

Minnesota Attorney General: Administrative Rules Proceedings

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Dwight S. Wagenius
Special Assistant
Attorney General

October 28, 1976

- Applications for Certificates of Need for Large Oil Storage Facilities, Large Oile Pipelines and Oil Refineries for Petroleum Suppliers - Rules EA 1001-1091

MINNESOTA ENERGY AGENCY
740 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101
612-296-5120

October 7, 1976

Michael B. Miller
Special Assistant
Attorney General
Department of Administration
G-19-K State Administration
Building
50 Sherburne Avenue
Saint Paul, MN 55155

Re: In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need for Large Oil Storage Facilities, Large Oil Pipelines and Oil Refineries for Petroleum Suppliers - Proposed Rules EA 1001-1091.
Docket No. EA-76-003-WS

Dear Mr. Miller:

Enclosed pursuant to Minn. Stat. § 15.0412 subd. 4 (Supp. 1975) and Minn. Regs. Atty Gen 301 et seq. is the entire record of the above-captioned proceeding.

Sincerely,

John P. Millhone
Director

JPM:sc
Enc.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities, Large Oil Pipelines, and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	STATEMENT OF COMPLIANCE WITH MANUAL OF RULE-MAKING PROCEDURES

I, Special Assistant Attorney General Dwight S. Wagenius, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rulemaking Procedures has been followed.

Dated: 7 October 1976

Dwight S. Wagenius

Special Assistant
Attorney General

H[redacted]76-003-WS

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE MINNESOTA ENERGY AGENCY)
GOVERNING CONTENTS OF APPLICATIONS FOR)
CERTIFICATES OF NEED AND CRITERIA FOR) REPORT OF THE ACTING
ASSESSMENT OF NEED FOR LARGE OIL STORAGE) CHIEF HEARING EXAMINERS
FACILITIES, LARGE OIL PIPELINES AND OIL)
REFINERIES FOR PETROLEUM SUPPLIERS.)
(PROPOSED EA 1000 RULE SERIES))

WHEREAS, a hearing was held on June 30, 1976, and reconvened July 15, 1976, before William Seltzer, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Findings of Fact, Conclusions and Recommendations made pursuant to Minn. Stat. §15.052, Subd. 3, were issued to the Energy Agency on September 20, 1976; and

WHEREAS, the Energy Agency has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Energy Agency has submitted said rules to the Acting Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Acting Chief Hearing Examiner finds that there are no substantial changes in said rules as originally proposed or as revised as a result of the public hearing process and submitted before the close of the record.

NOW, THEREFORE, upon receipt of this Report, the Energy Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the Agency to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 6th day
of October, 1976.

Duane R. Harves

DUANE R. HARVES
Acting Chief Hearing Examiner

MINNESOTA ENERGY AGENCY PROPOSED RULES

GOVERNING CONTENTS OF APPLICATIONS

FOR CERTIFICATE OF NEED AND CRITERIA

FOR ASSESSMENT OF NEED FOR

LARGE OIL STORAGE FACILITIES,

LARGE OIL PIPELINES

AND OIL REFINERIES FOR

PETROLEUM SUPPLIERS

Chapter 10
EA 1001-1091

Rule Number	Title of Rule
EA 1001	Purpose of Rules
EA 1002	Applicability of Rules
EA 1003	Application Procedures and Timing
EA 1004	Definitions
EA 1005	Filing Fees and Payment Schedule
EA 1011	Criteria for Assessment of Need
EA 1021	Contents of Application
EA 1031	General Information
EA 1032	Need Summary
EA 1033	Summary of Additional Considerations
EA 1034	Conservation Programs
EA 1040	LARGE OIL STORAGE FACILITY SECTION
EA 1041	Historical Energy Data
EA 1042	Forecast Data
EA 1043	Description of Proposed Facility
EA 1044	Alternatives
EA 1045*	Environmental Data
EA 1050	LARGE OIL PIPELINE FACILITY SECTION
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EA 1053	Description of Proposed Facility
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EA 1061	Historical Energy Data
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EA 1063	Description of Proposed Facility
EA 1064	Alternatives
EA 1065*	Environmental Data
EA 1071*	Environmental Data
EA 1081	Other Data Filed with the Application
EA 1091	Certificate of Need Modifications

* Rule EA 1071 is an alternative proposed by the Agency to rules EA 1045, 1055, 1065. The Agency expresses no preference.

MINNESOTA ENERGY AGENCY PROPOSED RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES, LARGE OIL PIPELINES AND OIL REFINERIES FOR PETROLEUM SUPPLIERS

Chapter 10
EA 1001-1091

EA 1001 PURPOSE OF RULES

The purpose of these rules is to specify the contents of applications for certificates of need and to specify criterion for assessment of need for large oil storage facilities, large oil pipelines and oil refineries, for petroleum suppliers pursuant to Minn. Stat. §116H.13

EA 1002 APPLICABILITY OF RULES

(a) Each applicant for a certificate of need for one of the following types of large energy facilities shall provide all information required by these rules:

(1) a new large oil storage facility;

(2) a new large oil pipeline facility;

(3) a new oil refinery; and

(4) an expansion of an existing oil refinery in excess of 25% of its rated throughput.

(b) Exception. Any person who as of the effective date of these rules has begun or has completed construction of a large energy facility shall not be subject to these rules for that facility.

EA 1003 APPLICATION PROCEDURES AND TIMING

(a) Each applicant for a certificate of need shall apply in a form prescribed by the director

(b) A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director. The director may require additional bound copies. All documents, forms, and schedules filed with the application must be typed on 8½" x 11" paper except for blueprints, engineering drawings, maps, and similar materials. The date of preparation and the applicant's name shall appear on each page of the application. Each application shall contain a title page and a complete table of contents which includes the applicable rule section titles and numbers given in these regulations.

(c) Subsequent to filing an application, any changes or corrections to the application shall comply with (b) as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked "REVISED" and dated with the date the revision was made. Revisions made to an application between the date the application is filed, but prior to public hearings, shall be filed with the director. Any revisions during or after public hearings shall be filed with the hearing examiner.

(d) Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, the number of copies filed, and the sections and subdivisions to which the applicant has responded.

(e) A hearing examiner shall be appointed and a public hearing shall be scheduled to commence no latter than eighty days after the receipt of the application, in accordance with the Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minn. Regs. EA 500 et seq. and the Hearing Examiner Rules of contested case procedures, Minn. Regs. HE 201 et seq.

(f) A decision on an application for certificate of need shall be made by the director no later than six months

from the receipt of the application, provided that the application as filed is substantially complete.

(g) The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct the deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

EA 1004 DEFINITIONS

(a) "Agency" means the Minnesota Energy Agency;

(b) "Applicant" means the person or persons submitting a certificate of need application;

(c) "Application" means a document submitted by a person or persons to the director for the purpose of obtaining a certificate of need, the contents of which are described in these rules;

(d) "Barrel" means that quantity of liquid which is equal to 42 gallons;

(e) "BTU" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

(f) "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

(g) "Demand" means that quantity of an energy product from an applicant's facilities for which there is a willing and able purchaser;

(h) "Director" means the director of the Agency'

(i) "Energy Product" means a product which may be used to provide energy;

(j) "Forecast" means a prediction of future demand for some specified time period;

(k) "Forecast Years" means the sixteen-year period consisting of the year in which an application is filed plus the next fifteen years;

(l) "Joint Application" means an application submitted to the director by two or more persons;

(m) "Large Oil Pipeline" means a pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof;

(n) "Large Oil Storage Facility" means a facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof;

(o) "Oil Refinery" means any facility which processes crude or synthetic crude oil for the purpose of separating it into marketable products;

(p) "Peak Day" means that day during a calendar year when the demand is the greatest;

(q) "Peak Demand" means the highest demand for energy occurring within any designated period of time;

(r) "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

(s) "Petroleum Supplier" means a petroleum refinery in the state and any entity engaged in transmission or wholesale distribution of more than 100,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof annually in this state;

(t) "Substantially Complete Application" means an application which is deemed by the director to be in substantial compliance with the informational requirements of these rules.

EA 1005 FILING FEES AND PAYMENT SCHEDULE

The fee for processing an application shall be;

(1) $1,500 plus $50 per one hundred thousand gallons of designed storage capacity for a large oil storage facility; or

(2) $10,000 plus $4 for each inch-mile of the Minnesota portion of a large oil pipeline; or

(3) $10,000 plus $200 per thousand barrels of designed daily throughput for an oil refinery;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of any applicant exceed $50,000. Fifty percent of the set fee (according to (1), (2), or (3) above,) shall accompany the application and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when its application is acted on by the director of any additional fees and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

EA 1011 CRITERIA FOR ASSESSMENT OF NEED

(a) Purpose of the criteria. The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. §§ 116H.01 through 116H.15.

(b) A certificate of need shall be granted to the applicant if it is determined that:

(1) the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. In making this determination, the director shall consider:

(i) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

(ii) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

(iii) the effects of promotional practices which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

(iv) the ability of current facilities and planned facilities not requiring a certificate of need to meet the future demand; and

(v) the effect of the proposed facility in making more efficient use of resources;

(2) a more reasonable and prudent alternative to the proposed facility has not been demonstrated. In making this determination, the following factors shall be considered:

(i) the appropriateness of the size, type, and the timing of the proposed facility compared to reasonable alternatives;

(ii) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(iii) the impact of the proposed facility on the natural and socioeconomic environments compared to the impacts of reasonable alternatives; and

(iv) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

(3) the consequences of granting the certificate of need outweigh the consequences of denying the certificate, considering:

(i) the relationship of the proposed facility to overall state energy needs;

(ii) the impact of the proposed facility on the natural and socioeconomic environments compared to the impact of not building the facility;

(iii) the effects of the proposed facility in inducing future development; and

(iv) socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality;

and that

(4) the granting of the certificate of need for the proposed facility is consistent with those relevant policies, rules and regulations of other state and federal agencies and local governments which have been considered during the hearing process.

EA 1021 CONTENTS OF APPLICATION

(a) Each application for a certificate of need shall provide all information requested in rules EA 1031 - 1034, plus additional information for specific types of facilities as indicated in paragraph (d).

(b) Joint Application. If the proposed application for a certificate of need is jointly submitted by two or more persons, then, when specified in these rules, each such person shall submit the information required by these rules.

(c) Multi-Party Ownership and Use. Each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

(d) Additional information shall be provided for specific types of facilities as indicated below.

(1) Large Oil Storage Facility. Refer to rule EA 1040.

(2) Large Oil Pipeline Facility. Refer to rule EA 1050.

(3) Oil Refinery. Refer to rule EA 1060.

EA 1031 GENERAL INFORMATION

(a) Each application shall contain a general information section which shall include the following information;

(1) the applicant's complete name and address, telephone number, and standard industrial classification code(s)

(2) the complete name, title, address and telephone number of the official or agent to be contacted concerning the applicant's filing;

(3) a brief description of the nature of the applicant's business and of the products which are manufactured, produced, or processed, or of the services rendered;

(4) a brief description of the proposed facility, the complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its capacity in gallons (oil storage), in designed maximum throughput in barrels per day (oil pipeline), or in designed throughput in barrels per day (oil refinery).

