates automatically when the agency has taken final administrative action on the permit application. The following constitute justification for the director to commence proceedings to terminate interim status:

1. the director finds that the applicant has failed to furnish a full and complete Part B of the permit application within the time allowed by 6 MCAR § 4.4204 B.1.; or

2. the director finds that the owner or operator is in violation of any of the requirements of 6 MCAR §§ 4.9380-4.9422.

6 MCAR § 4.4217 Preliminary determination, draft permit, and public comments.

The provisions of 6 MCAR § 4.4010 and 4.4011 are applicable to the public notice of draft permits and preliminary determinations, the use of fact sheets concerning hazardous waste facilities, and public comments, except as specifically otherwise provided as follows:

A. The director shall prepare a fact sheet for each draft permit which relates to a hazardous waste facility that the director finds to be major based on a review of the potential impacts of the facility on the environment.

B. Notwithstanding the provisions of 6 MCAR § 4.4010 D., the public notice period concerning a complete permit application and the director's preliminary determination as to whether the permit should be issued or denied shall be 45 days.

C. In addition to the requirements of 6 MCAR § 4.4010, the director shall mail a copy of the public notice and, if a fact sheet is prepared, a copy of the fact sheet to the persons described in 1.-5. as follows. The director shall also mail a copy of the permit application and the draft permit to the applicant and to the persons described in 3., 4., and 5. as follows:

1. to the governing body of each county and city or township that has jurisdiction over the area where the facility is located or proposed to be located;

2. to each state agency that has authority under state law with respect to the construction or operation of the facility which is the subject of the permit application;

3. to all federal and state agencies that have jurisdiction over fish, shellfish, and wildlife resources in the area where the facility is located or proposed to be located;

4. to the state advisory council on historic preservation, to state historic preservation officers, and any other government official, including officials in other states, whom the director determines may have an interest in the permit application; and

5. to the Environmental Protection Agency and any other federal agency that has issued or is required to issue a permit in connection with the facility which is the subject of the permit application.

D. In addition to the requirements of 6 MCAR § 4.4010 E., the director shall publish notice of the permit application in a

major daily or weekly local newspaper that has general circulation in the geographical area in which the proposed hazardous waste facility is located and shall broadcast this notice over at least one local radio station.

E. Prior to final agency action on a permit application, the director or the agency shall respond to comments received during the public comment period or during any public informational meeting or contested case hearing held on the matter. This response shall state what action, if any, the director or the agency will take as a result of the comments. Responses to comments must be available to the public.

6 MCAR § 4.4218 Public informational meetings and contested case hearings.

A. Requests. A request for a public informational meeting or a contested case hearing on the application must be made in writing during the public comment period provided in 6 MCAR § 4.4217 B. and must contain the information specified in 6 MCAR § 4.4011 C. The agency shall grant or deny a request for a contested hearing in accordance with 6 MCAR § 4.4013. If the request is for a public informational meeting or if a request for a contested case hearing is denied, the agency shall hold a public informational meeting.

B. Preparation of public notice. If a contested case hearing or public informational meeting is to be held, the director shall prepare a public notice in accordance with 6 MCAR § 4.4012 or 4.4013. The public notice must continue for at least 30 days before the public informational meeting or contested case hearing.

C. Mailing of public notice. The director shall comply with the requirements of 6 MCAR § 4.4012 D. or 4.4013 D., whichever is applicable, and shall also mail a copy of the public notice to the following:

1. to the governing body of each county and city or township that has jurisdiction over the area where the facility is located or proposed to be located;

2. to each state agency that has authority under Minnesota laws with respect to the construction or operation of the facility which is the subject of the public informational meeting or contested case hearing;

3. to all federal and state agencies that have jurisdiction over fish, shellfish, and wildlife resources in the area where the facility is located or proposed to be located;

4. to the state advisory council on historic preservation, the state historic preservation officers, and any other government official, including officials in other states, whom the director determines may have an interest in the permit application;

5. to the Environmental Protection Agency and any other federal agency that has issued or is required to issue a permit in connection with the facility which is the subject of the public informational meeting or contested case hearing; and

6. to all persons who have registered their names on the mailing list established under 6 MCAR § 4.4020.

D. Distribution of public notice. The director shall comply with the requirements of 6 MCAR § 4.4012 D. or 4.4013 D., whichever is applicable, and shall also publish notice of the public informational meeting or contested case hearing in a daily or weekly major newspaper that has general circulation in the geographical area in which the facility is located or proposed to be located and shall broadcast this notice over at least one local radio station.

6 MCAR § 4.4219 Final determination.

A. In general. Except as provided in B. or C., the agency shall issue all hazardous waste facility permits in accordance with 6 MCAR § 4.4014.

B. Draft permit for new hazardous waste thermal treatment facility. For a draft permit that concerns a new hazardous waste thermal treatment facility prepared under 6 MCAR § 4.4221, the agency shall issue a hazardous waste facility permit authorizing construction and operation of the proposed facility, requiring the permittee to conduct trial burns, and requiring submission of the results of the trial burns if the agency finds that the proposed facility is likely to qualify for a permit authorizing the operation of the facility under appropriate operating conditions as required by 6 MCAR § 4.9321 F. and as necessary for the permittee to comply with the performance standards set forth in 6 MCAR § 4.9321 D. This permit is subject to modification of the operating conditions to reflect the results of the trial burn and to ensure compliance with the standards set forth in 6 MCAR § 4.9321.

C. Draft short-term demonstration or two-phase permit for land treatment facility. For a draft short-term demonstration or

two-phase permit concerning a new hazardous waste land treatment facility prepared under 6 MCAR § 4.4222, the agency shall issue a hazardous waste facility permit authorizing the treatment demonstration and requiring submission of the results of the demonstration if the agency finds that the proposed facility is likely to qualify for a permit authorizing the operation of the facility under appropriate operating conditions as required by 6 MCAR § 4.9319 D. and as necessary for the permittee to comply with the groundwater protection standards of 6 MCAR § 4.9297 and the performance standards set forth in 6 MCAR § 4.9319. This two-phase permit is subject to modification of the operating conditions to reflect the results of the treatment demonstration and to ensure compliance with the standards set forth in 6 MCAR §§ 4.9297 and 4.9319.

6 MCAR § 4.4220 Emergency permits.

A. Issuance. Notwithstanding any other provision of 6 MCAR §§ 4.4201-4.4224 or 4.4001-4.4021, if the director finds that there is an imminent and substantial danger to human health or the environment, the director may issue a temporary emergency permit to the owner or operator of a facility to allow treatment, storage, or disposal of a hazardous waste which the owner or operator is not otherwise permitted to treat, store, or dispose. This permit is contingent upon the approval of the agency.

B. Oral or written permission. The emergency permit must be issued in writing, except that emergency permission to treat, store, or dispose of the hazardous waste may be given orally if circumstances warrant. If oral permission is given, the director shall, within five days after the date of giving of permission, issue a written permit.

C. Duration. The emergency permit may not exceed 90 days in duration.

D. Specifications. The emergency permit must clearly specify the hazardous waste to be received and the manner and location of its treatment, storage, or disposal.

E. Termination. The emergency permit is subject to termination at any time if the director determines that termination is appropriate to protect human health or the environment.

F. Requirements. The emergency permit must incorporate, to the extent possible under the circumstances, all applicable requirements of 6 MCAR §§ 4.4201-4.4224, 4.9281-4.9322, and 4.9480-4.9481.

G. Notification to public. At the time the director issues an emergency permit the director shall also notify the public of the emergency issuance of the permit. This notification must include:

1. the address and telephone number of the main agency office and the applicable regional office and the name of a person who may be contacted for additional information;

2. the name and location of the permitted hazardous waste facility;

3. a brief description of the wastes involved;

4. a brief description of the action authorized and the reasons for authorizing it; and

5. the duration of the emergency permit.

H. Agency approval. The director shall present the permit to the agency for approval at its next meeting. If no final action is taken by the agency at this meeting, the permit continues in effect until its expiration date or until the agency takes final action, whichever occurs first.

6 MCAR § 4.4221 Hazardous waste thermal treatment facility permits.

A. Phase one requirements. In the permit for a new hazardous waste thermal treatment facility, for the purpose of determining operational readiness following completion of physical construction, the director shall establish permit conditions, including but not limited to, allowable waste feeds and operating conditions. These permit conditions are effective for the minimum time required to bring the thermal treatment facility to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to 6 MCAR § 4.4224 D.8.

Applicants shall submit to the director a statement, with Part B of the permit application, that suggests the conditions necessary to operate in compliance with the performance standards of 6 MCAR § 4.9321 D. during this period. This statement must include restrictions on waste constituents, waste feed rates, and the operating parameters identified in 6 MCAR § 4.9321 F.

The director shall review this statement and other relevant information submitted with Part B of the permit application, and shall specify requirements for this period that are sufficient to meet the performance standards of 6 MCAR § 4.9321 D.

B. Phase two requirements. In the permit for a new hazardous waste thermal treatment facility, for the purposes of determining the feasibility of compliance with the performance standards of 6 MCAR § 4.9321 D. and of determining the adequate operating conditions under 6 MCAR § 4.9321 F., the director shall establish permit conditions to be effective during the trial burn.

C. Trial burn plan. An applicant shall submit to the director a trial burn plan with Part B of the permit application. The trial burn plan must include the following information:

1. the results of an analysis of each waste or mixture of wastes to be burned, that uses the analytical techniques set forth in Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods, publication number SW 846, 1980, of the Office of Solid Waste, United States Environmental Protection Agency or that uses analytical techniques found by the director to be equivalent to them. This analysis must include:

a. the heat value of the waste in the form and composition in which it will be burned;

b. a description of the physical form of the waste and, if applicable, viscosity of the waste;

c. an identification of any hazardous organic constituents listed in 6 MCAR § 4.9137 that are reasonably expected to be found in the waste;

d. an identification of all waste constituents listed in 6 MCAR § 4.9137 for which no analysis was done and an explanation of why this analysis was not done; and

e. an approximate quantification of the hazardous constituents identified in the waste, within the precision specified by Environmental Protection Agency document SW 846;

2. a detailed engineering description of the thermal treatment unit for which the permit is sought, including:

a. manufacturer's name and model number;

b. type of thermal treatment unit;

c. linear dimensions of the thermal treatment unit, including the cross sectional area of the combustion chamber;

d. a description of the auxiliary fuel system, including type and feed rate;

e. the capacity of the prime mover;

f. a description of any automatic waste feed cutoff system;

g. nozzle and burner design;

h. construction materials; and

i. location and description of temperature, pressure, and flow indicating devices and control devices;

3. a detailed engineering description of air pollution control equipment and stack gas monitoring equipment and pollution control monitoring systems, including:

a. manufacturer's name and model numbers;

b. physical dimensions; and

c. where applicable, control specifications as to air flow, pressure drop, discharge, voltage requirements, and water flow;

4. a detailed description of sampling and monitoring procedures, including sampling and monitoring locations, the equipment to be used, frequency of sampling and monitoring, and planned procedures for sample analysis;

5. a detailed test schedule for each waste for which the trial burn is planned, including date, duration, quantity of waste to be burned, and other factors relevant to the agency's decision under E.;

6. a detailed test protocol, including, for each waste identified, the ranges of temperatures, waste feed rate, combusion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the thermal treatment unit;

7. a description of, and planned operating conditions for, emission control equipment that will be used;

8. procedures for rapidly stopping waste feed, for shutting down the thermal treatment unit, and for controlling emissions in the event of an equipment malfunction; and

9. other information as the director finds is reasonably necessary to determine whether to approve the trial burn plan in light of the purposes of B. and the criteria in E.

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D. Review of trial burn plan. The director shall review the trial burn plan for completeness. If the director finds that the trial burn plan is incomplete or otherwise deficient, the director shall promptly advise the owner or operator of the incompleteness or deficiency. The director shall suspend further processing of the trial burn plan until the owner or operator has supplied the necessary information or otherwise corrected the deficiency.

The director shall designate as trial principal organic hazardous constituents those constituents for which destruction and removal efficiencies must be calculated during the trial burn. The director's designations shall be based on the waste analysis data submitted by the owner or operator, the director's estimate of the difficulty of thermally treating the hazardous constituents to be burned, and the concentration or mass of hazardous constituents in the proposed waste feed. In addition, if the waste analysis indicates that the waste feed contains wastes that are listed in 6 MCAR § 4.9134, then in making principal organic hazardous constituents determinations the director shall consider the hazardous organic waste constituents identified in 6 MCAR § 4.9136 that formed the basis of this listing.

E. Approval of trial burn plan. The agency shall approve a trial burn plan if the agency finds that:

1. the trial burn is likely to determine whether the thermal treatment performance standards in 6 MCAR § 4.9321 D. can be met by the proposed thermal treatment facility;

2. the trial burn itself will not present an imminent hazard to human health or the environment;

3. the trial burn will aid the director in determining operating requirements to be specified under 6 MCAR § 4.9321 F.; and

4. the information sought in 1. and 3. cannot be developed through other means.

F. Conduct of trial burn. The owner or operator shall conduct the trial burn in accordance with the trial burn plan approved by the agency. The owner or operator shall perform the following analyses or make the following determinations:

1. a quantitative analysis of the trial principal organic hazardous constituents in the waste feed to the thermal treatment unit;

2. a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial principal organic hazardous constituents, oxygen, and hydrogen chloride;

3. a quantitative analysis of the scrubber water, if any, ash residues, and other residues, for the purpose of estimating the fate of the trial principal organic hazardous constituents;

4. a computation of destruction and removal efficiency, in accordance with the formula specified in 6 MCAR § 4.9321 D.1.;

5. if the hydrogen chloride emission rate exceeds 1.8 kilograms of hydrogen chloride per hour (four pounds per hour), a computation of hydrogen chloride removal efficiency, in accordance with 6 MCAR § 4.9321 D.2.;

6. a computation of particulate emissions, in accordance with 6 MCAR § 4.9321 D.3.;

7. an identification of sources of fugitive emissions and the means of control thereof;

8. a measurement of average, maximum, and minimum temperatures of the thermal treatment zone and combustion gas velocity;

9. a continuous measurement of carbon monoxide in the exhaust gas; and

10. other analyses or determinations as the agency may specify as necessary to ensure that the trial burn will determine compliance with the performance standard in 6 MCAR § 4.9321 D. and to establish the operating conditions required by 6 MCAR § 4.9321 F. as necessary to meet this performance standard.