(5) the total fee for the application as prescribed by rule EA 1005, and the amount of the fee submitted with the application; and

(6) the signature(s), and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

(b) Each application shall contain a schedule in the general information section which shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

(1) the name of all known federal, state, or local agencies or authorities with which the applicant must file;

(2) the title of each required permit or certificate issued by the authority named in (1) and needed by the applicant;

(3) for each permit or certificate in (2), the date an application was filed or the projected date of future application;

(4) for each permit or certificate in (2), the actual date a decision was made on the application, or the anticipated decision date; and

(5) for each permit or certificate in (2) for which an application was filed, the disposition or status of the permit or certificate.

EA 1032 NEED SUMMARY

Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. The summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

EA 1033 SUMMARY OF ADDITIONAL CONSIDERATIONS

Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

(a) socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

(b) promotional activities which may have given rise to the demand for the facility; and

(c) the effects of the facility in inducing future development.

EA 1034 CONSERVATION PROGRAMS

Each application shall contain a section which relates to the conservation of energy. Separate responses are required from each person in a joint application.

(a) Does the applicant have an energy committee or an individual responsible for determination or coordination of its energy needs?

(b) Has the applicant defined energy or conservation goals or objectives?

(c) What major energy efficiency or conservation programs has the applicant considered?

(d) What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

(e) What major energy efficiency or conservation programs will be implemented within the next five years?

EA 1040 LARGE OIL STORAGE FACILITY SECTION

In addition to the data required in rules EA 1031-1034, each applicant for a large oil storage facility shall provide the information requested by rules EA 1041-1045, and, optionally, EA 1081.

In a joint application, separate responses are required from each person for information required by rules EA 1041-1042 and EA 1044.

EA 1041 HISTORICAL ENERGY DATA

Each applicant for a large oil facility shall provide the following information:

(a) a list of all existing oil storage facilities at the site where the proposed facility will be located, including for each facility its capacity in gallons and the year it was placed into service;

(b) identification of the specific facilities in (a) above which are normally used to store the type of petroleum products(s) which will be stored in the proposed facility;

(c) a description of the normal inventory cycle for the type of product(s) which will be stored in the proposed facility, including the applicant's policies, if any, of building inventories during certain seasons of the year.

(d) for the oil storage site or refinery where the proposed facility will be located, a list of the annual throughput in gallons for the five most recent calender years for the type of petroleum product(s) which will be stored in the proposed facility; and

(e) the impact of the shortage(s), if any, of storage capacity upon the applicant's operations for the type of petroleum product(s) which will be stored in the proposed facility.

EA 1042 FORECAST DATA

Each applicant for a large oil storage facility shall provide answers to the questions below.

(a) What are the applicant's projected storage capacity requirements, during the next five years, for the type of petroleum product(s) which will be stored in the proposed facility?

(b) What impact, if any, would the proposed facility have upon the applicant's ability to manage its inventory and supply its customers during the next five years, compared to its current situation?

(c) What impact, if any, would the proposed facility have upon the applicant's annual throughput or its ability to maintain current throughput levels during the next five years?

(d) What specific supply problems, if any, are anticipated by the applicant during the next five years?

EA 1043 DESCRIPTION OF PROPOSED FACILITY

Each application for a large oil storage facility shall include the following information in a separate section of the application:

(a) the purpose and planned use of the proposed oil storage facility, including its relationship to the facility which requires it;

(b) a description of the proposed oil storage facility including:

(1) its design capacity in gallons;

(2) the type(s) of petroleum products to be stored;

(3) the dimensions;

(4) engineering drawings, blueprints, and specifications (if available);

(5) an appropriate drawing which shows interconnections with other facilities at the site; and

(6) the estimated cost of the proposed oil storage facility and its expected economic life;

(c) the complete name and address of the engineer, if known, or (if designed by an outside agent) the firm, which designed the oil storage facility;

(d) the complete name and address, if known, of the contractor or firm who will construct the oil storage facility; and

(e) the approximate planned date for starting construction and the approximate planned in-service date.

EA 1044 ALTERNATIVES

Each applicant for a large oil storage facility shall respond to the following questions and submit the required data in a separate section of the application.

(a) Are there any known restrictions or limitations on the types of alternatives available to the applicant's proposed oil storage facility?

(b) Specifically, what other alternatives were examined? For each alternative examined provide the following information:

(1) a description of the alternative;

(2) when it was studied;

(3) who performed the study;

(4) why it was rejected;

(5) whether economics was considered and to what extent;

(6) whether environmental data were considered and to what extent; and

(7) whether actions or practices of competitors were considered and to what extent.

EA 1045* ENVIRONMENTAL DATA

(a) Location

(1) If the specific location for the proposed facility is known, provide the county, township, range, and section(s) of that site. Also indicate the name of and distance to the nearest city. For this site provide the information requested in paragraphs (b) through (e) below.

(2) If a specific location has not been chosen, provide the county, township, range and section(s), and the name of and distance to the nearest city for each parcel of land which in the opinion of the applicant could potentially serve as the site for the proposed facility. Considering these parcels of land in the aggregate, provide the information requested in paragraphs (b) through (e) below. Where environmental data differ by parcel of land, indicate those differences.

(b) Environmental Effects

(1) Water. Provide information regarding the impact of site preparation, construction, cleanup and rehabilitation, and operation of the proposed facility on water resources, including:

(i) the amount of water used by or for the facility, whether it is surface water or groundwater, how it will be used, and how its use will vary over time;

(ii) the depth of groundwater at the site;

(iii) the approximate distance in feet to lakes, streams, drainage ditches, wells, or storm drains within one mile of the site into which liquid contaminant could flow;

(iv) the effect on drainage of the area; and

(v) the possible effect on the location, condition, quality, or quantity of Minnesota's public water resources.

Rule EA 1045 is a proposed alternative to rule EA 1071. The agency has no expressed preference.

(2) Land, Minerals, Wildlife, and Historical Sites. Provide information regarding the impact of site preparation, construction, cleanup and rehabilitation, and operation of the proposed facility on Minnesota's non-water resources and historical sites, including:

(i) the nature of the terrain on which the facility is to be located;

(ii) the general soil type at the facility location;

(iii) state-designated critical areas, scientific and natural areas, wetlands, wildlife refuges, and educational areas within one mile of the site;

(iv) the types of land use in adjoining or nearby areas and the relative proportions devoted to each;

(v) unique natural land features, areas of special botanical significance, endangered species and other wildlife or fishing resources, open spaces and recreation areas within one mile of the site;

(vi) the effect on the potential use or extraction of indispensable or scarce minerals or energy resources and the amount of land so affected;

(vii) sites, structures, or landmarks of historical significance within one mile of the site; and

(viii) archaeological and paleontological sites within one mile of the site.

(3) Population Disruption; Induced Developments. Provide information regarding the capability of the proposed facility for causing population disruption or inducing other developments, including:

(i) the amount of vehicular traffic generated per day by the facility;

(ii) the effect on existing or proposed transportation systems;

(iii) the population growth likely to result in nearby areas as a result of the facility;

(iv) the extent of relocation of human beings, either directly or indirectly, as a result of construction or operation of the facility; and

(v) the extent to which the facility will create or add to the need for expanded utilities or public services.

(c) Wastes and Emissions from the Facility. Provide information regarding the impact of the proposed facility on the natural environment as a result of wastes or emissions, including;

(1) the effect of the facility on the air quality in surrounding areas, and the amount of each substance emitted by or because of the proposed facility contributing to that effect; and

(2) the quantity and type of gaseous, liquid, and solid wastes that will be discharged by the facility, the treatment facilities for those wastes, and the method(s) of disposal.

(d) Environmental Safeguards. Provide detailed information regarding the safeguards to be utilized by the applicant for mitigating the effect of the proposed facility on the environment, including;

(1) a complete description of the containment dike or wall system, including:

(i) height, width at its base, and slope;

(ii) dike material;

(iii) dike capacity and freeboard;

(iv) type and depth of material or soil in the floor of the diked area; and

(v) types of drainage valves and their locations;

(2) any other type of environmental safeguards;

(3) estimated cost of new safeguards provided specifically for the proposed facility; and

(4) the provisions, if any, for recycling of liquid from accidental spills.

(e) Other Mitigative Measures. Provide information on any other measures proposed by the applicant to reduce or eliminate the potential adverse effects identified above. Consider soil erosion control measures, water and air quality monitoring, landscaping, replacement acreage, alternative technologies, and other construction techniques or design alternatives.

EA 1050 LARGE OIL PIPELINE FACILITY SECTION

In addition to the data required in rules EA 1031-1034, each applicant for a certificate of need for a large oil pipeline facility shall provide the information required by rules EA 1051-1055.

In a joint application, separate responses are required from each person for information required by rules EA 1051-1052 and EA 1054.

EA 1051 HISTORICAL ENERGY DATA

(a) For the geographical area to be served by the proposed facility, the applicant shall provide the following:

(1) a list of the petroleum products transported or distributed by the applicant in that geographical area during the five most recent calendar years;

(2) for each petroleum product listed in (1) above and for each of the five most recent calendar years, a list of the annual and peak day quantities in the appropriate unit of measure;

(3) a list of sources of supply of petroleum products for transportation or distribution during the five most recent calendar years, including the complete name and address of each of the 25 largest suppliers or shippers with whom the applicant has contracted, the dates and durations of the contracts, the petroleum products and quantities involved and, for sources of crude oil, the geographical areas of origin of the crude oil; and

(4) a list of recipients of transported or distributed petroleum products during the five most recent calendar years, including the complete name and address of each of the 25 largest recipients with whom the applicant has contracted, the dates and durations of the contracts and the petroleum products and quantities involved.

(b) Name each large oil storage facility, large pipeline facility, and oil refinery associated with the transportation or distribution of the petroleum products named in (a) (1) above. Provide maps which represent the locations and interconnections of these facilities.

(c) For each large energy facility described in (b) above, located in Minnesota and owned or operated by the applicant, provide the average percentage of use of its full design capacity during the summer season and during the winter season.

EA 1052 FORECAST DATA

For the geographical area to be served by the proposed facility, the applicant shall provide the following:

(a) a list of the petroleum products the applicant expects to transport or distribute in that geographical area during the first six forecast years, the eleventh forecast year (the tenth year after the year of the application), and the sixteenth forecast year;

(b) for each petroleum product listed in (a) above and for each of the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, a list of the annual and peak day quantities expected, using the appropriate units of measure;

(c) a discussion of the methods, assumptions and factors employed for purposes of estimation in (a) and (b) above;

(d) a discussion of the effect on the forecast of possible changes in the key and key factors requested in (c) above; and

(e) considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.

(a) Design. The applicant shall provide the following information pertaining to the design of the proposed large oil pipeline;

(1) if known, the complete name and address of the engineer and firm to be responsible for the design;

(2) the estimated cost and economic life;

(3) a list of the petroleum products the large oil pipeline is intended to transport;

(4) the design capacity in barrels per day; and

(5) engineering data, including the following;

(i) a geographical descripton of the large oil pipeline from its origin to its termination, with a map showing the geographical area likely to be affected by it, the proposed locations of the pipeline, its pumping stations, valves, petroleum product storage facilities and interconnections;

(ii) representative illustrations showing the function and size of the major oil pipeline components;

(iii) for the pipe, valves and small petroleum product storage facilities, representative specifications, including length, diameters, weight, height, and/or depth with respect to ground or water level, maximum capacity, and maximum allowable operating temperature and pressure;

(iv) for the pumps, representative specifications, including diameter, allowable maximum and minimum operating temperatures and pressures, maximum capacity, minimum suction pressure and maximum discharge pressure; and

(v) for the prime movers, representative specifications, including type, allowable maximum power capacity in horsepower, allowable maximum and minimum operating temperature, and energy requirement in BTU per barrel of petroleum product pumped.

(b) Construction. The applicant shall provide the following information pertaining to the construction of the proposed facility:

(1) if known, the complete name and address of the company to be responsible for the construction;

(2) the proposed date for commencement of construction and the proposed in-service date; and

(3) an estimate of the in-service date if the construction were to be on a fully-expedited basis.

(c) Operation. The applicant shall provide the following information pertaining to the operation of the proposed facility:

(1) the expected average percentage of use of the full design capacity of the proposed facility during the first five years of operation;

(2) the expected maximum operating pressure and capacity of the proposed facility at peak demand;

(3) the expected power requirement from the prime movers at peak demand (in percent of the maximum allowable power capacity);

(4) a list of expected sources of supply or shippers of petroleum products for transportation during the first five calendar years of operation, including the complete name and address of each of the 25 largest suppliers or shippers with whom the applicant expects to have contracted, the expected dates and durations of the contracts, the petroleum products and quantities expected to be involved and, for sources of crude oil, the expected geographical areas of origin of the crude oil; and

(5) a list of expected recipients of transported petroleum products during the first five calendar years of operation, including the complete name and address of each of the 25 largest recipients with whom the applicant expects to have contracted, the expected dates and durations of the contracts and the petroleum products and quantities expected to be involved.

(a) The applicant shall study and provide information pertaining to the alternatives requested in paragraphs (b) through (d) below, and, for each alternative, the information shall be presented in the following format:

(1) a description of the alternative, including:

(i) a discussion of the design or strategy involved and the geographical area affected;

(ii) an estimate of the in-service or implementation date; and

(iii) a discussion of the method of operation of the alternative;

(2) a description of the study performed, including an identification of the person and firm that performed the study, the duration of the study , its date of completion and its cost;

(3) a summary of the conclusions of the study of the alternative. including the reasons for its rejection, the estimates for

(i) its cost,

(ii) economic life,

(iii) major environmental impacts,

(iv) inducement of future development,

(v) other beneficial uses of its output,

and its effects on employees and the people served in and from Minnesota; and

(4) a discussion of the extent to which rejection of the alternative was influenced by actions or practices of competitors.

(b) Reduced Growth of Demand. The applicant shall provide information (as outlined in (a) above) for the alternative of obtaining a reduction of the rate of growth of maximum demand through installation of auxiliary equipment or implementation of modified procedures.

(c) Size of Facility. The applicant shall provide information (as outlined in (a) above) for at least two size alternatives - a facility of the type proposed having twenty percent more capacity than proposed and a similar facility having twenty percent less capacity than proposed, as well

as each other size alternative studied.

(d) Type of Facility. The applicant shall provide information (as outlined in (a) above) for every alternative type (not size) of facility studied.

EA 1055* ENVIRONMENTAL DATA

(a) Location

(1) If the specific right of way for the proposed facility is known, provide the counties, townships, ranges, and sections of that right of way. Also indicate the names of and distances to nearby cities. For this right of way provide the information requested in paragraphs (b) through (e) below.

(2) If a specific right of way has not been chosen, provide the county, township, range and section(s), and the names of and distances to nearby cities for each parcel of land which in the opinion of the applicant could potentially serve as part of the right of way for the proposed facility. Considering these parcels of land in the aggregate, provide the information requested in paragraphs (b) through (e) below. Where environmental data differ by parcel of land, indicate those differences.

(b) Environmental Effects

(1) Water. Provide information regarding the impact of right of way preparation, construction, cleanup and rehabilitation, and operation of the proposed facility on water resources, including;

(i) the amount of water used by or for the facility, whether it is surface water or groundwater, how it will be used, and how its use will vary over time;

(ii) the depth of groundwater along the right of way;

(iii) the approximate point of crossing or distance to lakes, rivers, streams, drainage ditches, wells, or storm drains into which liquid contaminant could flow;

(iv) the effect on drainage of the area; and

(v) the possible effect on the location, condition, quality, or quantity of Minnesota's public water resources.

(2) Land, Minerals, Wildlife, and Historical Sites. Provide information regarding the impact of site preparation, construction, cleanup and rehabilitation,

* Rule EA 1055 is a proposed alternative to rule EA 1071. The agency has no expressed preference.

and operation of the proposed facility on Minnesota's non-water resources and historical sites, including:

(i) the nature of the terrain through which the facility may pass;

(ii) the general soil type on the facility right of way;

(iii) state-designated critical areas, scientific and natural areas, wetlands, wildlife refuges, nad educational areas within one mile of the right of way;

(iv) the types of land use in adjoining or nearby areas and the relative proportions devoted to each;

(v) unique natural land features, areas of special botanical significance, endangered species and other wildlife or fishing resources, open spaces and recreational areas within one mile of the right of way;

(vi) the effect on the potential use of extraction of indispensable or scarce minerals or energy resources and the amount of land so affected;

(vii) sites, structures, or landmarks of historical significance within one mile of the right of way; and

(viii) archaeological and paleontological sites within one mile of the right of way.

(3) Population Disruption; Induced Developments. Provide information regarding the capability of the proposed facility for causing population disruption or inducing other developments, including:

(i) the amount of vehicular traffic generated per day by the facility;

(ii) the effect on existing or proposed transportation systems;

(iii) the population growth likely to result in nearby areas as a result of the facility;

(iv) the extent of relocation of human beings, either directly or indirectly, as a result of construction or operation of the facility; and

(v) the extent to which the facility will create or add to the need for expanded utilities or public services.

(c) Wastes and Emissions from the Facility. Provide information regarding the impact of the proposed facility on the natural environment as a result of wastes or emissions, including;

(1) the effect of the facility on the air quality in surrounding areas, and the amount of each substance emitted by or because of the proposed facility contributing to that effect;

(2) the generation of noise or vibration by the facility, the noise source, and the maximum decibel levels anticipated at the pumping station property line; and

(3) the quantity and type of gaseous, liquid, and solid wastes that will be discharged by the facility the treatment facilities for those wastes, and the method(s) of disposal.

(d) Environmental Safeguards. Provide detailed information regarding the safe guards to be utilized by the applicant for mitigating the effect of the proposed facility on the environment, including:

(1) the type of environmental safeguard;

(2) the estimated cost of new safeguards provided specifically for the proposed facility; and

(3) the provision, if any, for recycling of liquid from accidental spills.

(e) Other Mitigative Measures. Provide information on any other measures proposed by the applicant to reduce or eliminate the potential adverse effects identified above. Consider soil erosion control measures, water and air quality monitoring. noise abatement, landscaping, replacement acreage, alternative technologies, and other construction techniques or design alternatives.

EA 1060 OIL REFINERY FACILITY SECTION

In addition to the data required in rules EA 1031-1034, each applicant for a certificate of need for an oil refinery facility shall provide the information requested by rules EA 1061-1065.

In a joint application, separate responses are required from each person for information requested by rules EA 1061-1062 and EA 1064.

EA 1061 HISTORICAL ENERGY DATA

(a) For the geographical area to be served by the proposed facility, the applicant shall provide the following:

(1) a list of the petroleum products refined, or if not refined, distributed by the applicant in that geographical area during the five most recent calendar years;

(2) for each petroleum product listed in (1) above and for each of the five most recent calendar years, a list of the annual quantities refined or distributed in the appropriate unit of measure;

(3) a list of sources of supply for oil refining or distribution during the five most recent calendar years, including the complete name and address of each of the 25 largest suppliers with whom the applicant has contracted, the dates and durations of the contracts, the petroleum products and quantities involved, and for sources of crude oil, the geographical areas of origin of the crude oil; and

(4) a list of contracts for out-of-state delivery of petroleum products refined in Minnesota during the five most recent calendar years, including only the dates and durations of the contracts and the petroleum products and quantities involved.

(b) Name each large oil storage facility, large pipeline facility and oil refinery associated with the refining or distribution of the petroleum products named in (a) (1) above. Provide maps which represent the locations and interconnections of these facilities.

(c) For each large energy facility described in (b) above, located in Minnesota and owned or used by the applicant, provide the average percentage (or, where applicable, the maximum percentage) of use of its full design capacity during the summer season and during the winter season.

EA 1062 FORECAST DATA

For the geographical area to be served by the proposed facility, the applicant shall provide the following:

(a) a list of the petroleum products the applicant expects to refine or distribute in that geographical area during the first six forecast years, the eleventh forecast year, and the sixteenth forecast year;

(b) for each petroleum product listed in (a) above and for each of the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, a list of the annual quantities expected, using the appropriate units of measure;

(c) a discussion of the methods, assumptions and factors employed for purposes of estimation in (a) and (b) above;

(d) a discussion of the effect on the forecast of possible changes in the key assumptions and key factors requested in (c) above; and

(e) considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.

EA 1063 DESCRIPTION OF PROPOSED FACILITY

(a) Design. The applicant shall provide the following information pertaining to the design of the proposed oil refinery:

(1) if known, the complete name and address of the engineer and firm to be responsible for the design;

(2) the estimated cost and economic life;

(3) a list of the crude oils (or equivalent) the oil refinery is intended to process, identifying each crude oil by geographical area of origin and sulfur content, and a list of each refined petroleum end product intended, including sulfur content;

(4) for each petroleum product requested by (3) above, the design capacity in barrels per day; and

(5) engineering data, including the following:

(i) a description of the approximate geographical location of the proposed oil refinery, with a map showing the geographical area likely to be affected by it and the proposed locations of connecting facilities, such as pipelines, valves, pumping stations and petroleum product storage facilities;

(ii) representative illustrations showing the functions and size of the major oil refinery components, their interconnections and the input and output flow of petroleum products; and

(iii) for the major refinery components, including major pumps, burners, heaters and condensors, representative specifications, such as height, land area occupied, capacity, maximum operating temperature and pressure, and energy efficiency.

(b) Construction. The applicant shall provide the following information pertaining to the construction of the proposed facility:

(1) if known, the complete name and address of the company to be responsible for the construction;

(2) the proposed date for commencement of construction and the proposed in-service date; and

(3) an estimate of the in-service date if the construction were to be on a fully-expedited basis.

(c) Operation. The applicant shall provide the following information pertaining to the operation of the proposed facility:

(1) the expected average percentage of use of the full design capacity of the proposed facility during the first five years of operation;

(2) a list of expected sources of supply for oil refining during the first five calendar years of operation, including the complete name and address of each of the 25 largest suppliers with whom the applicant expects to have contracted, the expected dates and durations of the contracts, the quantities expected to be involved and, for sources of crude oil, the expected geographical areas of origin of the crude oil; and

(3) a list of expected contracts for out-of-state delivery of refined petroleum products during the first five calendar years of operation, including only the expected dates and durations of the contracts and the petroleum products and quantities expected to be involved.