G. Submission of certification, results, and data. The owner or operator shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the analyses and determinations required by F. along with all underlying data of the results. The owner or operator shall make these submissions within 90 days after the completion of the trial burn, or later if approved by the director.

H. Authorized signature. All submissions to the director required by this rule must be signed in accordance with 6 MCAR § 4.4006 and must contain the certification required by 6 MCAR § 4.4205.

I. Phase three requirements. To allow a new hazardous waste thermal treatment facility to operate after completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the director shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of 6 MCAR § 4.9321 F. The director may prohibit the burning of hazardous wastes in the facility during this period. These permit conditions are effective for the minimum time required to complete sample analysis, data computation, and submission of the trial burn results by the applicant, and modification of the facility permit by the agency.

An applicant shall submit to the director a statement with Part B of the permit application that identifies the conditions necessary to operate in compliance with the performance standards of 6 MCAR § 4.9321 D. during this period. This statement must include restrictions on waste constituents, waste feed rates, and the operating parameters identified in 6 MCAR § 4.9321 F.

The director shall review this statement and other relevant information submitted with part B of the permit application and shall specify requirements for this period most likely to meet the performance standards of 6 MCAR § 4.9321 D.

J. Phase four requirements. To allow a new hazardous waste thermal treatment facility to operate after the director reviews the results of the trial burn conducted under phase two, based on the results of the trial burn, the director shall establish operating requirements in the final permit according to 6 MCAR § 4.9321. A permit modification, if necessary, must be completed according to 6 MCAR § 4.4224 B. or D. and a permit revocation, if necessary, must be completed according to 6 MCAR § 4.4018 C.

K. Requirements for existing hazardous waste thermal treatment facilities. To determine the feasibility of compliance with the performance standards of 6 MCAR § 4.9321 D. and to determine adequate operating conditions under 6 MCAR § 4.9321 F., the applicant for a permit for an existing hazardous waste thermal treatment facility may prepare and submit to the director a trial burn plan and perform a trial burn in accordance with C.-H. An applicant who submits trial burn plans and who receives approval before submission of a permit application shall complete the trial burn and submit the results specified in F. with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the director to establish a later date for the submission of the Part B application or trial burn results. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn must be conducted and the results must be submitted within a time period to be specified by the director.

6 MCAR § 4.4222 Land treatment demonstration permits.

A. Letters of approval. A person who desires to conduct controlled laboratory demonstrations of hazardous waste land treatment for the purpose of collecting preliminary data shall request a letter of approval from the agency.

The agency shall issue a letter of approval if the demonstration will be conducted under supervised conditions in a closed system capable of providing adequate protection to human health and the environment, and if the data obtained will not be used as the only basis for the issuance of a facility permit. The letter of approval must specify the general conditions for conducting demonstrations, the duration of approval, and the specific waste types.

The letter of approval may only provide approval for controlled laboratory demonstrations of hazardous waste treatment and does not provide exemptions from the hazardous waste management and disposal requirements of 6 MCAR §§ 4.9100-4.9560. Materials resulting from the demonstration that meet the criteria of 6 MCAR §§ 4.9128-4.9137 must be managed as hazardous waste.

B. Permit requirements. An owner or operator who desires to meet the treatment demonstration requirements of 6 MCAR § 4.9319 C. and E. shall request from the agency a treatment demonstration permit. The permit may be issued either as a short-term permit covering only the demonstration, or as a two-phase facility permit covering the demonstration and the design, construction, operation, and maintenance of the land treatment unit.

No short-term permit may be issued unless the agency finds that a completed Part B application is submitted that provides sufficient information upon which to base demonstration conditions, and that sufficient evidence exists upon which to base demonstration requirements.

No two-phase facility permit may be issued unless the agency finds that a completed Part B application is submitted that provides sufficient information upon which to base demonstration and facility conditions, and that sufficient evidence is provided to indicate that the waste material can be successfully land treated.

C. Permit applications. A completed Part B application must be submitted to obtain a short-term demonstration permit unless the director has issued a written exemption from one or more of the data requirements.

D. Two-phase permits. If the agency issues a two-phase permit, the permit must establish, as requirements in the first phase of the facility permit, conditions for conducting the demonstration. These permit conditions must include design and operating parameters, including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, effect on food chain crops, monitoring procedures, post-demonstration cleanup activities, and other conditions that the agency finds may be necessary under 6 MCAR § 4.9319 C. and E. The agency shall include conditions in the

second phase of the facility permit to meet all 6 MCAR § 4.9319 requirements pertaining to unit design, construction, operation, and maintenance. The agency shall establish these conditions in the second phase of the permit based upon the information contained in the Part B application.

The first phase of the permit is effective upon the date of permit issuance.

The second phase of the permit is effective as provided in F.

E. Submission of certification, determinations, and data. The owner or operator who has been issued two-phase permit and who has completed the treatment demonstration shall submit to the director a certification, signed by a person authorized to sign a permit application or a report under 6 MCAR § 4.4006, that the demonstration has been carried out in accordance with the conditions specified in phase one of the permit for conducting these demonstrations. Within 90 days of completion of the demonstration the owner or operator shall also submit the data collected during the demonstration and a determination as to whether compliance with 6 MCAR § 4.9319 C. and E. was achieved.

F. Permit modification. If the agency determines that the results of the demonstration meet the requirements of 6 MCAR § 4.9319 C. and E., the agency shall modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with 6 MCAR § 4.9319, based upon the results of the demonstration.

If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made in accordance with 6 MCAR § 4.4224 D., the agency shall give notice of its final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit becomes effective upon the date of notice of final decision.

If modifications under 6 MCAR § 4.4017 B. are necessary, the second phase of the permit becomes effective only after those modifications have been made.

All modifications must be conducted according to 6 MCAR § 4.4224. The second phase of the permit does not go into effect until after the requirements of 6 MCAR § 4.4224 are met and the agency has given notice of final decision.

6 MCAR § 4.4223 Terms and conditions of hazardous waste facility permits.

A. Term of permit. A hazardous waste facility permit is effective for a fixed term not to exceed five years.

B. Additional general conditions. Each draft and final hazardous waste facility permit issued by the agency must contain all of the general conditions in 6 MCAR § 4.4015 C. except the condition in 6 MCAR § 4.4015 C.11. In addition, each permit must contain the following general conditions:

1. The permittee need not comply with the conditions of this permit to the extent and for the duration this noncompliance is authorized in an emergency permit in accordance with 6 MCAR § 4.4220.

2. The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations for the active life of the facilities and, for disposal facilities, for the post-closure care period. The permittee shall also maintain an operating record in accordance with 6 MCAR § 4.9294 until closure of the facility.

3. The permittee shall not commence treatment, storage, or disposal of hazardous waste in a new hazardous waste facility or in a modified portion of an existing hazardous waste facility until:

a. The permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and by a registered professional engineer stating that the facility has been constructed or modified in compliance with the conditions of the permit; and

b. the director has inspected the new or modified facility and has provided the permittee with a letter stating that, based on information available to the director, the facility appears to have been constructed in compliance with the conditions of the permit.

4. If the permittee discovers a release or discharge of hazardous waste which could be a danger to public drinking water supplies or threaten human health or the environment or discovers a fire or explosion at a hazardous waste facility which could threaten human health or the environment outside the facility, the permittee shall, within 24 hours of the discovery of the incident, orally notify the director of the incident and its description. Within 15 days after the incident the permittee shall submit a written report describing the incident. The oral and written descriptions of the incident shall include at a minimum:

a. the name, address, and telephone number of the owner or operator;

b. the name, address, and telephone number of the facility;

c. the date, time, and type of incident;

d. the name and quantity of materials involved;

e. the extent of injuries, if any;

f. an assessment of actual or potential hazards to the environment and human health outside the facility; and

g. the estimated quantity and disposition of recovered hazardous materials.

5. In addition to the reports required by 6 MCAR § 4.4015, the permittee shall submit the following reports in accordance with 6 MCAR §§ 4.9280-4.9322:

a. If the permittee discovers a significant discrepancy in a manifest, the permittee shall attempt to reconcile the discrepancy. If the permittee is unable to reconcile the discrepancy within ten days, the permittee shall submit to the director a letter report and a copy of the manifest in accordance with 6 MCAR § 4.9293 C.1.

b. If a shipment of hazardous waste is delivered to the permittee without the required manifest or shipping paper, the permittee shall attempt to reconcile the discrepancy. If the permittee is unable to reconcile the discrepancy, the permittee shall, prior to the acceptance of the waste, notify the director of the delivery of the waste and shall submit to the director a follow-up report within ten days of receipt of the waste, in accordance with 6 MCAR § 4.9296 C.

c. In accordance with 6 MCAR § 4.9296 B., the permittee shall submit an annual report concerning the activities at the facility during the previous calendar year.

d. If the permittee receives hazardous waste which the permittee is not authorized by the permit to manage, the permittee shall immediately notify the director of the receipt of the waste in accordance with 6 MCAR § 4.9293 C.3.

6. The permittee may allow an authorized representative to sign reports submitted in accordance with the requirements of this permit if:

a. the authorization is made in writing by persons identified in 6 MCAR § 4.4006 except that for a corporation the written authorization must be made by a principal executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a person of equivalent responsibility; and

c. the written authorization is submitted to the director.

If authorization is no longer accurate, a new authorization must be submitted to the director prior to or together with any reports or permit applications to be signed by an authorized representative.

6 MCAR § 4.4224 Modification of permits; revocation and reissuance of permits.

A. Scope. In addition to the provisions of 6 MCAR §§ 4.4017, 4.4018, and 4.4019, the provisions of B., C., D., and E. are applicable to the modification, revocation, and reissuance of hazardous waste facility permits.

B. Additional justification for modification of permits or revocation and reissuance of permits. In addition to the justifications listed in 6 MCAR § 4.4017, the following constitute justification for the director to commence proceedings to modify a permit or to revoke and reissue a permit:

1. the director discovers that modification of a closure plan is required by 6 MCAR § 4.9298 D. or 4.9300 C.;

2. the permittee files a request for extension of the 90- or 180-day periods set forth in 6 MCAR § 4.9299;

3. the director receives notification of expected closure under 6 MCAR § 4.9298;

4. the director finds that modification of the 30-year post-closure period is necessary as provided in 6 MCAR § 4.9301 A.;

5. the director finds that continuation of security requirements is necessary as provided by 6 MCAR § 4.9301 B.;

6. the director finds that the permittee has made the demonstration required by 6 MCAR § 4.9301 C. such that a disturbance of the integrity of the containment system should be authorized;

7. the permittee files a request under 6 MCAR § 4.9312 C. for a variance from the required level of financial responsibility;

8. the director demonstrates under 6 MCAR § 4.9312 D. that an upward adjustment of the level of financial responsibility is required;

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9. the director finds that the corrective action program specified in the permit under 6 MCAR § 4.9297 M. has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time;

10. to include a detection monitoring program that meets the requirements of 6 MCAR § 4.9297 K., when the owner or operator has been conducting a compliance monitoring program under 6 MCAR § 4.9297 L. or a corrective action program under 6 MCAR § 4.9297 M., and the compliance period ends before the end of the post-closure care period for the unit;

11. a permit requires a compliance monitoring program under 6 MCAR § 4.9297 L., but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard;

12. to include conditions applicable to units at a facility that were not previously included in the facility's permit; or

13. a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

C. Additional justification to commence revocation without reissuance of permit. In addition to the justifications listed in 6 MCAR § 4.4018, a failure to submit an annual facility operator's fee within 180 days of the due date, as specified in the agency's hazardous waste fee rules, constitutes justification for the director to commence proceedings to revoke a permit without reissuance.

D. Minor modifications of permits. In addition to the corrections or allowances listed in 6 MCAR § 4.4019 B. and C., if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in 6 MCAR §§ 4.4010-4.4019:

1. to change the list of facility emergency coordinators in the permit's contingency plan;

2. to change the list of equipment in the permit's contingency plan;

3. to change estimates of maximum inventory under 6 MCAR § 4.9298 C.2.;

4. to change the expected year of closure under 6 MCAR § 4.9298 C.4.;

5. to change schedules for final closure under 6 MCAR § 4.9298 C.4.;

6. to change the ranges of the operating requirements set in the permit to reflect the results of the trial burn provided that the change is minor;

7. to change the operating requirements set in the permit for conducting a trial burn provided that the change is minor;

8. to grant one extension of the time period for determining operational readiness of a thermal treatment unit following completion of construction, for up to 720 hours operating time for treatment of hazardous wastes;

9. to change the treatment program requirements for land treatment units under 6 MCAR § 4.9319 B. to improve treatment of hazardous constituents, provided that the change is minor;

10. to change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with 6 MCAR § 4.4222 provided that the change is minor; and

11. to allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 6 MCAR § 4.9319 C. and E.3., provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.

E. Consideration of facility siting. In making its final determination on a permit modification or permit revocation and reissuance, the agency shall not consider the suitability of the facility location unless new information indicates that a threat to human health or the environment exists which was unknown at the time the permit was issued.

Repealer. Pollution Control Agency rules 6 MCAR §§ 4.9006 and 4.9007 are repealed.

Rules as Proposed (all new materials)

6 MCAR § 4.4301 Scope.

Rules 6 MCAR §§ 4.4301-4.4305 apply to the issuance of air emission facility permits and supplement the agency permit rules in 6 MCAR §§ 4.4001-4.4021.

6 MCAR § 4.4302 Definitions.

The definitions in 6 MCAR §§ 4.4001 and in 4.0001-4.0041 (APC 1 to 41) apply to the terms in 6 MCAR §§ 4.4301-4.4305.