(a) The applicant shall study and provide information pertaining to the alternatives requested in paragraphs (b) through (d) below, and, for each alternative, the information shall be presented in the following format:

(1) a description of the alternative, including:

(i) a discussion of the design or strategy involved and the geographical area affected;

(ii) an estimate of the in-service or implementation date; and

(iii) a discussion of the method of operation of the alternative ;

(2) a description of the study performed, including an identification of the person and firm that performed the study, the duration of the study, its date of completion and its cost;

(3) a summary of the conclusions of the study of the alternative, including the reasons for its rejection, the estimates for

(i) its cost,

(ii) economic life,

(iii) major environmental impacts,

(iv) inducement of future development,

(v) other beneficial uses of its output,

and its effects on employees and the people served in and from Minnesota; and

(4) a discussion of the extent to which rejection of the alternative was influenced by actions or practices of competitors.

(b) Reduced Growth of Demand. The applicant shall provide information (as outlined in (a) above) for the alternative of obtaining a reduction of the rate of growth of maximum demand through installation of auxiliary equipment or implementation of modified procedures.

(c) Size of Facility. The applicant shall provide information (as outlined in (a) above) for at least two size alternatives - a facility of the type proposed having

twenty percent more capacity than proposed and a similar facility having twenty percent less capacity than proposed, as well as each other size alternative studied.

(d) Type of Facility. The applicant shall provide information (as outlined in (a) above) for every alternative type (not size) of facility studied.

EA 1065 * ENVIRONMENTAL DATA - OIL REFINERY FACILITY

(a) Location

(1) If the specific location for the proposed facility is known, provide the county, township, range, and section(s) of that site. Also indicate the name of and distance to the nearest city. For this site provide the information requested in paragraphs (b) through (e) below.

(2) If a specific location has not been chosen, provide the county, township, range and section(s), and the name of and distance to the nearest city for each parcel of land which in the opinion of the applicant could potentially serve as the site for the proposed facility. Considering these parcels of land in the aggregate, provide the information requested in paragraphs (b) through (e) below. Where environmental data differ by parcel of land, indicate those differences.

(b) Environmental Effects.

(1) Water. Provide information regarding the impact of site preparation, construction, cleanup and rehabilitation, and operation of the proposed facility on water resources, including:

(i) the amount of water used by or for the facility, whether it is surface water or groundwater, how it will be used, and how its use will vary over time;

(ii) the depth of groundwater at the site;

(iii) the approximate distance to the nearest lakes, streams, drainage ditches, wells, or storm drains into which liquid contaminant could flow;

(iv) the effect on drainage of the area; and

(v) the possible effect on the location, condition, quality, or quantity of Minnesota's public water resources.

(2) Land, Minerals, Wildlife, and Historical Sites. Provide information regarding the impact of site preparation, construction, cleanup and rehabilitation.

* Rule EA 1065 is a proposed alternative to rule EA 1071. The agency has no expressed preference.

and operation of the proposed facility on Minnesota's non-water resources and historical sites including:

(i) the nature of the terrain on which the facility is to be located;

(ii) the general soil type at the facility location;

(iii) state-designated critical areas, scientific and natural areas, wetlands, wildlife refuges, and educational areas within five miles of the site;

(iv) the types of land use in adjoining or nearby areas and the relative proportions devoted to each;

(v) unique natural land features, areas of special botanical significance, endangered species and other wildlife or fishing resources, open spaces and recreation areas within five miles of the site;

(vi) the effect on the potential use of extraction of indispensable or scarce minerals or energy resources and the amount of land so affected;

(vii) sites, structures, or landmarks of historical significance within five miles of the site; and

(viii) archaeological and paleontological sites within five miles of the site.

(3) Population Disruption; Induced Developments. Provide information regarding the capacity of the proposed facility for causing population disruption or inducing other developments, including:

(i) the amount of vehicular traffic generated per day by the facility;

(ii) the effect on existing or proposed transportation systems;

(iii) the population growth likely to result in nearby areas as a result of the facility;

(iv) the extent of relocation of human beings, either directly or indirectly, as a result of construction or operation of the facility; and

(v) the extent to which the facility will create or add to the need for expanded utilities or public services.

(c) Wastes and Emissions from the Facility. Provide information regarding the impact of the proposed facility on the natural environment as a result of wastes or emissions, including:

(1) the effect of the facility on the air quality in surrounding areas, and the amount of each substance emitted by or because of the proposed facility contributing to that effect;

(2) the generation of noise or vibration by the facility, the noise source, and the maximum decibel levels anticipated at the refinery property line; and

(3) the quantity and type of gaseous, liquid, and solid wastes that will be discharged by the facility, the treatment facilities for those wastes, and the method(s) of disposal.

(d) Environmental Safeguards. Provide detailed information regarding the safeguards to be utilized by the applicant for mitigating the effect of the proposed facility on the environment, including:

(1) the type of environmental safeguard;

(2) the estimated cost of new safeguards provided specifically for the proposed facility; and

(3) the provision, if any, for recycling of liquid from accidental spills.

(e) Other Mitigative Measures. Provide information on any **other** measures proposed by the applicant to reduce or eliminate the potential adverse effects identified above. Consider soil erosion control measures, water and air quality monitoring, noise abatement, landscaping, replacement acreage, alternative technologies, and other construction techniques or design alternatives.

EA 1071* ENVIRONMENTAL DATA

Each application shall contain a section which compares the relative impacts upon the natural and socioeconomic environments of each of the following:

(a) the proposed facility;

(b) all alternative energy facilities described in response to these rules; and

(c) not constructing the proposed facility or any of its alternatives.

EA 1081 OTHER DATA FILED WITH THE APPLICATION

In addition to the information required by the director, the applicant may desire to file data which the director did not request. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

EA 1091 CERTIFICATE OF NEED MODIFICATIONS

(a) When the director denies an application, he shall state the reason(s) for the refusal and the changes, if any, which would make the facility certifiable.

(b) If an applicant determines that a change of more than two years in the in-service date is necessary or desirable for a facility previously certified by the director, he shall inform the director of the desired change of date for in-service operation, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said application notify the applicant if the proposed change of in-service date is acceptable.

* Rule EA 1071 is a proposed alternative to rules EA 1045, 1055 and 1066. The agency has no expressed preference.

(c) The following changes in a facility previously certified by the director shall not require recertification:

(1) oil storage capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director;

(2) oil pipeline length additions or subtractions of less than ten (10) percent of the length approved by the director; and

(3) oil refinery capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director.

RECEIVED
MAY 26 1976
OFFICE OF HEARING EXAMINERS

Received 4:32 pm
5/26/76
D.H. Wagenius
for Wm Seltzer

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES, LARGE OIL PIPELINES AND OIL REFINERIES.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above captioned rules be held in the Veterans Service Building, Room D, Fifth Floor, St. Paul, Minnesota on June 30, 1976 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

John P. Millhone, Director

Date: May 26, 1976

RECEIVED
JUN 4 1976
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

In the Matter of the Proposed Adoption by the Minnesota Energy Agency of Rules Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large Oil Storage Facilities, Large Oil Pipelines and Oil Refineries for Petroleum Suppliers EA 1001- 1091

AFFIDAVIT

OF MAILING

Richard A Wallen, BEING FIRST DULY SWORN, deposes and says:

That on the 28th day of May, 1976, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Richard A Wallen

Subscribed and sworn to before me this 28 day of May, 1976.

Susan K. Riedinger
Notary Public

SUSAN K. RIEDINGER
Notary Public, Ramsey Co., Minn.
My Commission Expires
Dec. 7, 1982

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
JUN 4 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities, Large Oil Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	DOCKET NO. EA-76-003-WS STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the Minnesota Energy Agency. They are being proposed for initial adoption at this time.

The need to adopt rules specifying criteria for assessment of need and governing the contents of applications for certificates of need arises from legislative mandate.

> Subdivision 1. The director shall, pursuant to chapter 15 and sections 116H.01 to 116H.15, promulgate assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section. The assessment of need criteria for electric generation facilities and electric transmission lines shall be promulgated no later than September 15, 1975. The assessment of need criteria for all other large energy facilities shall be promulgated no later than July 1, 1976.
>
> Subd. 2. On and after the effective date of the assessment of need criteria adopted pursuant to subdivision 1, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the director pursuant to sections 116H.01 to 116H.15 and consistent with the criteria for assessment of need.

Minn. Stat. § 116H.13 subds. 1-2 (Supp. 1975). (Emphasis added.) It is further provided that "(t)he application shall be on forms and in a manner established by the director." Minn. Stat. § 116H.13 subd. 4 (1974).

It is further provided in the Rules of Procedure Governing Certificate of Need Program that

> any person desiring to construct a new large energy facility in Minnesota shall submit an application for a certificate of need for said facility to the director prior to commencing construction of said facility . . . . The application shall contain the information required in the applicable substantive rules . . . .

Minn. Reg. EA 502(a). "Large energy facility" is defined to include

> . . . any facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof, any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof, (and) . . . any petroleum refinery . . . .

Minn. Stat. § 116H.02 subd. 5 (Supp. 1975).

The need to adopt rules establishing fees which shall accompany applications for certificates of need arises from a further legislative mandate in the Energy Agency Act.

> Any application for a certificate of need shall be accompanied by a fee not to exceed $50,000. The director shall establish by regulation pursuant to chapter 15 and sections 116H.01 to 116H.15, a schedule of fees based on the output or capacity of the facility and the difficulty of assessment of need. Funds collected in this manner shall be credited to the general fund of the state treasury.

Minn. Stat. § 116H.13 subd. 6 (1974).

The need to adopt a rule providing for inclusion of environmental data in applications for certificates of need arises from legislative mandate in the Energy Agency Act, Minnesota Statutes chapter 116H, and the Minnesota Environmental Policy Act, Minnesota Statutes chapter 116D, which read, in part, as follows:

> FINDINGS AND PURPOSE. The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality, that the state must insure consideration of urban expansion, transit systems; economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.
>
> The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring statewide environmental protection consistent with an adequate, reliable supply of energy.

Minn. Stat. § 116H.01 (1974).

No proposed large energy facility shall be certified for construction unless the applicant has justified its need. In assessing need, the director shall evaluate:

. . . .

(5) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;
(6) The effects of the facility in inducing future development;
(7) Possible alternatives for satisfying the energy demand including but not limited to potential for increased efficiency of existing energy generation facilities;
(8) The policies, rules and regulations of other state and federal agencies and local governments.

Minn. Stat. § 116H.13 subd. 3 (1974).

ACTION BY STATE AGENCIES. Subdivision 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.

Subd. 2. All departments and agencies of the state government shall:

. . . .

(c) Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;
(d) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
(e) Recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
(f) Make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, Chapter 412;
(g) Initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects . . . .

Minn. Stat. § 116D.03 (1974).

The rules are needed to inform each applicant for a certificate of need for a large oil storage facility, a large oil pipeline, or an oil refinery of the application procedures, filing fee which must accompany the application, the criteria

by which the need for the proposed facility shall be assessed, and the data elements which must appear in the application.

The need for each proposed rule is as follows:

EA 1001: This rule is needed to clarify the applicability of these rules to the contents of applications for certificates of need submitted by petroleum suppliers for large oil storage facilities, large oil pipelines and oil refineries to be constructed in Minnesota. Further, this rule indicates that the proposed rules specify the criteria by which the director will assess the need for the proposed facility.

EA 1002: This rule is needed to identify those certificates of need applicants who must comply with the proposed rules and those persons who are exempt for having begun or completed construction prior to the effective date of these rules.

EA 1003: This rule is needed to prescribe the form, size, and number of copies required, correction of application procedures, cover letter requirements, public hearing scheduling requirements, maximum processing duration, procedures for applications which are not substantially complete, and other procedural requirements imposed upon applicants.

EA 1004: This rule is needed to define certain terms of specific application in the proposed rules.

EA 1005: This rule is needed to establish the fee schedule based upon the two general criteria provided in Minn. Stat. § 116H.13 subd. 6 (1974): 1) the capacity of the facility, and 2) the difficulty of the assessment of need. The fee schedule is set so as to assure a reasonable probability that the expenses attributable to processing applications are covered by the fees collected.

EA 1011: This rule is needed to establish criteria to be used by the director in assessing the need for new large energy facilities. The rule establishes four criteria upon each of which the director must make an affirmative determination before a certificate of need may be granted. The rule is further needed to incorporate into the criteria the eight factors listed in Minn. Stat. § 116H. 13 subd. 3 (1974).

EA 1021: This rule is needed to direct each applicant to the rules which specify information required, and optional, in his application. In addition, the rule is needed to provide for joint applications and for applications for facilities owned and used by two or more persons.

EA 1031: This rule is needed to provide for a section in the application which includes basic factual data concerning the applicant, the applicant's business, the proposed facility, the total fee, and those individuals associated with the applicant who will respond to inquiries directed to the applicant. This rule is also needed to require a listing of all other known permits or certificates required for the proposed facility, to enable the director to perform his overall coordination function.

EA 1032: This rule is needed to insure that each application shall contain a section which states briefly the justification for the need for the proposed facility. A reader of the summary should quickly gain a broad understanding of the factors favoring certification of need.

EA 1033: This rule is needed to insure that each applicant provides information responding to the three statutory factors (Minn. Stat. § 116H.13 subd. 3 (4), (5), (6) (1974)) concerning which no other rule requires specific information.

EA 1034: This rule is needed to determine whether each applicant has studied or implemented a conservation program which might affect his need for the proposed facility.

Rules EA 1040 through 1045 are applicable only to applicants for certificates of need for large oil storage facilities. Rules EA 1050 through 1055 are applicable only to applicants for certificates of need for large oil pipeline facilities. Rules EA 1060 through 1065 are applicable only to applicants for certificates of need for oil refinery facilities.

EA 1040, 1050, 1060: These rules are needed to identify the subsequent rules which pertain to each application for one of the specific types of facilities covered by the proposed rules and to indicate which of those rules require separate responses from each person submitting a joint application.

EA 1041, 1051, 1061: These rules are needed to provide the director with historical data on the applicant's business or operations which data, in conjunction with information on conservation and energy efficiency, will assist the director in analyzing the applicant's forecast of future need for the proposed facility.

EA 1042, 1952, 1062: These rules are needed to require the applicant to provide information concerning his anticipated future operations. Forecast information is the primary justification for a new large energy facility and will aid the director in evaluating the relationship of the proposed facility to overall state energy needs.

EA 1043, 1053, 1063: These rules are needed to provide the director with a detailed description of the proposed facility. In addition, the information required by this rule is needed to aid the director in analyzing alternatives to the proposed facility and in determining the relationship of the proposed facility to overall state energy needs.

EA 1044, 1054, 1064: These rules are needed to insure that each applicant has considered alternatives to the proposed facility and to provide the director with specific information about the alternatives considered. The required information is needed to aid the director in determining whether the proposed facility is the most reasonable and prudent alternative available to the applicant, its customers, and the citizens of Minnesota and neighboring states.

EA 1045 or 1071, 1055 or 1071, 1065 or 1071: These rules are needed to provide data regarding the environmental impact of the proposed facility, to determine whether the output of the facility may be used to protect or enhance environmental quality,

and to determine whether the proposed facility is the most reasonable and prudent alternative available.

EA 1081: This rule is needed to provide each applicant with the opportunity to present additional data relevant to the determination of the need for the facility.

EA 1091: This rule is needed to require that the director justify each denial of a certificate of need application. The rule is further needed to specify those situations when recertification is required by a change in a facility previously certified by the director.

Dated: June 4, 1976

Richard A. Wallen

RICHARD A. WALLEN
Director, Certificate
of Need Program

Affd. of Mailing 5/28/76

EA-76-003-WS

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities, Large Oil Pipelines and Oil Refineries for Petroleum Suppliers. (Proposed EA 1000 Rule Series)	)))))))	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS

The hearing in the above-entitled matter was convened by Hearing Examiner William Seltzer of the Minnesota Office of Hearing Examiners on June 30, 1976, 9:30 a.m. in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota. Said hearing was continued and reconvened July 15, 1976, 9:30 a.m. in Conference Room A of the Veterans Service Building, Saint Paul, Minnesota. All interested persons, representatives of individuals or associations, and other interested groups present at the hearing had an opportunity to present evidence and question witnesses.

The Hearing Examiner, upon all records, files, evidence, arguments of counsel, and written comments filed before the close of the record, hereby makes and issues the following Findings of Fact, Conclusions and Recommendations.

FINDINGS OF FACT

1. That the Order for Hearing issued May 26, 1976 was in all respects proper in form, content, execution and filing.

2. That due, timely and adequate Notice of Hearing as ordered by the Minnesota Energy Agency (EA or Agency) was properly served and filed on May 26, 1976. All other relevant substantive and procedural requirements of statute or rule have been complied with for the purposes of establishing jurisdiction over the subject-matter to proceed to public hearing pursuant to statute.

3. That the authority of the Energy Agency to promulgate the above-entitled proposed rules is contained in Minn. Stat. § 116H.08. The Energy Agency adequately demonstrated its statutory rulemaking authority in its Notice of Hearing.

4. That the Statement of Need succinctly and adequately demonstrates the need for the proposed rule amendment for the purposes of establishing jurisdiction over the subject-matter to proceed to public hearing pursuant to statute.

5. That the subject-matter of these hearings (i.e., Large Oil Storage Facilities, Large Oil Pipelines and Oil Refineries) are defined by statute as "large energy facilities" [Minn. Stat. § 116H.02, subd. 5].

6. That the Director of the Energy Agency has statutory authority and is required to promulgate assessment of need criteria to be used in the determination of need for large energy facilities. Thereafter, no large energy facility may be cited or constructed in Minnesota without the issuance of a certificate of need by the Energy Agency Director pursuant to the Minnesota Energy Act and consistent with the criteria for assessment of need as established by regulation [Minn. Stat. §§ 116H.08 and 116H.13].

7. That the within considered proposed regulations are intended to establish, by regulation, assessment of need criteria to be used by the Director of the Energy Agency in considering requests for a certificate of need for Large Oil Storage Facilities, Large Oil Pipelines and Oil Refineries.

8. That the Energy Agency submitted a proposed draft of the within subject regulations prior to public hearings [Energy Agency Exhibit No. 2]. After the public hearings, but before the close of the record, the Energy Agency submitted a "REVISED" draft of the within subject regulations which reflect (1) the changes indicated on the Errata Sheet [Energy Agency Composit Exhibit No. 1, Tr. p. 7, June 30, 1976], (2) changes which are suggested by Agency staff after benefit of public hearing, (3) changes based on suggestions of industry at the public hearings and during the time the record remained open.

The proposed regulations considered in this Report are the Agency's "REVISED" regulations as submitted to the Hearing Examiner, before the close of the record, by cover letter from Dwight S. Wagenius, Special Assistant Attorney General and dated and received August 4, 1976. Said revised proposal (attached hereto and made a part hereof)

was designated by Mr. Wagenius as "Exhibit A".

9. That proposed EA 1001 as set forth in the Agency's revised proposal is reasonable and needed to delineate the general purpose of the within proposed rules.

10. That proposed rule EA 1002 as set forth in the Agency's revised proposal is reasonable and necessary to specify those large energy facilities to which the proposed regulation is applicable.

The Energy Agency's revision of EA 1002(a)(4) is substantially the same as the original proposal. The revision has been made so that an oil refinery expansion in excess of 25 percent of its rated throughput will be exempt from the rules if the expansion does not exceed 10,000 barrels per day of throughput. This change was made in response to a suggestion from Conoco Oil Company when it was pointed out that Conoco's refinery in Minnesota (which has a smaller throughput than that of major competitors) would have to obtain a certificate of need for any expansion of approximately 6,000 barrels under the original proposal, which was based on a percentage factor alone, whereas Conoco's competitors would not have to do so unless their expansion was in excess of 17,000 barrels or 30,000 barrels throughput per day [See Industry Exhibit No. 3].

11. That proposed rule EA 1003 as set forth in the Agency's revised proposal is reasonable (except as noted in this Paragraph hereinbelow) and necessary to establish procedures for complying with the proposed regulations in order to establish time frames appropriate to the procedural aspects and decision-making responsibilities of the parties involved.

The Energy Agency's revision of 1003(b) merely establishes a maximum limit upon the number of applications which an applicant may be required to file at the Agency's directive.

The Energy Agency's revision of EA 1003(f) is appropriate acknowledgment of industry's request to permit an applicant to make an affirmative showing that an urgent need exists for an early decision on the application so that the applicant may receive priority consideration by the Energy Agency. Upon a showing that an urgent need exists, the Energy Agency agrees to attempt to make its determination within 130 days after the urgency has been established [Tr. pp. 40-41, June

30, 1976; pp. 8, 13-14, 27, 154, July 15, 1976; and the Energy Agency's staff post-hearing statement at p. 8 received by the Hearing Examiner August 4, 1976].

That the Energy Agency's revision of EA 1003(h) is reasonable acknowledgment on the part of the Energy Agency to industry's request that, in certain situations, applicants be exempt from or allowed to substitute submissions in satisfaction of various data requirements of the within proposed regulations in order to avoid unnecessary delay and cost. However, the language suggested in the Energy Agency's revised proposal (1) fails to delineate a procedure for specifying which data requirements (or particular rules) will be exempted and (2) may place unreasonable hardship upon an applicant by requiring the applicant to supply data with only five days notice that a request for exemption has been denied. Such shortcomings can be corrected by adopting the following changes to the Energy Agency's revised proposal EA 1003(h):

> (h) Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request for exemption from specified rules and a showing by that person in a written statement to the director that the data requirement (1) is unnecessary to determine the need for the proposed facility or (2) may be satisfied by submission of another document. A request for exemption ~~may~~ must be filed ~~no later than~~ at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

12. That proposed definitional rule EA 1004 as set forth in the Agency's revised proposal is reasonable and necessary for the purposes of defining those words and key terms which must necessarily have specific meaning for a clear understanding of the within proposed regulations. The definitions contained in EA 1004(a) through (t) are sufficiently precise so as to avoid ambiguity and do not attribute definitions to the defined words in a manner that conflicts with applicable statutory definitions.

The Energy Agency's revision of the definition of "demand" at EA 1004(g) is a proper and reasonable response to industry's ascertion that the definition needed to be broadened to clearly include situations of storage and production demand-derived burden

on oil facilities, which, by their nature, may not occur at the same moment or day as the market demand.

The Energy Agency's revision of the definition of "oil refinery" at EA 1004(o) is reasonable and necessary. The inclusion of the phrase "on a single site" in the definition of "oil refinery" eliminates a potential interpretive problem that could otherwise arise under EA 1005 wherein it is necessary to distinguish between new oil refineries and existing oil refineries for purposes of complying with the fee schedule therein. For example, if an oil company owned a refinery in northern Minnesota and decided to construct a new refinery 50 miles away, there may be a dispute as to whether or not the newer refinery is, in fact, a new refinery or an expansion of an existing operation. The differentiation is important since different fee schedules are established for new and existing refineries. Using the phraseology "on a single site" in defining "oil refinery" eliminates possible ambiguities.