6 MCAR § 4.4303 Permit requirement.

A. Permit required. Except as provided in B., no person may construct, modify, reconstruct, or operate an emission facility or control equipment without obtaining an air emission facility permit from the agency.

B. Exemptions. A person who constructs, modifies, reconstructs, or operates an emission facility that meets one or more of the following exclusions need not obtain an air emission facility permit from the agency:

1. a total emission facility with potential emissions of a single criteria pollutant of less than 25 tons per year, except:
   a. a facility subject to Minnesota Rule APC 9, Control of Odors in the Ambient Air;
   b. a facility subject to federal new source performance standards; and
   c. a total emission facility with potential lead emissions of at least 1,000 pounds per year;
2. a fuel burning facility with heat inputs less than the following:
   a. natural gas, 50 million BTU/hr.;
   b. distillate oil, 10 million BTU/hr.;
   c. wood alone, 5 million BTU/hr.;
   d. residual oil, 5 million BTU/hr.; and
   e. coal, coke, and other solid fuels, 1 million BTU/hr.;
3. a sand and gravel operation that produces less than 150,000 tons of product per year;
4. a pressurized storage tank for anhydrous ammonia, liquid petroleum gas (LPG), liquid natural gas (LNG), or natural gas;
5. a facility that uses less than 10,000 gallons of solvent borne coating per year;
6. a storage tank for petroleum liquid with a capacity of less than 40,000 gallons;
7. a dry bulk agricultural commodity facility with an annual commodity throughput of less than 45,000 tons;
8. an incinerator with a maximum refuse burning capacity of less than 1,000 pounds per hour, unless thermally treating hazardous waste; and
9. a concrete batching facility that produces less than 200,000 cubic yards of concrete per year.

6 MCAR § 4.4304 Permit application.

In addition to the information required by 6 MCAR § 4.4005, a person who requests an emission facility permit shall submit the following information to the director:

A. the characteristics of the exhaust gas stream, before and after the emission control equipment, including emission rates, concentrations, volumetric flow rates, and temperature;

B. the physical characteristics of particulate emissions;

C. the type and design specifications of the control equipment; and

D. the location and elevation of the emission point and the relation of the emission point to nearby structures, window openings, and other information necessary to appraise the possible effects of the exhaust gas stream.

6 MCAR § 4.4305 Special conditions for air emission facility permits.

In addition to the special conditions in 6 MCAR § 4.4015 B. and if applicable to the circumstances, an air emission facility permit may contain special conditions including but not limited to the following:

A. standards of performance for air polluntants from an emission facility;

B. operational requirements for situations where a standard of performance is not applicable or the operational requirements are necessary to achieve compliance with a standard of performance;

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C. testing and reporting requirements to ensure compliance with standards of performance; and

D. notification and reporting requirements for shutdowns and breakdowns.

Repealer. APC 3 of the Pollution Control Agency rules is repealed.

Rules as Proposed

6 MCAR § 4.4311 Scope.

Rules 6 MCAR §§ 4.4001-4.4021 and 4.4311-4.4321 govern application procedures for and the issuance and conditions of indirect source permits. Rules 6 MCAR §§ 4.3001-4.3011; 4.4001-4.4021 and 4.4311-4.4321 shall be construed to complement each other.

~~APC 19 Permits for Indirect Sources.~~

~~(a)~~ 6 MCAR § 4.4312 Definitions.

A. Statutes and other rules. The definitions in Minnesota Statutes, section 116.06; 6 MCAR § 4.4001; and APC 2 apply to terms in 6 MCAR §§ 4.4311-4.4321 unless the terms are defined in C.-H.

B. Scope. As used in 6 MCAR §§ 4.4311-4.4321, the following terms have the meanings given them.

~~(1)~~ C. Indirect source. "Indirect source"÷ means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a state standard. ~~Such~~ Indirect sources include, but are not limited to:

~~(aa)~~ 1. highways and roads~~.~~;

~~(bb)~~ 2. parking facilities~~.~~;

~~(cc)~~ 3. retail, commercial, and industrial facilities~~.~~;

~~(dd)~~ 4. recreation, amusement, sports, and entertainment facilities~~.~~;

~~(ee)~~ 5. airports~~.~~;

~~(ff)~~ 6. office and government buildings~~.~~;

~~(gg)~~ 7. apartment and condominium buildings~~.~~; and

~~(hh)~~ 8. education facilities.

~~(2)~~ D. Associated parking area. "Associated parking area"÷ means a parking facility or facilities owned or operated in conjunction with an indirect source.

~~(3)~~ E. To commence construction. "To commence construction"÷ means to engage in a continuous program of construction including site clearance, grading, dredging, or land filling specifically designed for an indirect source in preparation for the fabrication, erection, or installation of the building components of the indirect source. For the purpose of this paragraph, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be considered in determining whether a construction or modification program is continuous.

~~(4)~~ F. To commence modification. "To commence modification"÷ means to engage in a continuous program of modification, including site clearance, grading, dredging, or land filling in preparation for a specific modification of the indirect source.

~~(5)~~ G. Highway project. "Highway project"÷ means the development proposal of a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program.

~~(6)~~ H. Metropolitan area. "Metropolitan area"÷ means the city limits of Duluth and all contiguous incorporated areas in Minnesota; the city limits of Moorhead and all contiguous incorporated areas in Minnesota; the city limits of St. Cloud and all contiguous incorporated areas; Rochester and all area within the boundaries of Olmsted County; and the Twin Cities metropolitan area including Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

~~(b)~~ 6 MCAR § 4.4313 Permit ~~Required~~ requirement.

Except as provided in 6 MCAR §§ 4.4314 and 4.4315, no person ~~shall~~ may cause or allow the construction or modification of any of the ~~following~~ indirect sources listed in A.-D. without first obtaining a permit ~~to do so~~ from the agency~~÷~~. If an indirect source is constructed or modified in increments that individually do not require a permit and that are not part of a program of construction or modification in planned incremental phases for which a permit has been issued by the agency, the increments

commenced after December 31, 1974, must be added together to determine the applicability of the requirement to obtain a permit.

A. Parking facilities:

~~(1) any~~ 1. a new parking facility, or other new indirect source with an associated parking area, which has a new parking capacity of 2,000 cars or more~~.~~; or

~~(2) Any~~ 2. a modified parking facility, or ~~any~~ a modification or an associated parking area, which increases parking capacity by 1,000 cars or more, or which increases total parking capacity to 2,000 cars or more.

B. Highways:

~~(3) Any~~ 1. a new highway project wholly within or partially within a metropolitan area with an anticipated average annual daily traffic volume of 20,000 or more vehicles per day within ~~10~~ ten years of the completion of construction~~.~~; or

~~(4) Any~~ 2. a modified highway project which will increase average annual daily traffic volume by 10,000 or more vehicles per day within ~~10~~ ten years after completion of the modification.

C. Airports:

~~(5) Any~~ a new or modified airport construction which will result in the generation of more than 1,000,000 passengers per year on regularly scheduled air carriers and commercial charter flights within ~~10~~ ten years after completion of construction.

~~(6) Where an indirect source is constructed or modified in increments which individually are not subject to review under this regulation, and which are not part of a program of construction or modification in planned incremental phases approved by the Agency, all such increments commenced after December 31, 1974, or after the latest approval hereunder, whichever date is most recent, shall be added together for determining the applicability of this regulation.~~

D. Other sources:

~~(7) Any~~ an indirect source for which ~~will generate mobile sources in a quantity that preparation of~~ the results of an assessment ~~as set forth in Appendix A of this regulation and provided for in Section (d) indicates~~ prepared under 6 MCAR § 4.4315 indicate that a permit is required.

(c) 6 MCAR § 4.4314 Exemptions.

The ~~following~~ owner or operator of an indirect ~~sources are~~ source listed in A.-F. is exempt from the requirement to obtain ~~a~~ an indirect source permit:

A. Existing sources:

~~(1)~~ indirect sources ~~which are~~ that were in operation on ~~the effective date of this regulation~~ February 18, 1975.

B. Sources under construction:

~~(2)~~ indirect sources for which construction ~~has~~ was commenced prior to January 1, 1975.

C. Parking facilities:

~~(3) Any~~ 1. a new parking facility, or other new indirect source with an associated parking area, which has a new parking capacity of fewer than 1,000 cars~~.~~; or

~~(4) Any~~ 2. a modified parking facility, or ~~any~~ a modification of an associated parking area, which increases parking capacity by fewer than 500 cars, provided that the conditions of ~~Section (b) (2)~~ 6 MCAR § 4.4313 A.2. are not exceeded.

D. Airports:

~~(5) Any~~ a new or modified airport construction ~~which~~ that will result in the generation of fewer than 500,000 passengers per year on regularly scheduled air carriers and commercial charter flights within ~~10~~ ten years after completion of construction.

E. Highways:

~~(6)~~ highway projects ~~which~~ that are wholly outside a metropolitan area.

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F. Other sources:

~~(7)~~ indirect sources constructed as part of the Minnesota Implementation Plan to Achieve Carbon Monoxide Ambient Air Quality Standards, specifically the parking ramps constructed by the city of Minneapolis on the fringe of the Minneapolis central business district.

~~(d)~~ 6 MCAR § 4.4315 Assessment.

A. In general. For all indirect sources not described in ~~Section (b) or Section (c)~~ 6 MCAR §§ 4.4313 and 4.4314, the necessity for an indirect source permit shall be determined according to the air quality assessment procedure set forth in ~~Appendix A to this regulation~~ C. No person ~~shall~~ may cause or allow the construction of an indirect source for which an assessment is required until the assessment has been completed to the satisfaction of the director. ~~The Director shall make a determination on whether a permit application is required within seven days of receipt of a satisfactory assessment.~~ If the director determines that a permit application is required, ~~such applications shall~~ the application must be made in accordance with ~~Section (e)~~ 6 MCAR § 4.4317.

~~(e) Permit Application~~

~~Construction or modification of any indirect source subject to this regulation shall not commence until a permit is issued by the Agency or until a determination is made by the Director in accordance with Section (d) that a permit application need not be made. Application for a permit shall be made in accordance with provisions of this section. Every application shall be accompanied with a copy of any draft or final environmental impact statement which has been prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321), or a copy of any environmental assessment or environmental impact statement submitted to the Minnesota Environmental Quality Council.~~

~~(1) For all indirect sources subject to this regulation, other than highway projects:~~

~~(aa) The name and address of the applicant.~~

~~(bb) A map showing the location of the site of the indirect source and the topography of the area.~~

B. Assessment information. To perform the air quality assessment the following information is required:

1. The highest existing peak daily traffic count on the busiest segment of a public road or highway located within one-fourth mile from a point on the property line of the indirect source. This segment of public road or highway shall be referred to as the "busiest roadway."

2. The highest projected peak daily traffic attracted to the proposed indirect source construction or modification occurring at a time during the one-year period immediately following the construction or modification.

3. The highest projected peak daily traffic on the busiest roadway during the one-year period immediately following the construction or modification, not including traffic attracted to the proposed indirect source.

C. Assessment procedure. The director shall make a determination as to whether a permit is required based on the following:

1. A comparison of existing busiest roadway traffic volume to volume likely to result in a violation of the one-hour carbon monoxide standard. If 12 percent of the traffic volume determined pursuant to B.1. is greater than or equal to 2,500 vehicles per hour, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 2. must be followed.

2. A comparison of existing busiest roadway traffic volume to volume likely to result in a violation of the eight-hour carbon monoxide standard. If 60 percent of the traffic volume determined under B.1. is greater than or equal to 5,000 vehicles per eight hours, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 3. must be followed.

3. A comparison of projected busiest roadway and source-attracted traffic to volume likely to result in a violation of the one-hour carbon monoxide standard. If 12 percent of the sum of the traffic volumes determined under B.2.-3. is greater than or equal to 5,000 vehicles per hour, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 4. must be followed.

4. A comparison of projected busiest roadway and source-attracted traffic volumes to volume likely to result in a violation of the eight-hour carbon monoxide standard. If 60 percent of the sum of the traffic volumes determined under B.2.-3. is greater than or equal to 7,500 vehicles per eight hours, a permit is required. If it is less, then no permit is required.

6 MCAR § 4.4316 Circumvention.

No person may circumvent the requirements of 6 MCAR §§ 4.4311-4.4321 by causing or allowing a pattern of ownership or

development to occur over a geographic area which, except for the pattern of ownership or development, would otherwise require an indirect source permit.

6 MCAR § 4.4317 Contents of permit application.

A. In general. A person who applies for an indirect source permit shall submit to the director the information required by 6 MCAR § 4.4005. In addition, the applicant shall submit to the director the information required by B. and, where applicable, the information required by C. and D. If approval is sought for an indirect source to be constructed in incremental phases, the applicant shall submit the information required by this rule for each phase of the construction project at the time of the initial application.

B. Information required for all indirect sources. All applicants for an indirect source permit shall submit the following:

~~(cc)~~ 1. a description of the proposed use of the site, including the normal hours of operation of the facility, and the general types of activities to be operated ~~therein.~~ in it;

~~(dd)~~ 2. a site plan showing the location of associated parking areas, points of motor vehicle ingress and egress to and from the site and its associated parking areas, and the location and height of buildings on the site~~.~~;

~~(ee)~~ 3. an identification of the principal roads, highways, and intersections that will be used by motor vehicles moving to or from the indirect source~~.~~;

~~(ff)~~ 4. an estimate, as of the first year after the date the indirect source will be substantially complete and operational, of the average daily traffic volumes, maximum traffic volumes for one-hour and eight-hour periods, and vehicle capacities of the principal roads, highways, and intersections identified ~~pursuant to subsection (1)(ee)~~ under 3. located within one-fourth mile of all boundaries of the site~~.~~;

~~(gg)~~ 5. availability of existing and projected mass transit to service the site~~.~~;

~~(hh) Where approval is sought for indirect sources to be constructed in incremental phases, the information required by this section shall be submitted for each phase of the construction project.~~

~~(ii)~~ 6. any additional information or documentation that the director or agency deem necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data for carbon monoxide at the proposed site prior to construction or modification. If the director requires the applicant to perform air quality monitoring for carbon monoxide at the proposed site, the director shall not require the applicant to perform monitoring for a period of more than 14 days.

~~(2)~~ C. Information required for airports. An applicant for an indirect source permit for an airport shall submit the following:

~~(aa)~~ 1. an estimate of the average number and maximum number of aircraft operations per day by type of aircraft during the first, fifth, and tenth years after the date of expected completion~~.~~;

~~(bb)~~ 2. a description of the commercial, industrial, residential, and other development that the applicant expects will occur within three miles of the perimeter of the airport within the first five and the first ten years after the date of expected completion~~.~~; and

~~(cc)~~ 3. expected passenger loadings at the airport.

~~(dd) The information required under subsections (1)(aa) through (ii) of this section.~~

~~(3)~~ D. Information required for highway projects. An applicant for an indirect source permit for a highway project shall submit the following:

~~(aa)~~ 1. a description of the average and maximum traffic volumes for one-, eight-, and 24-hour time periods expected within ~~10~~ ten years of date of expected completion~~.~~;

~~(bb)~~ 2. an estimate of vehicle speeds for average and maximum traffic volume conditions and the vehicle capacity of the highway project~~.~~;

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~~(ee)~~ 3. a map showing the location of the highway project, including the location of buildings along the right-of-way~~.~~; and

~~(dd)~~ 4. a description of the general features of the highway project and associated right-of-way, including the approximate height of buildings adjacent to the highway.

~~(ee) Any additional information or documentation that the Director deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data for carbon monoxide at the proposed site prior to construction or modification.~~

~~(ff) The information required under subsections (1)(aa) through (ii) of this section.~~

~~(4) The air quality monitoring requirements of this section shall be limited to carbon monoxide, and shall be conducted for a period of not more than 14 days.~~

6 MCAR § 4.4318 Determination of air quality impact of indirect source.

A. Concentrations of carbon monoxide. The agency shall determine, by evaluation of information submitted by the applicant, the reasonableness of anticipated concentrations of carbon monoxide at reasonable receptor or exposure sites that will be affected by the mobile source activity expected to be attracted by the indirect source. For a highway, the agency shall determine, by evaluation of information submitted by the applicant, the reasonableness of anticipated concentrations of carbon monoxide at reasonable receptor or exposure sites that will be affected by the mobile source activity expected on the highway for the ten-year period following the expected date of completion. For the purposes of this rule "reasonable receptor or exposure sites" means locations where people might reasonably be exposed to carbon monoxide for time periods corresponding to time periods referenced in Minnesota ambient air quality standards.

B. Analytic method. In estimating anticipated carbon monoxide concentrations the applicant shall use the methods set forth in Code of Federal Regulations, title 40, section 52.22 (b)(4)(ii) (1982).

~~(f) Standards for Issuance~~

~~(1) For indirect sources other than highway projects,~~

6 MCAR § 4.4319 Final determination.

The agency shall ~~approve an application~~ issue a permit to construct or modify an indirect source if ~~it~~ the agency determines that the indirect source will not:

~~(aa)~~ A. violate ~~any~~ a control strategy of the Minnesota Implementation Plan to Achieve National Ambient Air Quality Standards; or~~,~~

~~(bb)~~ B. violate state standards for carbon monoxide in ~~any~~ a region or portion thereof.

~~(2) The Agency shall make the determination pursuant to this section by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected to be attracted by the indirect source. Such determination may be made by using traffic flow characteristic guidelines published by the Environmental Protection Agency which relate traffic demand and capacity considerations to ambient carbon monoxide impact by use of appropriate atmospheric diffusion models, or by any other reliable analytic method. The applicant may submit with his application the results of an appropriate diffusion model or any other reliable analytic method, along with the technical data and information supporting such results. Any such results and supporting data submitted by the applicant shall be considered by the Agency in making a determination pursuant to this section.~~

~~(3) For all highway projects subject to this regulation, the Agency shall not grant a permit to construct or modify if it determines that the indirect source will:~~

~~(aa) Cause a violation of any control strategy of the Minnesota Implementation Plan to Achieve National Ambient Air Quality Standards; or,~~

~~(bb) Cause or exacerbate a violation of the state standards for carbon monoxide in any region or portion thereof. The determination pursuant to this section shall be made by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected on the highway for the ten year period following the expected date of completion according to the procedures specified in Section (f)(2) of this regulation.~~

~~(4) The determination of the air quality impact of a proposed indirect source "at reasonable receptor or exposure sites" shall mean such location where people might reasonably be exposed for time periods consistent with the state ambient air quality standards for the pollutants specified for analysis pursuant to this section.~~

~~(g) Permit Procedure~~

~~(1) Within 20 days after receipt of an application or addition thereto, the Director shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of subsection (2) of this section shall be the date on which all required information is received by the Agency.~~

~~(2) Within 30 days after receipt of a complete application, the Director shall:~~

~~(aa) Make a preliminary determination whether the application for an indirect source permit should be approved, approved with conditions in accordance with Section (h) of this regulation, or disapproved;~~

~~(bb) Make available to the public in at least one location in the affected Minnesota Development Region a copy of all materials submitted by the owner or operator, a copy of the Director's preliminary determination, and a copy or summary of other materials, if any, considered by the Director in making the preliminary determination; and,~~

~~(cc) Notify the public, by prominent advertisement in a newspaper of general circulation in each Minnesota Development Region in which the proposed indirect source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Director's preliminary determination on the approvability of the indirect source.~~

~~(3) A copy of the notice required pursuant to this section shall be sent to the applicant and to officials and agencies having cognizance over the location where the indirect source will be situated, as follows: Local air pollution control agencies, the chief executive of the city and county, and the Regional Development Commission in the Minnesota Development Region in which the indirect source is located.~~

~~(4) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Agency in making its final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Agency shall consider the applicant's response in making its final decision. All comments shall be made available for public inspection in at least one location in the Minnesota Development Region in which the indirect source would be located.~~

~~(5) The Agency shall take final action on an application within forty-five days after the close of the public comment period. The Agency shall notify the applicant in writing of its approval, conditional approval, or denial of the application, and shall set forth its reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location of the region in which the indirect source would be located.~~

~~(6) The Agency may extend each of the time periods specified in this section for a period not to exceed 30 days or such other periods as agreed to by the applicant. Nothing herein, however, shall preclude the Agency from extending any of these time periods for an appropriate length of time if it decides to hold a public hearing or public meeting on any permit application, or if an environmental impact statement on the indirect source is prepared.~~

~~(h)~~ 6 MCAR § 4.4320 Permit conditions.

~~(1) Whenever an indirect source as proposed by an owner or operator's application would not be permitted to be constructed for failure to meet the tests set forth pursuant to Section (f) of this regulation, the Agency may impose reasonable conditions on an approval related to the air quality aspects of the proposed indirect source so that such source, if constructed or modified in accordance with such conditions, could meet the tests set forth pursuant to Section (f) of this regulation. Such~~

A. Special conditions. An indirect source permit issued by the agency must contain conditions necessary for the permittee to achieve compliance with all applicable Minnesota or federal statues or rules. These conditions may include, but are not ~~be~~ limited to:

~~(aa)~~ 1. binding commitments to roadway improvements or additional mass transit facilities to serve the indirect source secured by the owner or operator from governmental agencies having jurisdiction ~~thereof~~ over them;

~~(bb)~~ 2. binding commitments by the owner or operator to specific programs for mass transit and paratransit incentives for the employees and patrons of the source; and;

~~(cc)~~ 3. binding commitments by the owner or operator to construct, modify, or operate the indirect source in ~~such~~ a

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manner ~~as may be~~ necessary to achieve the traffic flow characteristics ~~published by the Environmental Protection Agency prusuant to Section (f) (2) of this regulation~~ determined by the director to be appropriate to prevent violations of carbon monoxide ambient air quality standards.

~~(2) The Agency may specify that any items of information provided in an application for approval related to the operation of an indirect source which may affect the source's air quality impact shall be considered permit conditions.~~

~~(3) Notwithstanding the provisions relating to modified indirect sources contained in Section (b) of this regulation, the Agency may condition any approval by reducing the extent to which the indirect source may be further modified without resubmission for approval under this section.~~

~~(4) No owner or operator shall construct an indirect source except in accordance with the permit as approved by the agency, and no owner or operator shall construct and operate an indirect source except in accordance with conditions imposed by the agency under this section. Subsequent modification to an approved indirect source may be made without applying for permission pursuant to this regulation only where such modification would not violate any condition imposed pursuant to this section and would not be subject to the modification criteria set forth in Section (b) of this regulation.~~

~~(5)~~ B. General condition. An indirect source permit issued by the agency must contain the general condition that approval to construct or modify shall become invalid if construction or modification is not commenced within 24 months after receipt of ~~such~~ the approval. The agency may extend ~~such~~ this time period upon a satisfactory showing that an extension is justified. The applicant may apply for ~~such~~ an extension at the time of initial application or at any time thereafter.

~~(6) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with all local, state and federal regulations.~~

~~(7) The Permittee shall allow the Agency, or any authorized employee or agent of the Agency, when authorized by law and upon presentation of proper credentials, to enter upon the property of the Permittee for the purpose of obtaining information or examining records or conducting surveys or investigations pertaining to the installation or operation of the indirect source covered by the permit.~~

~~(8) The Permittee shall, when requested by the Agency, submit such information and reports which are relevant to the control of pollution regarding the operation of the indirect source covered by the permit.~~

~~(9) The Agency may prescribe other permit conditions related to the maintenance of carbon monoxide standards.~~

~~(i) Circumvention.~~

~~No person shall circumvent the requirements of this regulation by causing or allowing a pattern of ownership or development to occur over a geographic area which, except for the pattern of ownership or development, would otherwise require an indirect source permit.~~

~~(k) Ambient Standards.~~

~~Regardless of whether a permit is required for the indirect source, no owner or operator of an indirect source shall cause or allow a violation of any ambient air quality standard.~~

6 MCAR § 4.4321 Minor modification of permit.

In addition to the corrections or allowances listed in 6 MCAR § 4.4019 C., the director upon obtaining the consent of the permittee may modify an indirect source permit without following the procedures in 6 MCAR §§ 4.4010-4.4019 if the director determines that the modification would not result in an increase in carbon monoxide of greater than one part per million or a violation of the carbon monoxide standard established in 6 MCAR § 4.0001, and that the modification would not subject the permittee to the requirement to obtain a permit modification set forth in 6 MCAR § 4.4313.

~~APPENDIX A~~

~~The air quality assessment required in paragraph (d) will require the following information and procedure;~~

~~(1) Information:~~

~~(a) The highest existing peak daily traffic count on any segment of any public road or highway located within one-fourth mile from any point on the property line of the indirect source. This public road or highway is the busiest roadway to be affected by the modification or construction and is hereinafter referred to as the "busiest roadway." [^{q}e(24)]~~

~~(b) The highest projected peak daily traffic attracted to the proposed indirect source construction or modification occurring at any time during the one year period immediately following the construction or modification. [^{q}p(24)]~~

~~(c) The highest projected peak daily traffic on the busiest roadway during the one-year period immediately following the construction or modification, not including traffic attracted to the proposed indirect source. [^{q}r(24)]~~

(d) Compute the maximum expected one-hour traffic volumes $^{q}e(a)$, $^{q}p(1)$, $^{q}r(1)$, where:

$^{q}e(1)$ .12 $^{q}e(24)$
$^{q}p(1)$ .12 $^{q}p(24)$
$^{q}r(1)$ .12 $^{q}r(24)$

(e) Compute the maximum expected eight-hour traffic volumes $^{q}e(8)$, $^{q}p(8)$, $^{q}r(8)$, where:

$^{q}e(8)$ .6$^{q}e(24)$
$^{q}p(8)$ .6$^{q}p(24)$
$^{q}r(8)$ .6$^{q}r(24)$

(2) Procedure:

(a) STEP 1. Comparison of Existing Air Quality to the One Hour Standard.

If $^{q}e(1)$ is greater than or equal to 2,500 vehicles per hour, a permit application is required and completion of the remaining steps is not required; if it is less, go to STEP 2.

(b) STEP 2: Comparison of Existing Air Quality to the Eight-Hour Standard.

If $^{q}e(8)$ is greater than or equal to 5,000 vehicles per eight hours, a permit application is required and completion of the remaining steps is not required; if it is less, go to STEP 3.

(c) STEP 3: Comparison of Projected Air Quality to the One-Hour Standard.

If $^{q}r(1)$ $^{q}p(1)$ is greater than or equal to 5,000 vehicles per hour, a permit application is required and completion of the remaining step is not required; if it is less, then go to STEP 4.

(d) STEP 4: Comparison of Projected Air Quality to the Eight-Hour Standard.

If $^{q}r(8)$ $^{q}p(8)$ is greater than or equal to 7,500 vehicles per eight hours, a permit application is required. If it is less, then no permit application is required.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Department of Employee Relations

Adopted Rules Governing the State Personnel System (2 MCAR §§ 2.225; 2.2301; 2.303; 2.406; 2.409 and 2.413)

The rules proposed and published at *State Register*, Volume 8, Number 11, pages 429-431, September 12, 1983 (8 S.R. 429) are adopted as proposed.

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.

Board of Examiners for Nursing Home Administrators

Adopted Rules Governing Licensure and Relicensure of Nursing Home Administrators

The rules proposed and published at *State Register*, Volume 7, Number 43, pages 1547-1553, April 25, 1983 (7 S.R. 1547) are adopted with the following modifications:

Rules as Adopted

~~NHA 1~~ 7 MCAR § 6.001 Statutory authority.

~~The~~ Rules ~~and Regulations herein contained~~ 7 MCAR §§ 6.001-6.024 constitute, comprise, and shall be known as the rules ~~and Regulations~~ of the Board of Examiners for Nursing Home Administrators of the state of Minnesota and are promulgated ~~pursuant to~~ under the authority granted to the ~~said~~ board under ~~and pursuant to Minnesota Statutes 1969 Section 144.954 and Minnesota Statutes 1969 Section 144.959,~~ Minnesota Statutes, sections 144A.19-144A.29 and in accordance with the Administrative Procedure Act ~~Minnesota Statutes 1969 ep. 15~~ in Minnesota Statutes, chapter 14.