The Energy Agency revision of the definition of "Peak Day" at EA 1004(p) by replacing the word "demand" with the word "throughput" is necessary and reasonable. Unlike an electric utility, the peak day in the oil industry is not related to that day's demand, but rather it is related to total throughput.

13. That proposed EA rule 1005 as set forth in the Agency's revised proposal is reasonable and necessary to designate certificate of need filing fees and payment schedules pursuant to Minn. Stat. § 116H.13, subd. 6.

The change in the Agency's revised proposal at EA 1005(1) reflects the Agency's appropriate response to comments from industry which persuaded the Agency that the fee for processing a large oil storage facility application should start higher (at $2,000) and increase less rapidly (by only $10 per one hundred thousand gallons), since the cost of assessment of need probably does not increase by the originally proposed fee of $50 per one hundred thousand gallons of storage capacity.

The Agency's revised proposal at EA 1005(3) and the addition of EA 1005(4), pertaining to oil refinery fees, reflects the Agency's

appropriate response to industry to the effect that the cost of assessing the need for an oil refinery expansion is less than the cost for assessing the need for a new oil refinery and that fees should reflect such difference.

The revised general proviso in EA 1005(4) which limits fees is the Agency's appropriate response to comments which have persuaded the Agency that the present $50,000 statutory limit on an applicant's fee is not low enough for those applications with set fees much lower than $50,000. The Agency's adoption of industry's recommendation that the total fee should not exceed 200% of the set fee is reasonable. The language of the Agency's revised proposal, in part, including the new verbage suggested by the Agency is as follows:

> "...in no event shall the total fee required of any applicant exceed $50,000 or 200% of the fee set according to above schedule."

The basis for the amended proposal is stated in the Agency's ENERGY AGENCY STAFF POST-HEARING STATEMENT, received by the Office of Hearing Examiners, August 4, 1976. The reasoning is found at Page 11 as follows:

> "The agency has incorporated the industry's recommendations that the total fee shall not exceed 200% of the set fee. This change will not likely reduce the ability of the Certificate of Need Program to collect fees which approximate its costs. Also, the change directly addresses the following MACI Comment: 'In no event, however, is it reasonable for the agency to be authorized to assess...such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility.' Such open-ended and complete authority begs abuse and creates an unnecessary element of uncertainity and possibly even distrust. Tr. p. 51, June 30, 1976. The agency agrees with the industry supporting argument with one exception: The agency does not agree that the industry should not 'be responsible for any additional costs over and above the basic fees where such costs are the result of actions of third parties and are not the fault of the applicant."

The Hearing Examiner specifically finds that the Agency's reasoning is reasonable. However, the language utilized by the Agency in its amended proposal may, on its face, appear to fly in the face of the statutory limitation of a maximum fee of $50,000 and may be somewhat ambiguous if one tries to determine whether the appropriate fee is going to be the stated $50,000 maximum or the 200% of the fee set according to the schedule. This minor problem can be corrected by

inserting the following language in the Agency's proposed rule EA 1005(4), to wit:

> "...in no event shall the total fee required of any applicant exceed the lesser of $50,000 or 200% of the fee set according to the above schedule...."

Minn. Stat. § 116H.13, subd. 6 requires that the fee schedule be based on two factors: (1) the output or capacity of a facility, and (2) the difficulty of assessment of need. The Agency's proposed filing fees and payment schedule is specifically and directly correlated with either output or capacity of the large energy facilities regulated by the within proposed regulations. Therefore, the first statutory criteria for assessing fees is specifically followed by the Agency's proposal. The second statutory criteria, that the fees be based on difficulty of assessment of need, is also met by the Agency's proposal. The Agency, in large part, established its fee schedule so as to collect fees which approximate the Agency's costs of processing. In turn, such basis was originally calculated on the Agency's costs per man hour devoted to processing an application. It is specifically found that there is a direct correlation between man hours devoted to processing an application and the statutory criteria of "...difficulty of assessment of need...."

Industry put forth the proposition that it should not be responsible for any additional costs over and above the basic fees where such costs are the result of actions of third parties and are not the fault of applicant. The Agency properly rejected this contention. The statute provides no exceptions when an applicant's costs are increased by third parties. Furthermore, if actions of third parties increases the amount of man hours spent on an application, difficulty of assessment of need is correspondingly increased.

14. That proposed rule EA 1011 as set forth in the Agency's revised proposal is both reasonable and necessary to establish by regulation criteria to be used by the Agency director in his determination of the need for a proposed large energy facility. The director of the Agency is mandated by statute to promulgate regulations which put forth criteria upon which the Director is to make his assessment of need [Minn. Stat. § 116H.13, subd. 1]. Proposed rule EA 1011 satisfies the statutory mandate to promulgate such regulations.

While rule EA 1011 establishes the criteria (standards) to be used by the Director in making his determination; separate rules specify the specific data that an applicant must supply to the Agency. The data supplied to the Agency will be analyzed by the Director in accordance with the criteria he must apply.

During the public hearing, considerable discussion concerned the issue of whether or not the eight factors to be evaluated by the director in assessing need [as set forth in Minn. Stat. § 116H.13, subd. 3] should be the exclusive criteria used by the director. The issue raised also centered around whether or not the eight factors listed in the Energy Act were criteria, standards or something else to be used by the director in his assessment of need. [See Tr., June 30, 1976 pp. 67-78]. In considering these issues, it is specifically found that the Agency has authority to promulgate regulations establishing criteria to be used by the Director for his assessment of need [Minn. Stat. § 116H.13, subd. 1]. The Hearing Examiner specifically rejects the industry contention that EA 1011 should set forth the exact language of the statutory criteria so that there will be nothing lost between the legislative intent and an attempted rewording of that intent [see Industry Exhibit No. 2, p. 11]. It is specifically found that those statutory areas in the Energy Act which must be evaluated by the Director in reviewing a certificate of need application, are binding on the Director. However, since the legislature also provided for the Agency to promulgate (by regulation) assessment of need criteria to be used in the determination of need; it is clear the Agency can promulgate regulations which suplement and expand upon the statutory criteria within appropriate statutory limitations. The eight factors to be considered by the director in his assessment of need which are listed in Minn. Stat. § 116H.13, subd. 3, are not an exclusive list of factors and the director must consider both the statutory factors and the assessment of need criteria as established by regulation in making his determination on issuance of a certificate of need.

It is not necessary for the determination of the validity and appropriateness of proposed EA rule 1011 to determine whether or not

the factors listed in Minn. Stat. § 116H.13, subd. 3, are "factors" or "criteria". The relevant determination is the fact that the Agency has authority to promulgate by regulation assessment of need criteria to be used by the Director. Any overlapping or duplication between the regulations and statutory factors are to be left to the director of the Agency on a case by case basis in his determination of need.

Proposed rule EA 1011 establishes four criteria upon which the director must make an affirmative determination before a certificate of need may be granted. The first criterion in the proposed regulation provides the standard which the director will use to measure the validity of the applicant's ascerted need for a new energy facility. The second criteria established in the proposed regulation is based upon Minn. Stat. § 116H.13, subd. 3(7) which requires the director to evaluate possible alternatives for satisfying the energy demand. The third regulatory criteria requires the Director to determine if the consequences of granting the certificate of need outweighs the consequences of denying the certificate. The fourth criteria requires the director to find that granting the certificate is consistent with policies, rules and regulations of other state and federal agencies and local governments.

The changes as appear in the herein revised proposal at rule EA 1011(b)(1)(iii) appropriately respond to industry comments which have persuaded the Agency that Minn. Stat. § 116H.13, subd. 3(4), ["Promotional activities which may have given rise to the demand for this facility"] should be applied to an applicant only with language restricting the director's evaluation to the <u>applicant's</u> promotional activities, not <u>all</u> promotional activities. For example, an oil refinery should not be held accountable for other commercial entities which may promote the use of the refinery's product as may be the case of an automobile manufacturer promoting increased sales of motor vehicles which, in turn, will increase fuel consumption.

The change to the Agency's proposed rule EA 1011(b)(1)(iv) appropriately responds to industry's recommendation to limit the director's evaluation to only those planned and current facilities which the applicant "<u>has access</u>" rather than <u>all</u> facilities including

those of competitors, The relevant statute is Minn. Stat. § 116H.13, subd. 3(7) ["Possible alternatives for satisfying the energy demand incldуing but not limited to potential for increased efficiency of existing energy generation facilities"]. The language change avoids a situation in which the Agency must determine which of a number of competitors may build more capacity, since the oil industry is not composed of governmental controlled public utilities as would be the case with electric utilities.

The change as appears in the Agency's proposed rule EA 1011 (b)(4), as set forth in the Agency's revised proposal is a reasonable and proper reaction to industry comments which persuaded the Agency that industry should not have the burden of proving that the granting of a certificate of need is consistent with relevant rules and regulations of other federal, state and local agencies. Instead, any inconsistency with rules and regulations of other federal, state and local agencies will have to be demonstrated on the record [Tr. pp. 51-52, 57-59, 158, June 30, 1976].

15. That proposed rule EA 1021 as set forth in the Agency's revised proposal is reasonable and necessary for the purposes of delineating the required contents of industry applications for a certificate of need.

This rule: (1) directs an applicant to other specific rules which require specific responses from an applicant, (2) requires each person in a joint application for a certificate of need to submit individual responses when directed to do so, (3) requires each person who owns and uses a facility with other persons to comply with the requirements for joint applications, and (4) designates for an applicant the other specific rules which require responses based on the specific type of facility for which an applicant is applying for a certificate of need.

16. That proposed rule EA 1031 as set forth in the Agency's revised proposal is reasonable and necessary for the purpose of specifying the general type information required in an application for a certificate of need. In accordance with this rule, an applicant is required to supply such basic information as the applicant's name, title, a brief description of the facility and the nature of the applicant's business, a listing of other federal, state and local agencies with which the applicant must file for the proposed facility,

and other general type information.

17. That proposed rule EA 1032 as set forth in the Agency's revised proposal is reasonable and necessary for the purposes of allowing an applicant to summarize the major factors which, in applicant's opinion, justify the need for the proposed facility. Such written summary will also enable a reader of the application to quickly gain a general understanding of those factors regarded as most cogent by applicant without the reader having to review the entire application.

18. That proposed rule EA 1033 as set forth in the Agency's revised proposal is a reasonable and necessary data requirement on industry which im plements, by regulation, Minn. Stat. § 116H.13, subd. 3 which requires the Director to consider and evaluate certain factors. The factors are: (1) promotional activities leading to the demand for the proposed facility, (2) socially beneficial uses of the output of the facility, (3) the effects of the facility in inducing future development. The Director cannot adequately evaluate these factors unless industry supplies the data and information required in EA 1033. The information required by rule EA 1033 is not required to be supplied to the Agency in any other rules.

19. That proposed rule EA 1034 as set forth in the Agency's revised proposal is reasonable and necessary to implement, by regulation, and evaluate the effects of existing or possible energy conservation programs prior to issuing a certificate of need [Minn. Stat. § 116H.13, subd. 3]. The required data supplied by industry under EA 1034 will enable the Director to make the appropriate evaluation.

20. That proposed rule EA 1040 as set forth in the Agency's revised proposal is reasonable and necessary to advise applicants of the particular rules whose data requirements must be complied with when making application for a certificate of need for a Large Oil Storage Facility.

Similarly, proposed rules EA 1050 and EA 1060 as set forth in the Agency's revised proposal, are reasonably designed to advise applicants of the particular rules whose data requirements must be complied with when making application for a certificate of need for Large Oil Pipeline Facilities and Oil Refineries, respectively.

21. That proposed rule EA 1071 as originally set forth in the Agency's proposed regulations has been deleted from the Agency's revised proposal. The original proposed rule EA 1071 was an alternate environmental data rule to be considered by the public and Hearing Examiner. The Agency deleted EA 1071 from its revised proposal based on testimony by environmental agency witnesses that this alternate environmental data rule was insufficient for environmental purposes. Additionally, the Agency ascerts that industry was of the opinion that EA 1071 was "disturbingly unspecific". The Hearing Examiner finds that originally proposed rule EA 1071 was, in fact, insufficient for the purpose for which it was designed and should not be considered. If environmental data is to be required of an applicant, a more thorough and comprehensive environmental data requirement should be utilized.

22. That certain rules as set forth in the Agency's revised proposal are entitled HISTORICAL ENERGY DATA (proposed rules EA 1041, 1051, 1061), FORECAST DATA (EA 1042, 1052, 1062), DESCRIPTION OF PROPOSED FACILITY (EA1043, 1053, 1063), ALTERNATIVES (EA 1044, 1054, 1064), and ENVIRONMENTAL DATA (EA 1045, 1055, 1065). Each such rule title has three separate rules which appear in each of the three large energy facility sections (i.e., Large Oil Storage Facilities, Large Oil Pipelines and Oil Refineries). That each series of rules having the same title are similarly constructed and have received similar comments and changes. Therefore, each title heading, which contains three proposed rules each, will be considered in this Report in order of their titles rather than having a separate numbered paragraph in this Report for each proposed rule being considered.

23. That the HISTORICAL ENERGY DATA rules as set forth in the Agency's revised proposal (EA 1041 - storage facilities, 1051 - pipeline facilities, 1061 - refineries) are reasonable and necessary to require an applicant to supply appropriate information and data pertaining to historical experiences. Such data is a reasonably necessary element of consideration for the Director to make his determination of whether or not to issue a certificate of need for the new proposed large energy facility. Basically, these proposed

rules provide for a designation by general category, of petroleum products stored, transported and refined for the last five calendar years; a list of quantities stored, transported and refined for the last five years; a list of other large energy facilities associated with the facility for which application is made and other information pertinent to make a determination as to whether or not the new proposed facility is really needed.

The changes as appear in the herein revised proposal are a reduction of data requirements on industry from the rules as originally proposed.

As originally proposed, EA 1041(a) would have required an applicant with many oil storage facilities (at the site where the proposed facility would be located) to provide many pages of data, not all of which would have been germane to the determination of need for the proposed facility. However, the rule as currently proposed would provide the Agency with sufficient relevant historical data to project an applicant's future storage requirements.

Originally proposed EA 1041(c) has been deleted. Such deletion is appropriate and based upon industry's convincing position that there is no "normal inventory cycle" for most oil storage facilities.

Originally proposed EA 1041(e) is deleted since that rule essentially duplicated the data requirements of EA 1042(d).

Changes appear in the herein revised proposal at subdivisions (1), (2), (3), and (4) of EA 1051(a) because the original wording could be read so as to require information on every type of gasoline, distillate oil, crude oil, etc. So construed, the list of products would have been unnecessarily long and detailed. Additionally, subdivisions (3) and (4) as originally proposed required data which most often would be deemed to be a proprietary nature by applicant.

EA 1051(b) and (c) were appropriately revised to require that an applicant provide data on categories of petroleum products and not on all petroleum products. These paragraphs were also revised to allow an applicant not to provide the required data for a large number of oil storage facilities at a single site. A pipeline may have associated with it as many as 100 or more oil storage facilities. However, these facilities would be concentrated at just a few loca-

tions.

Subdivisions (1) and (2) of EA 1061(a) were revised to provide that applications only contain lists of data on major categories of petroleum products and not on all petroleum products.

The original subdivisions (3) and (4) of EA 1061(a) were deleted from the revised proposed rules and replaced by a new subdivision (3) which reasonably and appropriately requires an applicant to submit all non-proprietary data required by the original subdivisions. Paragraphs (b) and (c) of EA 1061 have been amended to reflect the agency staff's reasonable belief that neither lists of all petroleum products nor lists of all oil storage facilities at one location are needed in an application.

24. That the proposed FORECAST DATA rules as set forth in the Agency's revised proposal (EA 1042 - storage facilities, 1052 - pipelines, 1062 - refineries) are reasonable and necessary data requirements on an applicant in order to supply the Director, in part, with information upon which to make his determination of whether or not to issue a certificate of need. Whereas the rules pertaining to HISTORICAL ENERGY DATA supply the Director with information pertaining to the facility's past business experiences, the rules pertaining to FORECAST DATA present information pertaining to expected future business experience.

The FORECAST DATA rules require an applicant to supply information pertaining to projected capacity requirements, a projected list of categories of the products which applicant expects to process and distribute, the benefit derived to applicant if a certificate of need is granted, the assumptions used to predict future expectations, the effect of possible future changes of such assumptions, other facilities planned by applicant to satisfy the forecast demand, etc.

The changes as appear in the herein revised proposal regarding forecast data result in a reduction of data requirements to be supplied by industry to the Agency. The changes acknowledge the fact that certain data may be supplied to the Energy Agency pursuant to their existing rules at Minn. Regs. EA 400 - 411. Thus, duplicative data requirements are eliminated. Under the revised proposal, an

applicant can substitute prior submissions under EA 401 - 411 in lieu of supplying new submissions under the current proposal.

EA 1052 is appropriately revised to provide that only data on categories of petroleum products need to be included in the application.

25. That the proposed rules entitled "DESCRIPTION OF PROPOSED FACILITY" (EA 1043 - storage facilities, 1053 - pipelines, 1063 - refineries) as set forth in the Agency's revised proposal are reasonable and necessary to describe the purpose, planned use and description of the proposed facility. Such data must be supplied by an applicant as a necessary element in order for the Director to make an adequate assessment of whether or not to issue a certificate of need.

These rules are designed to supply the Director, in part, with information pertaining to the following: The purpose and planned used of the facility, a description of the facility including its design, dimensions and engineering drawings, the names and addresses of independent contractors used to design and construct the facility, the estimated cost and life of the facility, the planned in-service date of the facility and its capacity.

The changes as appear in the herein revised proposal to the rules pertaining to "DESCRIPTION OF PROPOSED FACILITY" represent a reduction of data requirements upon industry when applying for a certificate of need.

The deletion of originally proposed rules EA 1043(b)(5), EA 1053(a)(5)(ii), and EA 1063(c)(3) is a reasonable acquiescence on the part of the Agency to industry's position that some of the rules as originally proposed would have required unnecessarily detailed information which, to a large extent, would not be germane to the determination of need.

Subdivision (3) of revised EA 1053(a) was appropriately revised to require that only data on categories of petroleum products needed to be included in the application. Subdivision (4) of revised EA 1053 was appropriately amended to reflect the fact that the capacity of a pipeline can be increased by adding more pumping stations along the pipeline. For example, the ultimate design capacity of a proposed pipeline may be approximatley four times the initial

planned capacity.

Subdivision (5) of revised EA 1053(a) and subdivision (3) of revised EA 1053(c) were appropriately revised to eliminate data requirements of marginal value to the determination of need.

Subdivisions (4) and (5) of paragraph (c) were appropriately revised to reflect the fact that the original language required data that in most instances would have been proprietary.

Revised EA 1063 is an appropriate response by the agency staff to industry's ascertion that such amendment would add clarity, delete the requirements of proprietary data and eliminate unnecessarily detailed engineering data.

26. That the proposed rules under the title "ALTERNATIVES" as set forth in the Agency's revised proposal are reasonable and necessary data requirements on industry in order to supply the Director with information pertaining to alternatives in order for the Director to make an appropriate determination of need as to that criteria. These proposed rules (EA 1044 - storage facilities, 1054 - pipelines, 1064 - refineries) are necessary to establish compliance with Minn. Stat. § 116H.13, subd. 3(7); which requires the Director to consider possible alternatives for satisfying the energy demand which is sought to be satisfied by the applicant's proposed action. These rules place a duty on industry to supply the Agency with information which, in applicant's opinion, discloses the feasibility of alternative methods of satisfying the energy demand. Naturally, the Director can examine and evaluate alternatives which are not suggested by an applicant.

The changes as appear in the herein revised proposal represent a reduction of data required to be supplied by industry as compared to the original proposal.

The Agency's revised proposal properly deleted originally proposed rules EA 1044(b)(6), (7), EA 1054(c), (d), and EA 1064(c), (d). The deleted rules placed a duty on industry to supply data pertaining to alternatives which would not have had a corresponding benefit in assisting the Director in his determination of need as compared to the burden placed on industry to supply such information. Furthermore, some of the deleted portions would have required industry to supply information and data which more appropriately belongs

elsewhere within the proposed regulatory scheme.

Aside from the deletions, the other changes proposed to EA 1044, EA 1054 and EA 1064 represent a proper and logical approach to accumulating required information and data with the least possible burden on industry without effecting the reasonable and proper intent and purpose of the proposed rules.

27. That the most substantial and strenuous objection raised by industry was to the ENVIRONMENTAL DATA rules (EA 1045, 1055, 1065). Many issues were raised in opposition to these proposed rules including (1) whether environmental data is relevant to the determination of issuance of a certificate of need, (2) whether the Energy Agency has statutory authority to require environmental data from an applicant in order to consider environmental factors in making its determination of issuance of a certificate of need, (3) whether the fact that the Agency proposed alternative ENVIRONMENTAL DATA rules results in the conclusion that the Agency failed to make an affirmative presentation of the need and reasonableness of the rules as required by statute, and (4) whether the Energy Agency can gather or require environmental data for the benefit of other state agencies.

27(A). That the Director fo the Energy Agency has the sole discretion regarding the issuance or denial of a certificate of need. The Director's determination is binding upon other state departments and agencies. Minn. Stat. § 116H.13, subd. 7 reads, in part, as follows:

> "...issuance or denial of certificate of need shall be the sole and exclusive prerogative of the director and said determinations and certificates shall be binding upon other state departments and agencies, regional, county and local governments and special purpose government districts except as provided in sections 116C.01 to 116D.04, subdivision 9."

Therefore, if the Director issues a certificate of need, a substantial step has been taken toward the installation of a large energy facility. The Director's decision is binding on all other state agencies so that at the certificate of need stage, a substantial, and practically speaking, binding step has been taken toward the installation of a large energy facility whichch could conceiveably have a major adverse impact upon the environment of the State of Minnesota. The only exception is found in Minn. Stat. § 116D.04, subd. 9 wherein the Minnesota Environmental Quality Council has a short ten-day

period to institute procedures that could reverse or modify the decision of the Director of the Energy Agency to issue a certificate of need; to wit:

> "Prior to the final decision upon any state project or action significantly effecting the environment or for which an environmental impact statement is required, or within ten days thereafter, the council may delay implementation of the action or project by notice to the agency or department and to interested parties. Thereafter, within 45 days of such notice, the council may reverse or modify the decisions or proposal where it finds, upon notice and hearing, that the action or project is inconsistent with the policy and standards of sections 116D.01 to 116D.06. Any aggrieved party may seek judicial review pursuant to chapter 15."