7 MCAR § 6.010 License requirements.

A. In general. No initial license shall be issued to a person as a nursing home administrator unless the individual:

1. ~~6.~~ 4. [Unchanged.]

5. has paid ~~all license~~ the following licensure and examination fees as established by the board:

a. an original application fee, not to exceed $75;

b. a state examination fee, not to exceed $50; and

c. a national examination fee, not to exceed $80.

6. [Unchanged.]

7. has a baccalaureate or higher degree from an accredited institution and has satisfactorily completed an approved academic course in each of the following areas:

a. A course in the principles of organizational management and administration which delineates the role, functions, and process of management including planning, staffing, organizing, controlling, delegating, and evaluating outcomes~~;~~.

b. An accounting course which provides an introduction to basic financial concepts, financial statements, definition of accounting terminology, and the recording and reporting of financial events including budgeting~~;~~.

c. A course in social gerontology which includes the study of the social aspects of aging in our society as they relate to services and programs for the infirm or aged, or both~~;~~.

d. A course on issues in health care in which there is a study of at least three of the major social, economic, and ethical issues confronting long-term health care which include nontraditional approaches to health care, relationships of life style to health, patients' rights, right-to-die issues, and dilemmas of health care professionals in terms of morals, ethics and professional commitments~~;~~.

e. A course in health care law which studies common case law and types of legal entities that affect or govern long-term health care organizations including its board and staff and the laws that affect guardianship or conservatorship~~;~~.

f. A course in the administration of long-term care services and programs which is a study of the function and role of professional and nonprofessional personnel, their services, and organizational programs which are needed to provide therapeutic-geriatric services for those requiring long-term health care~~, including a study of commonly accepted medical terms in long term health care;~~.

g. A human resource or personnel management course which is a study of recruitment, screening and selection processes, job descriptions, job evaluations, personnel policies affecting management and human resources, including orientation and development of employees, personnel records, wage and salary administration, labor laws, affirmative action planning, and equal employment opportunity legislation~~;~~.

h. A board pre-approved practicum course which relates knowledge courses to the practice of administration in long-term health care organizations. The course, which must be of a minimum of 300 clock hours, must be under the direction of a faculty person of the educational institution coordinating the course and carried out by a licensed nursing home administrator preceptor. Upon mutual agreement of the educational facility and nursing home preceptor, a licensed nursing home may serve as the practicum site for an applicant who is employed by that nursing home.

i. A course in medical terminology, including a study of commonly accepted medical terms used in long-term care.

B. Waiver provisions.

2. The board shall waive 7 MCAR § 6.010 A.7 h. if the applicant submits evidence of having completed satisfactorily one year continuous, full time as an administrator or in a position as an assistant administrator ~~position~~ in an acute care, skilled care, or intermediate care facility, or as a director of nursing services or a director of social services in a skilled or intermediate care facility.

7 MCAR § 6.013 License; issuance.

C. Acting administrator. If a licensed nursing home administrator is removed from his position by death or other unexpected cause, the owner, governing body, or other appropriate authority of the nursing home suffering such removal may designate an acting nursing home administrator who may serve ~~only after getting an acting license and~~ for no more than 180 days. The owner, governing body or other appropriate authority of the nursing home suffering such removal shall notify the licensure board in writing within 15 days of the termination of service of the administrator as well as the appointment of the new administrator. Upon receipt of notification of a vacancy, the board shall provide, if the designated new administrator is not fully licensed, the appropriate forms for securing an acting license. The board shall expediently process all qualified applicants for acting license. If an application is received after a vacancy occurs, the acting license shall be retroactive to the date the applicant assumed administrative responsibility of the facility.

7 MCAR § 6.014 Reciprocity.

A. General requirements. The board, subject to the law pertaining to the licensing of nursing home administrators prescribing the qualifications for nursing home administrator license, may endorse, without examination, a nursing home administrator license issued by the proper authorities of any other state or political subdivision of the United States~~, and upon payment of a fee established by the board,~~ provided:

4. that an applicant who seeks licensure by reciprocity shall pay a service fee, as established by the board not to exceed $50.

7 MCAR § 6.015 Display of license.

B. Duplicate licenses. Upon receipt of satisfactory evidence that a license has been lost, mutilated, or destroyed, the board may issue a duplicate license upon payment of a fee established by the board, not to exceed $25.

7 MCAR § 6.016 Renewal.

B. Fees; time for renewal. Upon making an application for a renewal of his license such licensee shall pay the annual fee as established by the board, not to exceed $125. Renewal applications received after July 1 shall pay the late filing fees as established by the board not to exceed $30 for the first six months and $50 for the second six months. The applicant shall submit evidence satisfactory to the board that during the annual period immediately preceding such application he has complied with the rules of this board and continues to meet the requirements as established, including, but not limited to, continuing educational requirements for relicensure. Nonacademic continuing education requirements of relicensure shall be completed by May 1 of each year for the ensuing licensure year; however, upon presentation of a written petition, licensees may be granted an extension for an appropriate period of time. Extensions will only be granted in unusual circumstances. Applicants granted extensions will be required to make payment of applicable late filing fees.

7 MCAR § 6.017 Revocation, suspension, refusal.

B. Criteria for disciplinary action. In determining whether a person is incompetent to serve in the profession of nursing home administration as provided in A., the non-inclusive items listed in 1.-11. may be considered. No person shall be licensed or continue to be licensed as a nursing home administrator if he or she:

1. Has practiced fraud, deceit, or misrepresentation in his or her capacity as a nursing home administrator~~; or~~.

2. Has committed acts of misconduct in the operation of a nursing home under his or her jurisdiction~~; or~~.

3. Is habitually overindulgent or addicted to the use of habitforming drugs, including alcohol~~,~~; a legend drug as defined in Minnesota Statutes, chapter 151~~,~~; a chemical as defined in Minnesota Statutes, chapter 151~~,~~; or a controlled substance as defined in Minnesota Statutes, chapter 152~~;~~ and this overindulgence or addiction has affected the person's performance of his or

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her duties. In reviewing this disciplinary matter, the board shall consider any attempt the person has made toward rehabilitation.

4. Has practiced without annual registration; ~~or~~.

5. Has wrongfully transmitted or surrendered possession of his or her license or certificate to any other person, either temporarily or permanently; ~~or~~.

6. Has paid, given, has caused to be paid or given or offered to pay or give to any person, a commission or other consideration for solicitation or procurement either directly or indirectly for nursing home patronage; ~~or~~.

7. Has practiced fraudulent, misleading, or deceptive advertising with respect to the institution of which he or she is an administrator, to any person; ~~or~~.

8. Has falsely impersonated another licensee of a like or different name; ~~or~~.

9. Has failed to exercise true regard for the safety, health, and life of a patient; or.

10. Has willfully permitted unauthorized disclosure of information relating to a patient or the patient's record; ~~or~~.

7 MCAR § 6.019 Program approval.

A. Approval of programs for licensure. A program of study offered by an accredited educational institution must have prior approval of the board in order to be acceptable for meeting nursing home administrator licensure requirements. The board shall approve programs of study which include courses in the areas described in 7 MCAR § 6.010 A.7.a.-h. upon payment of a service fee as established by the board, not to exceed $40 per program.

Renumbering. ~~Renumber NHA 1 as 7 MCAR § 6.001.~~ Renumber NHA 12 as 7 MCAR § 6.012. Renumber NHA 22 to 24 as 7 MCAR §§ 6.022 to 6.024.

Department of Labor and Industry
Occupational Safety and Health Review Board

Adopted Rules of Procedure for Practice Before the Occupational Safety and Health Review Board

The rules proposed and published at *State Register*, Volume 8, Number 5, pages 160-171, August 1, 1983 (8 S.R. 160) are adopted with the following modifications:

Rules as Adopted

8 MCAR § 1.7250 General provisions.

A. Definitions. For the purposes of 8 MCAR §§ 1.7250-1.7255, the following terms have the meanings given them.

2. "Commissioner," "board," ~~"person,"~~ "employer," and "employee," have the meanings set forth in Minnesota Statutes, section 182.651.

B. Scope of rules. Rules 8 MCAR §§ 1.7250-1.7255 shall govern all proceedings before the board~~, except~~. Additionally, all contested case and rule hearing proceedings are governed by 9 MCAR §§ 2.101-2.222.

E. Service and notice.

4. Service must be certified by a written statement that sets forth the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the pleading or document.

7. If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within two working days of receiving the acknowledgement of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form complies with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of Labor and Industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and will be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties under the terms and conditions established by the Occupational Safety and

Health Review Board in its rules of procedure. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 444 Lafayette Road, St. Paul, MN 55101, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor and Industry for abatement of the violations has been contested and will be the subject of a hearing.

21. If a settlement proposal is filed with the hearing examiner, it shall be served upon affected employees by the employer. For affected employees represented by an authorized employee representative, service shall be accomplished by personal delivery or first class mail to the representative. For affected employees not so represented, service shall be accomplished by posting. Proof of service of the settlement proposal on affected employees shall be filed with the hearing examiner.

8 MCAR § 1.7251 Parties and representatives.

A. Party status.

1. Affected employees or an authorized representative may choose to participate as parties provided they file notice of intent to participate at least five days before the start of the hearing. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer. This notice shall be filed with the executive secretary if a hearing examiner has not yet been assigned. After a hearing examiner has been assigned, this notice shall be filed with the hearing examiner and served upon all other parties.

3. Intervention and appearance by nonparties may be granted pursuant to 9 MCAR § 2.210.

8 MCAR § 1.7252 Pleadings and motions.

D. Employer contests.

2. Notice to respondent. The commissioner shall file and serve on the respondent no later than 40 days after receiving the notice of contest a notice stating the following:

d. the name of the agency official or member of the Attorney General's staff to be contacted to discuss informal disposition under 9 MCAR § 2.207 or discovery under 9 MCAR § 2.214 C.; ~~and~~

e. that ~~a failure to appear at the hearing may result in the allegations of the pleadings being taken as true~~ respondent has a right to a contested case hearing before an independent hearing examiner from the Office of Administrative Hearings pursuant to Minnesota Statutes, sections 14.48 to 14.62, and 182.664, subdivision 3;

f. that respondent may present evidence and argument with respect to the issues and cross-examine witnesses;

g. where the procedural rules may be obtained;

h. that parties may attempt to settle the matter without a hearing; and

i. that should respondent wish to initiate discovery pursuant to 9 MCAR § 2.214 C. prior to the setting of a hearing date, respondent must file a discovery motion with the review board and the case will be transferred to the Office of Administrative Hearings for a decision on the discovery motion.

K. Notice of readiness for hearing.

1. Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a notice of readiness for hearing with the board and serve a copy on all parties.

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2. Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing. The board shall serve a written notice of hearing and order on all parties at least 30 days prior to the hearing date. The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to 8 MCAR § 1.7250 E. The notice of hearing and order must state the following:

a. that if a party chooses to appear at the hearing, a notice of appearance must be filed by that party with the hearing examiner within 20 days of the date of service of the notice of hearing and order pursuant to 9 MCAR § 2.205; and

b. that a failure to appear at the hearing may result in the allegations of the pleadings being taken as true.

8 MCAR § 1.7253 Post hearing procedures.

B. Notice of appeal.

3. The notice of appeal must be received by the board at its offices in St. Paul, Minnesota, on or before the 30th day following ~~publication~~ issuance of the hearing examiner's findings and decision.

8 MCAR § 1.7254 Settlement.

C. Settlement agreements must contain a provision stating ~~that~~ the date on which the employer has served the agreement upon affected employees in the manner prescribed by 8 MCAR § 1.7250 E.21.

I. An affected employee may file with the hearing examiner an objection to a proposed settlement agreement within ten days of service of the proposed agreement upon the employee. The hearing examiner shall give consideration to the objection before approving or disapproving the settlement.

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 Energy and Economic Development

Notice of Postponement of Hearing Regarding Minnesota Energy Conservation Service Program

The Energy Division of the Department of Energy and Economic Development hereby announces that the public hearing scheduled for December 20, 1983 regarding the amendment of the rules governing the Minnesota Energy Conservation Service Program, 6 MCAR § 2.2300-2.2313 is postponed.

The Department will reschedule the public hearing for a later date. Once the exact date of the hearing is determined, a notice will be published in the *State Register* and mailed to the Departments' list of interested persons.

The purpose of the postponement is to allow further public comment on the rules proposed by the Department and published in the *State Register* November 14, 1983, Volume 8, Number 20, page 1106-1134. Persons desiring to comment on the rules proposed are urged to submit their comments as soon as possible to: Mark Polich, MECS Program Manager, Energy Division, Department of Energy and Economic Development, 150 East Kellogg Blvd., St. Paul, MN 55101.

Housing Finance Agency
Home Improvement Division

Notice of Fund Availability for Solar Bank Deferred Loans

The Minnesota Housing Finance Agency announces that funds have been received from the Solar Energy and Energy Conservation Bank of the U.S. Department of Housing and Urban Development for the purpose of providing energy financing

in the form of deferred loans to homeowners residing in one to four unit buildings, and who are ineligible to receive such energy financing from other sources. Up to $5,000 is available to homeowners whose family income is below 150% of the median family income for the county of residence. The deferred loan is repaid only if the borrower sells, transfers or conveys the property, or ceases to reside in the property for a period of 10 years following the date of the loan.

Applications will be accepted by program administrators upon referral by Northern States Power Company, or such other entity as MHFA approves, beginning January 1, 1983 until such funds are expended or until August 31, 1984, whichever is earlier. Such application must include the following:

— Homeowner Application & Certifications and Administering Entity Worksheet;

— Energy Audit and Work Write-up;

— Contractor Homeowner Warranties;

— Contractor Bid(s);

— Combination Loan Repayment Agreement, Mortgage, Security Agreement, and Fixture Financing Statement;

— Credit Reviews (where applicable).

Such applications must be submitted to MHFA for final approval.

The Solar Bank Deferred Loan Program is being implemented in the Northern States Power Company Service Area and Minnegasco, Inc. Service Area through the following administrators.

Dakota County Housing and Redevelopment Authority

Metropolitan Council Housing and Redevelopment Authority

Minnesota Valley Action Council

Region 6E Community Action Council

Scott Carver Economic Opportunity Agency

Tri County Action Programs, Inc.

Future Notices of Fund Availability will identify additional service areas and program administrators.

For more information on this program contact:

Kathleen Anderson
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
(612) 296-8844

Department of Public Welfare
Income Maintenance Bureau

Outside Opinion Sought Concerning Rules Governing the General Assistance Program

Notice is hereby given that the Minnesota Department of Public Welfare is considering amendments to rules governing the General Assistance program, including 12 MCAR § 2.055 (permanent rule) and 12 MCAR 2.05501 through 2.05509 (temporary rules), in order to incorporate statutory changes, add specificity, and to make permanent existing temporary rules.

The commissioner is authorized to promulgate rules for the General Assistance program by Minnesota Statute § 256D.04 and Laws of Minnesota, 1983, ch.312.

The proposed changes to the rule include but are not limited to:

1. Establishing the rights and responsibilities of the Department of Public Welfare, local welfare agencies, and applicants for or recipients of General Assistance concerning work registration, work requirements, and participation in the Minnesota Emergency Employment Development Act (MEED) program; and

2. Establishing standards of assistance; and

3. Authorizing local welfare agencies to enter into a contract with the Department of Economic Security for the purpose of determining the eligibility of MEED program applicants or participants for an Employment Allowance; and

4. Setting forth the policies of the Department of Public Welfare affecting applicants and recipients who apply for the federal Supplemental Income Program, and affecting those agents who provide special assistance to the individual in applying for or securing the federal program.

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:

Michael Sirovy
Department of Public Welfare
Income Maintenance Policy Development Section
444 Lafayette Road, 2nd floor
St. Paul, Minnesota 55101

Oral statements of information and comment will be received over the telephone at (612) 297-2011 between 9:00 am and 4:00 pm Mondays through Fridays.

Statements of information and comment will be accepted until further notice. Any written material received by the Department shall become part of the hearing record. Oral statements will be considered but will now become part of the hearing record.

Department of Public Welfare
Income Maintenance Bureau

Outside Opinion Sought Concerning Temporary Rules to Be Promulgated Regarding General Assistance and Supplemental Security Income

Notice is hereby given that the Minnesota Department of Public Welfare intends to promulgate temporary rules governing its policies affecting certain General Assistance applicants and recipients who apply for the federal Supplemental Security Income program, and affecting those agents who, under the provisions of Minn. Stat. 256D.05, Subd. 5, provide special assistance to the individual in applying for or securing the federal program. The General Assistance program provides qualified individuals and families with cash resources to meet their basic needs for food, shelter, clothing, and other essential items. The federal Supplemental Security Income program provides for similar needs, with qualification dependent upon the individual's age or disability. The General Assistance program, financed through state and county funds, is intended only for those persons who cannot qualify for a federally financed program.

In its proposed temporary rules, the Department will set forth its policies concerning:

a) the identification of applicants for and current recipients of General Assistance who may be eligible for Supplemental Security Income, including the requirements imposed upon those individuals to file applications with the Social Security Administration; and

b) the policies which will govern the implementation of Minn. Stat. 256D.06 Subd. 5, including:

1) a definition of special assistance to be rendered by agents acting in the applicant's behalf;

2) specifying with whom and under what terms the local welfare agency may contract with outside agents to provide the special assistance to General Assistance applicants and recipients; and

3) establishing reasonable fees, costs, and disbursements to those agents from the state share of Interim Assistance collected.

All interested or affected persons or groups are invited to participate and to suggest methods which the Department might adopt in its implementation of these policies. Statements of information and comment may be made orally or in writing. All comments will be considered; however, only written comments related to this solicitation shall become a part of the official record. Oral statements of information and comment will be received over the telephone at (612) 297-3919 between 9:00 a.m. and 4:00 p.m., Mondays through Fridays. Written statements may be addressed to:

Linda Ady
Assistance Payments Division
Minnesota Department of Public Welfare
444 Lafayette Road — 2nd Floor
St. Paul, MN 55101

All statements of information and comment will be accepted by the Department until further notice.

Office of the 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 the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is January 10, 1984.

WORLD TRADE CENTER COMMISSION has 1 vacancy open immediately for a person knowledgeable in the areas of finance, export business and education. The commission shall study private and public financial commitment required for a Minnesota World Trade Center. Members are appointed by the Governor. For specific information contact World Trade Center Commission, Roberta Schneider, 130 Capitol, St. Paul 55155; (612) 296-0057.

Department of Transportation

Petition of the City of Minneapolis for a Variance from State Aid Standards for Vertical Clearance

Notice is hereby given that the City Council of the City of Minneapolis made a written request to the Commissioner of Transportation for a variance from minimum design standards for the reconstruction of the Burnham Road Bridge over the Chicago Northwestern Railroad.

The request is for a variance from 14 MCAR § 1.5032, H., 1., c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a vertical clearance of 20 feet instead of the required 22 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

December 2, 1983

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of St. Cloud for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Cloud has made a written request to the Commissioner of Transportation for a variance from minimum street width standards for the reconstruction of Ninth-Tenth Avenue South from First Street South to six-hundred feet South of First Street South.

The request is for a variance from 14 MCAR § 1.5032, H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a street width of sixty feet curb-to-curb with a fourteen feet median instead of the required sixty-eight feet street width.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

December 7, 1983

Richard P. Braun
Commissioner of Transportation

SUPREME COURT

Decisions Filed Wednesday December 7, 1983

Compiled by Wayne O. Tschimperle, Clerk

CX-83-1767 Hancock-Nelson Mercantile Company, Inc., et al., Petitioners, v. Ronald Weisman, Respondent.

A writ of prohibition will not be granted where the trial court, after hearing, has found probable cause to believe petitioners by filing a financing statement without obtaining consent of a court appointed receiver violated the court's order granting the receiver all powers to operate the corporation business and make all necessary day-to-day business decisions, and violated Minn. Stat. Chapter 588.

Petition for Writ of Prohibition denied. Popovich, C.J.

C1-83-1141 State of Minnesota, Respondent, v. Duane Frey, Appellant.

The trial court did not err in refusing to depart from the presumptive sentence range of 90-104 months established by Sentencing Guidelines and grant a durational reduction of one-third because of the defendant's more passive role as an accomplice for burglary of a dwelling by another armed with a dangerous weapon.

Affirmed. Popovich, C.J.

C6-83-1197 State of Minnesota, Respondent, v. Kurt Dean Doughman, Appellant.

1. It is desirable, but not mandatory, for a trial court to interrogate a defendant and to require the defendant to sign a "Petition to Plead Guilty" as suggested in the Minnesota Rules of Criminal Procedure before accepting a guilty plea. There are other means of building an adequate record on which to evaluate a guilty plea.

2. If a defendant has had a chance to consult with an attorney about his case a presumption arises that the defendant was fully informed of his constitutional rights.

3. A court may weigh a defendant's criminal history in evaluating whether his guilty plea was knowing and intelligent.

4. The fact that a defendant may receive a more severe penalty if he goes to trial instead of accepting a plea bargain does not make his plea involuntary.

Affirmed. Foley. J.

C5-83-1174 Jack Robert Gerson, Relator, v. Commissioner of Economic Security.

Reversed and remanded. Wozniak, J.

C2-83-1147 Valentine Ramirez, Relator, v. Metro Waste Control Commission, Respondent, and Commissioner of Economic Security, Respondent.

1. Viewing the findings of the representative of the commissioner of Economic Security in the light most favorable to his decision, there is evidence reasonably tending to sustain the conclusion that claimant voluntarily terminated his employment without good cause attributable to his employer.

2. When an employee freely chooses to resign his employment to protect his work record from showing a discharge for tardiness, his resignation constitutes voluntary termination of employment without good cause attributable to the employer, a disqualifying condition for unemployment compensation benefits under Minn. Stat. Sec. 268.09, subd. 1(1).

Affirmed. Sedgwick, J.

C8-83-1508 State of Minnesota, Respondent, v. Nate Baxter Compton, Appellant.

A six-month delay between the date of signing an arrest and detention order and the date of the revocation hearing was unreasonable where defendant was in prison on another offense and that fact was known to the court. The defendant is entitled to credit against the sentence imposed on the prior felony for time spent in prison waiting for a revocation hearing, notwithstanding that his imprisonment resulted from an unrelated felony. We reverse and order credit of 189 days against defendant's sentence.

Reversed. Sedgwick, J.

C3-83-1156 Scott Hogenson, Relator, v. Brian Knox Builders, Respondent, and Commission of Economic Security, Respondent.

1. A conclusion of law drawn by the commissioner of economic security is not binding on the reviewing court if it does not have reasonable support in the findings.

2. A mere application for unemployment benefits cannot be deemed misconduct under Minn. Stat. § 268.09, subd. 1(2).

Remanded for proceedings consistent with this opinion.

Lansing, J.

C2-83-1181 James Grover Holtz, Appellant, v. Commissioner of Public Safety, Respondent.

1. Trial court did not err in concluding that responsible and probable grounds existed to invoke the implied consent law.

2. Trial court did not err in concluding that the driver was properly advised of his rights under the implied consent law even though the police officer failed to read the entire implied consent advisory form.

Affirmed. Lansing, J.

C7-83-1144 William P. Maher, Appellant, v. All Nation Insurance Company, a Minnesota Corporation, and Mutual Service Casualty Insurance Company, a Minnesota Corporation, Respondents.

1. The insurer failed to make a meaningful offer of underinsured motorist coverage.

2. An insurance policy which limits underinsured motorist coverage by definition to resident relatives who do not own a private passenger automobile, defined as a passenger or station wagon-type automobile, covers an owner of a pickup truck.

3. An insurance policy restriction which limits underinsured motorist coverage by definition to resident relatives who do not own an automobile is void as against public policy.

Reversed. Parker, J.

CX-83-1879 Frank Liptak, Defendant-Petitioner, v. State of Minnesota, ex rel. City of New Hope and Jean Coone, Plaintiff-Respondents.

Denied. Popovich, C.J.

Decisions Filed Friday, December 9, 1983

Compiled by Wayne O. Tschimperle, Clerk

CX-83-554 & C9-83-1002 State of Minnesota, Respondent, v. Ronald William Back, Appellant, James Croft, Appellant.

Trial judge did not err in refusing to depart durationally from presumptive sentence in sentencing man who participated in shooting spree that resulted in the death of a woman, and a different trial judge did not err in departing durationally from the presumptive sentence in sentencing a codefendant who actually fired the shot that killed the victim.

Affirmed. Amdahl, C.J.

C2-83-144 Benny Ronald Washington, Appellant, v. State of Minnesota, Respondent.

Evidence was sufficient to sustain conviction for assault with a dangerous weapon.

Affirmed. Peterson, J.

C4-82-1205 State of Minnesota, Respondent, v. Robin Frost, Appellant.

1. Evidence was sufficient to convict defendant of second-degree manslaughter.

2. Trial court did not err in its instructions on the elements of second-degree manslaughter or in refusing to submit the lesser offense of reckless use of a firearm.

3. Trial court did not err in refusing to dispositionally depart from the presumptive sentence by sentencing defendant to a probationary term.

Affirmed. Peterson, J.

C4-82-1012 State of Minnesota, Respondent, v. Jerry A. Wellman, Appellant.

Defendant received a fair trial and evidence was sufficient to support his convictions of third-degree assault; presence of severe aggravating circumstances justified use of both a durational departure and a departure with respect to consecutive service.

Affirmed. Wahl, J. Concurring Specially, Amdahl, C.J.

C8-82-1529 In the Matter of the Arbitration of Merlyn J. Woog, claimant, Respondent, v. The Home Mutual Indemnity Company, Appellant.

On a motion to vacate an arbitration panel's award of underinsured motorist benefits, the trial court failed to make a de novo review of the arbitrability of disputed issues on coverage, stacking, and set-off; the case is remanded to the trial court for a review of the arbitrability issues.

Reversed and remanded for further proceedings. Simonett, J.

SUPREME COURT

CX-82-1130, C1-82-1131, CX-82-1354 Northern States Power Company, petitioner, Respondent, v. Minnesota Public Utilities Commission, Appellant, and Minnesota Department of Public Service, intervenor, Appellant, Minnesota Office of Consumer Services, Appellant, City of St. Paul, et al., Intervenors-Respondents Below, Minnesota Public Interest Research Group, intervenor, Appellant.

The acceptance by the Federal Energy Regulatory Commission of a filed amended coordinating agreement between Minnesota and Wisconsin electrical power utilities established a wholesale rate which must be considered by the Minnesota Public Utilities Commission as an expense of power purchased in setting rates for Minnesota retail electric power purchases.

Affirmed. Kelley, J.

TAX COURT

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

State of Minnesota

Claude E. and Dorothy Vershure,

Appellants,

vs.

The Commissioner of Revenue,

Appellee.

Tax Court

In the Matter of the Appeal from the Commissioner's Order dated September 10, 1982, relating to the Individual Income Tax of Appellants for the Years Ending 1978, 1979, 1980 and 1981

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT

Docket No. 3703

The above matter was tried before Judge Carl A. Jensen, Minnesota Tax Court, in St. Paul, Minnesota, on July 22, 1983.

Richard W. Davis of Altman, Weiss & Bearmon appeared on behalf of Appellants.

Amy Eisenstadt, Special Assistant Attorney General, appeared on behalf of the Appellee.

Syllabus

A domicile once shown to exist is presumed to continue until the contrary is shown.

Findings of Fact

1. Appellants Claude and Dorothy Vershure are cash basis taxpayers. This case involves their 1978 through 1981 Minnesota income tax. The issue in this case is appellants' domicile and residency.

2. Appellants Claude and Dorothy Vershure were domiciliaries of the State of Minnesota until at least September, 1973.

3. Appellant Dorothy Vershure was born in Moose Lake, Minnesota. She attended high school in McGregor, Minnesota, and attended Brainerd Junior College, Brainerd, Minnesota for two years. She attended pharmacy school at the University of North Dakota, Fargo, North Dakota, graduating in June, 1973. She returned to Minnesota after graduation.

4. Appellant Dorothy Vershure's parents live in McGregor, Minnesota. All her siblings, except one brother, live in Minnesota.

5. Appellant Claude Vershure's parent live in Laporte, Minnesota.

6. Appellant Claude Vershure attended nursing school in Hibbing, Minnesota.

7. In the spring of 1973, Claude and Dorothy Vershure purchased three acres of real estate in Laporte, Minnesota, which they sold in September, 1973.

8. Since September, 1973, Dorothy Vershure has been a commissioned officer in the U. S. Public Health Service (PHS).

9. Dorothy Vershure considered Laporte, Minnesota to be her permanent home at the time she accepted her appointment in the Public Health Service.

10. On September 17, 1973, Dorothy Vershure was called to active duty and ordered to report to the PHS Indian Health Center, McLaughlin, South Dakota on September 25, 1973.

11. While stationed in South Dakota, Claude and Dorothy Vershure were required to live in government housing.

12. Claude and Dorothy Vershure opened a checking and savings account in South Dakota.

13. From May 25, 1972 through April 22, 1974, Claude and Dorothy Vershure maintained a checking account at the First National Bank, Cass Lake, Minnesota. The mailing address for the account was Laporte, Minnesota.

14. While in South Dakota, Dorothy Vershure was registered with the State of Minnesota as an intern pharmacist. The address stated on her registration application was Laporte, Minnesota.

15. In March, 1974, Dorothy Vershure applied for registration as a pharmacist with the State of Minnesota.

16. Dorothy Vershure took the pharmacist license examination in Minnesota and was licensed by the State of Minnesota on April 2, 1974. She has never applied for, or been granted, a pharmacist license by the State of South Dakota.

17. In the spring of 1974, Dorothy Vershure requested a transfer to the PHS Indian Health Center, White Earth, Minnesota.

18. By a Transfer Order dated May 9, 1974, Dorothy Vershure was transferred to White Earth, Minnesota, effective June 11, 1974. According to the Order, this was a permanent transfer.

19. On May 9, 1974, Claude and Dorothy Vershure applied for a loan in the amount of $13,000.00 from the Peoples State Bank, Frazee, Minnesota. The loan was obtained and was used to purchase a house and 80 acres of property in Frazee, Minnesota.

20. In October, 1975, this property was sold and another home was purchased in Lake Park, Minnesota. The Vershures received a homestead credit on the Lake Park home from the date of purchase through 1982.

21. Claude Vershure has maintained his registered nurse license in the State of Minnesota from 1972 to the present. His address of record was Laporte, Minnesota until 1975 when it was changed to Lake Park, Minnesota.

22. In October, 1973, Claude Vershure obtained a registered nurse certificate in South Dakota. He renewed his South Dakota license in 1976.

23. In April, 1976, commissioned officers in the Public Health Service became eligible for the benefits provided under the Soldiers' and Sailors' Relief Act of 1940.

24. Claude and Dorothy Vershure registered to vote in South Dakota in October, 1976. They first voted in South Dakota in November, 1976, and voted again in 1980, voting both times by absentee ballot.

25. Prior to April or May, 1976, Minnesota state income taxes were withheld from Dorothy Vershure's paychecks.

26. Claude and Dorothy Vershure filed a 1975 Minnesota income tax return in January or February, 1976, checking the box marked "resident".

27. From 1977 to 1979 Claude and Dorothy Vershure owned a lake home on Summer Island, in Becker County, Minnesota.

28. Claude and Dorothy Vershure have never owned recreational property in South Dakota.

29. Dorothy Vershure did not file a State of Legal Residence Certificate with the Public Health Service, claiming a South Dakota residence until December 10, 1979.

30. From 1978 through 1981 Claude and Dorothy Vershure held an interest in property, other than their homestead, in Lake Park, Minnesota.

31. Although licensed by the State of South Dakota, all motor vehicles owned by Claude and Dorothy Vershure were physically located in Minnesota. Their Skidoo snowmobile was not licensed in any state.

32. In 1978, Claude and Dorothy Vershure purchased a Lund boat and registered that boat in Minnesota on July 25, 1978.

33. In 1978, Claude and Dorothy Vershure licensed a homemade trailer in Minnesota.

34. On May 1, 1979, Claude and Dorothy Vershure registered a Coleman canoe with the State of Minnesota.

35. In May, 1978, Claude Vershure formed the Anderson-Vershure Construction Company.

36. Claude and Dorothy Vershure had a checking account at the Detroit Lakes State Bank during the period of January 1, 1978 to September, 1980.

37. Claude and Dorothy Vershure had a savings account at the Ogema State Bank, Ogema, Minnesota during the period of January 1, 1978 through December 31, 1981.

38. Claude and Dorothy Vershure had a savings account and a checking account at the Peoples State Bank, Frazee, Minnesota during the period of January 1, 1978 through December 31, 1981.

39. Claude and Dorothy Vershure received the following loans from the Peoples State Bank, Frazee, Minnesota: $5,000.00 in May, 1978, $20,000.00 in August, 1978 and $6,000.00 in January, 1980.

40. Claude and Dorothy Vershure purchased malpractice insurance, life insurance and insurance for their home, lake home and other real property through Minnesota insurance agencies.

41. Claude and Dorothy Vershure have two children. Both attended Minnesota schools during the period of January 1, 1978 through December 31, 1981.

42. During the period of January 1, 1978 to December 31, 1981, Claude and Dorothy Vershure had the following recreational licenses: Missouri fishing license; Alaskan fishing license; Canadian fishing license; and Minnesota fishing licenses. They did not have any South Dakota recreational licenses.

43. Appellants were residents of Minnesota and domiciled in Minnesota during the years 1978 through 1981.

44. Appellee accepted the filing of appellants' income tax return for the year 1976. Appellants relied on this and continued to file income tax returns in the same manner. We find that appellee is estopped from collecting interest on unpaid amounts for all periods prior to the date of the Order of September 10, 1982.

Conclusions of Law

1. Appellants were residents of Minnesota and domiciled in Minnesota during the years 1978 through 1981 and were subject to Minnesota income taxes during those years. The Orders of the Commissioner assessing additional income tax for those years are confirmed except that interest shall be due and payable only from September 10, 1982, to the date of payment.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

December 9, 1983

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

Minn. Stat. § 290.17(2) (1982) provides that the income from personal services of all Minnesota residents shall be assigned to Minnesota for income tax purposes. A resident is "any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such year, have been domiciled outside the state." Minn. Stat. § 290.01, subd. 7 (1952). A Department of Revenue income tax regulation, 13 MCAR § 1.6001, defines domicile:

The term "resident" means any individual person maintaining a home in Minnesota during any part of a tax year who is, during that part of such year, domiciled in Minnesota. The term "domicile" means the bodily presence of an individual person in a place coupled with an intent to make such a place one's home.

The domicile of any person shall be that place in which that person's habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person's domicile.

* * * * *

The domicile of a member of the armed forces will be governed by the facts just prior to becoming a member of the armed forces unless the person takes the necessary steps to establish a new domicile.

The mere intention to acquire a new domicile without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person's status. The presumption is that one's domicile is the place where one lives. An individual can have only one domicile at any particular time. *A domicile once shown to exist is presumed to continue until the contrary is shown.* An absence of intention to abandon a domicile is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts shall be given more weight than declarations.

* * * * *

(Emphasis added).

The regulation goes on to list a number of factors to consider in determining whether or not a person is domiciled in the State of Minnesota. No single item in the list, by itself, establishes domicile. Among the factors relevant to the case at bar are the following:

1. Location of domicile for prior years.

2. Where the person votes or is registered to vote. Casting an illegal vote does not establish domicile for income tax purposes.

* * * * *

4. Classification of employment as temporary or permanent.

5. Location of employment.

6. Location of newly acquired living quarters whether owned or rented.

7. The present status of the former living quarters, i.e. was it sold, offered for sale, rented or available for rent to another.

8. Homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and the homestead status of the former living quarters has not been renewed.

9. Ownership of other real property.

10. Jurisdiction in which a valid driver's license was issued.

11. Jurisdiction from which any professional license was issued.

* * * * *

13. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles.

* * * * *

15. Whether an income tax return has been filed as a resident or nonresident.

16. Whether the person has fulfilled the tax obligations required of a resident.

17. Location of any bank accounts, especially the location of the most active checking account.

18. Location of other transactions with financial institutions.

* * * * *

20. Location of business relationships and the place where business is transacted.

* * * * *

22. Address where mail is received.

23. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota.

* * * * *

25. Location of schools at which the person, the person's spouse, or children attend, and whether resident or nonresident tuition was charged.

26. Statements made to an insurance company concerning the person's residence, and on which the insurance is based.

* * * * *

The regulation and the case law make it clear that once a domicile is established it continues until another domicile has been established elsewhere. *Sarek v. Commissioner*, Minn. Tax Court #2524 (April 19, 1979), *American Law Institute, Restatement, Conflict of Laws*, ch. 2, § 23. The taxpayer has the burden of proving that he established a new domicile outside of Minnesota. *McCutchan v. Commissioner*, Minn. Tax Court #563 (January 20, 1956).

To establish a new "domicile" requires physical presence in a given jurisdiction coupled with an intention to make such place one's home. *Miller's Estate v. Commissioner of Taxation*, 240 Minn. 18, 59 N.W. 2d 925 (1953). The question of intent, as gathered from a person's act and declarations is a question of fact. *In re Estate of Smith*, 242 Minn. 85, 89, 64 N.W. 2d 129, 131 (1954). A person's course of conduct is accorded greater weight than his self-serving declaration of domicile. *See, Texas v. Florida*, 306 U.S. 398, 425 (1939); *Seecomb v. Bovey*, 135 Minn. 353, 356, 160 N.W. 1018, 1019 (1917). "A mere place of residence and a few other contacts are not enough to establish a new domicile." *Sarek v. Commissioner, supra*. Domicile is not

something easily abandoned or accidentally changed. *Lindberg v. Commissioner*, Minn. Tax Court #359 (March 30, 1950), *McCutchan, supra.*

Generally, a person inducted into military service retains his domicile or residence in the state from which he entered military service. *Prudential Life Ins. Co. of America v. Lewis*, 306 F. Supp. 1177 (Ala. 1969). It has long been the rule that presence at a soldiers' military station, without more, cannot make that station his domicile and "[a] corollary of this rule is that a serviceman who lives on the military base, even if his family is living on base with him, cannot establish a domicile at the base (cites omitted)." *Stifel v. Hopkins*, 447 F. 2d 1116 (6th Cir. 1973). *See also Restatement, Conflict of Laws* 2d §17.

In *Harris v. Harris*, 205 Iowa 108, 215 N.W. 661 (1927), the Court addressed the issue of whether a person, an officer in active service of the Army of the United States, can acquire a domicile in the Army post or camp where he is stationed, even though he establishes his family there. The Court held in the negative stating:

. . . a person under such circumstances cannot, in any proper sense of the term, have a residence anywhere other than the home he has left, since he has no choice as to where he goes, the time he can remain, or when he shall return. To gain either an actual or legal residence there is, of necessity, involved at least the exercise of volition in its selection, and this cannot be affirmed of the residence of either a soldier or sailor in active service.

The rule stated above does not absolutely preclude a member of the military from establishing a domicile in the state he or she is stationed. To do so, however, the person must establish an off-base home as well as taking other positive steps that indicate an intent to establish a new domicile. *See, Ellis v. Southeast Construction Co.*, 260 F.2d 280 (8th Cir. 1958); *Deese v. Hundley*, 283 F. Supp. 848 (D.C.S.C. 1964).

Appellants did not establish an off-base home while stationed in South Dakota. Rather, they lived in government housing, which they were required to do. Under present case law, it is legally impossible for appellants to have established a domicile in South Dakota under these circumstances.

Further, appellants have not shown sufficient other facts that would indicate their intent to make South Dakota their domicile. In the case of a member of the armed services, the evidence to sustain a change of domicile to the place where he or she may be stationed must be "clear and unequivocal". *Ferrara v. Ibach*, 285 F. Supp. 1017 (D.C.S.C. 1968). The facts in this case do not meet this standard of proof.

Mrs. Vershure testified that at the time she joined the Commissioned Corps, she and her husband wanted to travel around the country and do different things and that they did not particularly intend to return to Minnesota. However, in *Connor v. COT*, Docket No. 315 (July 8, 1948), the Court stated:

It is also quite clear that the mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile, (cite omitted) and that a person cannot be said to lose his domicile or residence by leaving it with an uncertain, indefinite, or half-formed purpose to take up his residence elsewhere (cite omitted).

Appellants opened banking accounts, opened a post office box and attended church in South Dakota. These are no more than the normal incidences of conducting one's life where one lives. South Dakota drivers' licenses were obtained in December, 1973. Mr. Vershure obtained a South Dakota Registered Nurse Certificate in October, 1973. He would have had to do this in order to gain employment in his field while living in South Dakota. Two vehicles were registered in South Dakota in 1974.

A mere place of residence and a few other contacts are not enough to establish domicile. *Sarek v. Commissioner, supra.*

Intent must be implemented by action, which in fact, integrates one's life with the new community. *Coulter v. COT*, Docket No. 257 (October 8, 1946).

In contrast, the facts show that the appellants maintained connections with the State of Minnesota during the period in question. There is no question that appellants were domiciliaries of the State of Minnesota prior to Mrs. Vershure's transfer to South Dakota. Both were born, raised and educated in Minnesota. In the spring of 1973, appellants bought three acres of property in Cass Lake, Minnesota. A checking account was opened in May, 1973 in Cass Lake and the account was kept open during the period appellants lived in South Dakota. Although appellants testified that the account was left open only for the purpose of covering outstanding checks, deposits were made as late as February, 1974. (*See* appellee's Exhibit H) The mailing address used by the bank at all times the account was open was Laporte, Minnesota.

In April, 1974, while in South Dakota, Mrs. Vershure applied to take the Minnesota pharmacist exam. She did not apply to take the test in South Dakota and has never been licensed as a pharmacist in that state. Since the tests in both states are essentially the same, there would have been no advantage in taking one test over the other. One would also reasonably expect Mrs. Vershure to obtain a license in the state she intended to make her home after retirement. Mr. Vershure maintained his registered nurse license in Minnesota in 1973 and 1974. Although he had his license certified to South Dakota, he did not change his address of record to South Dakota. Mr. Vershure testified that he maintained his Minnesota license because he would have had to take the state board again or perhaps make up continuing education credits. However, Minn. Stat. § 148.251 provides a simple procedure for allowing a license to lapse:

A person licensed under the provisions of sections 148.171 to 148.285 who desires to retire from practice temporarily, shall send a written notice to the board. Upon the receipt of such notice, the board shall place the name of such person on the non-practicing list. While so remaining on the list, the person shall not be subject to the payment of any fees, and shall not practice nursing in this state. When such person desires to resume practice, he or she shall make application for re-registration and pay the annual registration fee for the current year to the board, and the registration certificate shall be issued to such applicant, and such person shall immediately be placed on the practicing list as a licensed registered nurse.

(Emphasis added.)

The actions taken by appellants from the time of the transfer to Minnesota in 1974 through 1981 clearly indicate that Minnesota was in fact their domicile. In appellants' Answers to Appellee's Requests for Admissions, appellants admitted that the transfer took place pursuant to Mrs. Vershure's application for an open position in Minnesota. At trial, Mrs. Vershure qualified her admission by stating that she never made a formal application. Instead, the service unit director at White Earth, a personal friend of the Vershures, asked Mrs. Vershure if she was interested in the job and Mrs. Vershure said yes. At that point, her superiors in Aberdeen were contacted and the paperwork was done, resulting in an official order of transfer. The Order itself was no more than a technicality. Mrs. Vershure was not transferred to Minnesota under compulsion, but at her own request. She has not requested a transfer back to South Dakota since 1974.

Before the transfer to Minnesota took place, appellants decided to purchase a home in Minnesota. Appellants applied for a loan of $13,000 to purchase a house and 80 acres of property in Frazee, Minnesota in May, 1974. This property was purchased in June, 1974 for $26,000.00. The loan was obtained from the Peoples State Bank, Frazee, Minnesota. Appellants homesteaded this property.

In October, 1974 appellants sold that property and bought another home in Lake Park, Minnesota. A contract for deed was filed in October, 1975 and a warranty deed filed in 1978. This property was homesteaded from 1975 through 1982. Although appellants did not apply for homestead status, they were aware that it had been granted and never asked that the status be removed.

Appellants bought a lake home in Minnesota in 1977 which they owned until 1979. Mr. Vershure made extensive improvements to the lake home. They bought a boat and canoe for use in Minnesota. Appellants never purchased any recreational property in South Dakota.

In May, 1978, Mr. Vershure formed the Anderson-Vershure Construction Company. The Vershures mortgaged the family home in order to start the business. The company was engaged in the business of constructing log homes for resale in Minnesota. A venture of this type involves a time and financial commitment that is indicative of substantial ties to the state.

From 1978 to 1982, appellants held an interest in another piece of property in Lake Park, Minnesota. Mrs. Vershure testified that it was held by the construction company. However, a 1982 deed lists the grantors as the Andersons and Vershures, individually. Although Mrs. Vershure testified that the deed could not have the company as the grantor, there is no law in Minnesota preventing a partnership from owning and conveying property in its own name.

During the period of 1978 through 1981, the appellants had several bank accounts in Minnesota. From January 1, 1978 through December 31, 1981, appellants had both a savings and a checking account with the Peoples State Bank, Frazee, Minnesota. Appellants had a checking account with the Detroit Lakes State Bank, Detroit Lakes, Minnesota from January 1, 1978 through December 31, 1981. Appellants had a savings account at the Ogema State Bank, Ogema, Minnesota. This is much more than would be necessary to take care of everyday living expenses during a temporary residency.

Appellants also obtained several loans from the Peoples State Bank in Frazee, Minnesota. In 1974, they borrowed $13,000.00 to purchase their first home. In May, 1978 they obtained a loan of $5,000.00, and in August, 1978 they received a loan of $20,000.00. A loan of $6,000.00 was obtained in January, 1980 to purchase a Mercedes Benz.

In 1978 appellants purchased a motor boat and trailer. The boat was registered in Minnesota and a Minnesota license was obtained for the trailer in 1978. In 1979, appellants purchased a Coleman canoe which they also registered in Minnesota. Appellants also owned a Skidoo snowmobile, which they did not license in Minnesota or South Dakota, although they are required to do so by law.

Appellants obtained several insurance policies from Minnesota companies. They purchased malpractice insurance from a Minneapolis agency and life insurance through a St. Paul agency. They insured their home, the lake home and the property owned with the Andersons with a Lake Park insurance company.

During the period of 1978 through 1981, appellants held fishing licenses in Minnesota, Alaska and Canada and had Minnesota fishing licenses each year. Although Mrs. Vershure testified that the fishing and hunting facilities in South Dakota were a major attraction of that state, they did not have any South Dakota recreational licenses for the period of 1978 through 1981.

The facts show that at the time appellants moved back to Minnesota in 1974, they had not established a domicile in South

Dakota. It also appears that the issue of residency did not come to their attention until May, 1976 when they found out that Mrs. Vershure was eligible for relief under the Soldiers' and Sailors' Relief Act. One section of this act provides that the state where a serviceperson is stationed cannot tax that person's military income if he or she is a resident of another state. It was at this point, appellants became aware of the possible benefits of claiming another domicile.

Prior to May, 1976, appellants had Minnesota taxes withheld from their paychecks. When appellants filed their 1975 Minnesota individual income tax return in January or February, 1976, they checked the box marked resident, rather than non-resident. In answer to appellee's Requests for Admissions, appellants stated that they did so because it would cause less confusion. Mr. Joe Nelson, a tax examiner with the Department of Revenue, testified that, in fact, which box was checked would have made no difference to the substantive portion of the return.

After becoming aware of the Soldiers' and Sailors' Relief Act in May, 1976, appellants did take some further steps in an attempt to retroactively establish a South Dakota residency. Although they had never voted previously, in October, 1976, they registered to vote in South Dakota, voting in November, 1976 and again in November, 1980 by absentee ballot. They continued to license their vehicles in South Dakota and renewed their South Dakota drivers' licenses. Mr. Vershure renewed his South Dakota registered nurse certificate in 1976. (See appellee's Exhibit 4) But these steps, taken after appellants had been back in Minnesota for two years, do not support appellants' claim of forming the requisite intent to change domicile while they were physically present in South Dakota, and it is necessary that residence in fact and intent concur in order to establish a new domicile. In re Adoption of Pratt, 219 Minn. 414, 18 N.W. 2d 147 (1945).

In the present case, once one goes beyond the declarations of appellants and looks at how they actually conducted their lives from 1973 through 1981, there can be no doubt that the domicile remained in Minnesota. The overwhelming weight of appellants' actions show that they maintained "deep roots . . . embedded in the social and economic life of the old community." Coulter v. Commissioner of Taxation, Docket No. 257 (Oct. 8, 1946).

Minnesota Statutes § 290.56 states as follows:

Where a taxpayer is liable for additional taxes under this chapter, interest shall be added to the additional amount, at the rate specified in section 270.75, from the due date of the original return.

Prior to February 1, 1982, the interest rate specified in Minn. Stat. § 270.75 was 8 percent. From February 1, 1982 to January 1, 1983, the interest rate under this section was 20 percent. According to Minn. Stat. § 270.75, subd. a, beginning in January, 1983, the interest rate is to be adjusted each year to the adjusted prime rate charged by banks during September of the immediately preceding year. The interest rate has been adjusted to 14 percent for 1983.

The legislature has clearly mandated that interest shall be assessed on unpaid taxes and specifically set the interest rate at 20 percent for the period of February, 1982 to January, 1983. Where the intention of the legislature is clearly manifested by plain and unambiguous language, no construction is necessary nor permitted. 17B Minn. Dunn. Dig. Statutes § 894; (3rd Ed. 1970). In Moser v. COR, Docket No. 3598-S (Oct. 1, 1982), the Court refused to abate the assessment of interest at the 20%. Although Moser is a small claims court case and not precedent, the Court did state that while 20% interest was high, it was not unreasonable in light of the economy in 1982 and that it was bound to follow the statute.

Of course, appellants could have avoided the assessment of interest by paying the tax pending the outcome of their appeal. The Minnesota Supreme Court has repeatedly recognized that interest is not a penalty but is the payment of a reasonable sum for the loss of use of money. General Mills, Inc. v. State, 303 Minn. 66, 226 N.W. 2d 296 (Minn. 1975). If the appellants are not required to pay the assessed interest, the State of Minnesota is not being fully compensated and appellants are being unjustly enriched, having had the full use of these tax dollars since they were due to the present time.

It would appear that appellants did not pay Minnesota income taxes for the years 1976 and 1977. Since it now appears that they should have paid income taxes for these years, it may compensate somewhat for the interest that is assessed. The fact that the 1976 and 1977 tax returns were accepted does not bind the state, although there have been no changes that would affect residency or domicile between those years and subsequent years. We find that Appellants' domicile has always been Minnesota.

The simple fact that they intended to retire in South Dakota is not of much weight. Many people spend various amounts of time in such states as Florida and Arizona with an intention to retire there, but the change of domicile does not occur until the intention and physical facts coincide. It is true that Appellants did do some of the things that would ordinarily be connected with a change of domicile.

It is interesting to note that the word domicile is derived from the Latin "domus" which means home or dwelling house. Domicile is also considered to be the permanent home to which a person has the intention of returning. Obviously, since the place that appellants lived was owned by the government, they could not have had the intention of returning to that home. Appellants actually testified that they had planned perhaps to go to Rapid City rather than to McLaughlin where they had lived in the Army property.

The matter of the registration of their motor vehicles since 1974 raises an interesting question. Minn. Stat. § 168.181 reads in part as follows:

Subdivision 1. Notwithstanding any provision of law to the contrary or inconsistent herewith the registrar of motor vehicles with the approval of the attorney general is hereby empowered to make agreements with the duly authorized representatives of the other states, District of Columbia, territories and possessions of the United States or arrangements with foreign countries or provinces exempting the residents of such other states, districts, territories and possessions and foreign countries or provinces using the public streets and highways of this state from the payment of any or all motor vehicle taxes or fees imposed by Minnesota Statutes, Chapter 168, subject to the following conditions and limitations:

* * * *

(3) Upon condition that the exemptions provided herein shall not apply to a passenger automobile or house trailer owned by a resident of any state, district, territory or possession or foreign country or province temporarily residing in this state while gainfully employed on the same job for a period of six months or more.

* * * *

Although that is not an issue in this case, it appears that the vehicles of appellants should possibly have been subject to Minnesota motor vehicle license fees during all of the years since 1974. This is obviously only reasonable since these fees are all used on the maintenance of the Minnesota highways and these vehicles were driven almost exclusively on Minnesota highways.

We might also refer again to the fact that appellants have received homestead treatment on their residence in Minnesota for all or most of the years involved herein. Such treatment amounts to a tremendous reduction in real estate taxes that appellants have paid. A great deal of the reduction for homestead taxes is by reimbursement to the taxing districts from the income taxes collected by the State of Minnesota. It would obviously be unfair for the appellants to be receiving these benefits without contributing to the payment of income taxes.

Appellants indicated that they were given homestead treatment on their property without application by them. The tax statements undoubtedly showed very clearly that they were receiving the benefits of homestead treatment and the very word "homestead" must imply to almost anyone that that is the residence or domicile of the person.

Although it is not an issue to be decided by this Court, we have some question about the legitimacy of appellants voting in South Dakota. They were just as eligible to vote in South Dakota in 1974 as they were in 1976, but they did not do so. The fact that the Soldiers' and Sailors' Relief Act went into effect in 1976 may have misled them into believing that they were able to choose South Dakota as their domicile and, therefore, avoid Minnesota income taxes. We doubt that they have ever participated in any local elections and we would have no idea where they might feel they would be entitled to vote in local elections.

The evidence is overwhelming that appellants have always been domiciled in Minnesota, and we have so found.

As we have stated above, interest is ordinarily payable on delinquent income taxes from the date the income taxes were due. In this case, however, we have found that appellants relied on the acceptance of the manner of filing for the year 1976 and the same manner was followed in subsequent years. Although we find that the income tax is due, we do find that the appellee is estopped from collecting interest on the income tax until appellants had been notified that the acceptance of the 1976 income tax return was incorrect.

Formerly estoppel could be used against the government only when it was acting in its proprietary capacity. This has been changed so that estoppel now can lie when the government is acting in its sovereign capacity. The Supreme Court has clearly stated this in Mesaba Aviation Division v. County of Itasca, 258 N.W. 2d 877 (Minn. 1977), and Ridgewood Development Co. v. State, 294 N.W. 2d 288 (Minn. 1980). In the Ridgewood case the Supreme Court referred to the Mesaba case and stated:

"We cautioned that estoppel would only be applied against the government acting in a sovereign capacity 'if the equities advanced by the individual are sufficiently great.'"

In both of these cases the Supreme Court found there was no estoppel. However, in the Ridgewood case three judges dissented and one did not participate. All judges acknowledged that estoppel would lie under proper circumstances even when the government is acting in its sovereign capacity.

In Townboard of Marshan v. City Council of Hastings, 298 N.W. 2d 353 (Minn. 1980), the Court again discussed the matter of estoppel. The Court held that the time fixed for a request for a hearing was fixed by law and could not be the subject of waiver or estoppel. However, the Court went on to state:

"To create an estoppel, one must act to his detriment and in reliance upon the acts or omissions of another."

We find here that appellants did rely on the acts of appellee to their detriment as to interest and we, therefore, find that the appellee is estopped from collecting interest until appellants had been notified that the prior approval was incorrect.

C.A.J.

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