Suppose, for the purposes of hypothetical argument only, that the Energy Agency issues a certificate of need for a large energy facility which will be substantially detrimental to this State's environment. At that point, a substantial step has been taken to adversely impact the environment. However, the REFINERIES' POST-HEARING BRIEF received by the Office of Hearing Examiners, August 4, 1976 at Pages 8 and 9, puts forth the proposition that since the Energy Agency does not have siting authority, will address the question of siting at later stages and thereby examine the issue of detrimental environmental impact. Notwithstanding such argument, it is noted that in the hypothetical situation given hereinabove, the Energy Agency's decision to issue a certificate of need is, for all practical purposes, substantially binding upon other state agencies. Thus, if environmental considerations are not made at the need stage, other agencies may be left with dubious task of deciding where to site an environmentally detrimental facility without having had the necessary data base to offer constructive input into the principle decision to construct or not to construct such facilities.

Therefore, it is specifically found that it would be advantageous for the Energy Agency to consider environmental factors in making its decision of whether or not to issue a certificate of need. The question which now arises is whether or not the Energy Agency has statutory authority to consider environmental factors and to adopt, by regulation, criteria to be used in the determination

of environmental issues.

27(B). It is specifically found that the Energy Agency has statutory authority to consider environmental factors in making the determination of whether or not to issue a certificate of need and that pursuant to the Agency's statutory authority to promulgate assessment of need criteria [Minn. Stat. § 116H.13, subd. 1], that the Energy Agency can promulgate regulations specifying the environmental criteria to be used by the Director in his determination of need.

The statutory authority for requiring environmental data in the certificate of need process is provided by Minn. Stat. §§ 116D.03, 116H.01 and 116H.13, subd. 3(5-8). Minn. Stat. § 116D.03 of the Minnesota Environmental Policy Act supports the position that the Energy Agency shall consider environmental criteria because that statute directs that to the fullest extent practicable, the policies, regulations and public laws of the State shall be interpreted and administered in accordance with the policies of the Minnesota Environmental Policy Act. That Act requires all departments and agencies (including the Energy Agency) to do the following:

> "...utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on man's environment...[Minn. Stat. § 116D.03, subd. 2(b)]
>
> Identify and develop methods and procedures that will insure that environmental ammenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations...[Minn. Stat. § 116D.03, subd. 2(c), Emphasis added]
>
> ...recognize the world wide and long range character of environmental problems and, were consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of mankind's world environment... [Minn. Stat. § 116D.03, subd. 2(e)]"

It is specifically found that the above-mentioned portions of the Minnesota Environmental Policy Act apply to the Minnesota Energy Agency. There is no conflict between the environmental policy act and the Energy Act. The Director of the Energy Agency still has sole discretion with regard to the issuance or denial of certifi-

cates of need. However, the Director's exclusive prerogative to excercise such sole discretion must be made in compliance with the hereinabove stated portions of the Minnesota Environmental Policy Act. In order for the Director to comply with the dictates of the Environmental Policy Act, environmental data must be supplied by applicants for a certificate of need so that the considerations which are mandated by statute can be given "equal consideration in decision making." It is further specifically found that the position taken in "Attachment C" of the REFINERIES' POST-HEARING BRIEF regarding the applicability of the Minnesota Environmental Policy Act to the Energy Agency is incorrect. The argument set forth is that the decision of whether or not to issue a certificate of need is in the "sole and exclusive prerogative" of the Director of the Energy Agency and therefore, provisions of the Environmental Policy Act are not binding upon the Director (it is noted that industry acknowledges that Minn. Stat. § 116D.04, subd. 9 of the Environmental Policy Act is binding on the Energy Agency). In fact, the Director's statutory authority to exercise "sole and exclusive prerogative" in the determination of need is not carte blanche authority to disregard the Environmental Policy Act, but rather a granting of authority to the Director to exercise his personal discretion within the confines of applicable statutory and regulatory mandates.

Minn. Stat. § 116H.01 of the Minnesota Energy Act further strengthens and supports the position that the Energy Agency has authority to promulgate environmental assessment of need criteria. That statute states the following:

> "The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems; economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified coordinated response within state government."

Page 13 of Attachement C of the REFINERIES'POST-HEARING BRIEF states that "section 116H.01 only constitutes the legislature's general statement of policy in establishing the [energy] agency." Their position is that this statutory section does not authorize environmental data gathering and evaluation by the Energy Agency. However, the "Findings and purpose" section of the Minnesota Energy Agency Act has the weight of statutory authority and is not relegated to a secondary position as industry apparently believes. It is true, as industry ascerts, that the principle function of the Energy Agency is to focus its attention and responsibilities to the energy field. However, determinations in the energy field are thoroughly entwined with impact upon our environment. Thus, for the energy agency to function in accord with logic and statutory mandate requires a consideration of environmental factors before issuance of a certificate of need.

Minn. Stat. § 116H.13, subd. 3(5-8) requires the Director to evaluate certain factors in making his assessment of need. The factors listed in this portion of the Minnesota Energy Agency Act are inseparable from factors having a direct bearing upon the environment. Thus, it is specifically found that the stated portions of the Minnesota Energy Act require the Director to evaluate environmental considerations when making his determination of need. Indeed, in assessing need, the Director is required to evaluate "the policies, rules and regulations of other state and federal agencies and local governments." There is no stated statutory exemption from environmental policies, rules or regulations of other state and federal agencies. Therefore, the fact that the Energy Agency must consider other policies, rules and regulations (which include environmental considerations) result in the conclusion that the issues of environmental impact are fused with the determination of need for a large energy facility.

27(C). In addition to arguing that the Energy Agency has no statutory authority to promulgate assessment of need criteria, industry ascerts that:

> "The fact that the agency has proposed two alternate rules so significantly different and expresses 'no preference' between them indicates that the agency has filed to make 'an affirmative presentation of facts establishing the need for and the reasonableness of the

rule proposed for adoption' as required by Minnesota Statutes Section 15.0412."
[See Attachment C of the REFINERIES' POST-HEARING BRIEF at Page 10]

Such argument lacks merit. The mere fact that the Agency proposed two alternative environmental data rules without expressing a preference for either one of the proposed rules does not automatically lead to the conclusion that there was a failure to make an affirmative presentation as required by § 15.0412. No single rule contains language "chisled in granite" and which cannot be altered as circumstances demand. Agencies must be allowed to propose alternate regulations and rules during the public hearing process if they so desire. In fact, such a procedure benefits all parties concerned by providing viable alternatives upon which final decisions can be made after a review of all relevant testimony and submissions.

27(D). The next issue concerning the appropriateness of requiring environmental data during the certificate of need process is whether or not the Energy Agency can gather environmental data for the benefit of other state agencies. The record substantiates the ascertion that proposed rules EA 1045, 1055, and 1065 as set forth in the Agency's revised proposal are designed, in part, to supply an environmental data base for other state agencies such as the Pollution Control Agency, Department of Natural Resources and Environmental Quality Council. An adequate example substantiating the position that the Energy Agency is requiring environmental data, in part, for the benefit of sister agencies is found in the transcript of proceedings of June 30, 1976 at Page 100 et seq. The Energy Agency's principal witness was being cross-examined by industry as follows:

Q. I guess I'm not clear, noting having a chance to digest, obviously, the specification statement so just in looking at the rules I'm still not sure why you are asking for the environmental data as I understood from an initial comment by you earlier on in this hearing you mentioned that you would not be looking at this yourself, is that correct?

A. My staff will not be evaluating environmental data.

Q. So you are asking for it not for the Energy Agency?

A. The director must evaluate environmental considerations in making his decision.

Q. Well, let's look at the 116H.13, those eight items that are set forth there, where in any of those eight -- let's just stay with those for a minute, do you see environmental effects on the facility, the environmental consequences of the facility?

A. If I look at subdivision 3, item (7), if I want to evaluate possible alternatives for satisfying the energy demand including -- well, just evaluate possible alternatives to satisfy the energy demand, I'm going to evaluate them on a number of different basis; one is economics, clearly; a second would be environmental.

Q. But you said you are not going to look at environmental?

A. My staff's going to.

Q. Your staff's going to. Well, what are you going to spend all these staff hours on, you are not going to look at these, you are not going to look at the environmental data at all in these 25 minimum hours, is that what I understand?

A. I have not -- in making that estimate of 25 hours my staff is not expected to examine the environmental data, that's correct.

Q. Well, is your staff going to have a proposed recommendation at all? You have an input, I take it, to the director of some sort, you see him once in a while in the hearing process, or any application process, don't you make some sort of recommendation for him? You can make that without doing an evaluation, can't you?

A. The staff would write a brief based upon the hearing record.

Q. The staff will?

A. Yes.

Q. Including the environmental?

A. Including environmental mattes <u>brought up as a part of the hearing</u>. (Emphasis added)

. . .

Q. Okay. Including an evaluation of all of these matters if you are going to read eight broad enough to talk about environmental considerations, if you are going to read item (7) broad enough to consider environmental considerations I take it a substantial part of your report is going to be on environmental considerations since we have a lot of data asked for here?

A. He is not given a substantial -- part of the report would be devoted to environmental matters, <u>no</u>. (Emphasis added)

Q. Well, part of the report will be?

A. Assuming that it's discussed during the hearing yes.

Q. Well, can we take that as a fair assumption?

A. That would depend upon the amount of participation <u>of other state agencies</u>. (Emphasis added)

Q. Well, it will be a part of the hearing, will it not, just because of the environmental data that's requested in the application? Without any third party coming in there will be in fact environmental data if it's just the applicants and agency at the hearing?

A. I do not see the agency itself, outside of one or two people, does not have a reservoir of environmental expertise. The Pollution Control Agency does not have, to my knowledge, a reservoir of energy expertise, nor does DNR have a reservoir of energy expertise. I call your attention to subdivision (7) of 116H.13 'other state agencies authorized which permit the siting, construction or operation of large energy facility shall present their position regarding need and participate in the public hearing process prior to the issuance or denial of a certificate of need.'

As further indication of the Energy Agency's decision to accumulate environmental data for the benefit of sister agencies, the following testimony which appears at Pages 14 and 15 of the transcript indicate the Agency's intent to dovetail environmental information with information utilized by sister agencies:

Q. Dr. Wallen, without going and beating this thing to death I have three questions. Relating to what Bob Johnson said about pegging the environmental data that the MEA would request to that data which is already being prepared and submitted to other state agencies which have the directive to assess environmental impacts, you said that was -- that would be one way of doing it essentially?

A. From my perspective that would be a very acceptable way of doing it.

Q. All right. Then I ask you this, would you, in your opinion, feel that that would satisfy the legislative directive to the MEA to collect whatever you feel is necessary in the form of environmental data?

A. I'm not sure I understand your question.

Q. If you did that, if you pegged the environmental data to the reports that are already being required by other state agencies, do you feel that that type of a provision in your regulations would be sufficient to satisfy the legislative directive?

A. Which legislative directive?

Q. The ones you are referring to here for the question of environmental data?

A. Yes.

Q. Would it satisfy the agency needs?

A. I could see no reason why it would not satisfy our agency needs and apparently the data is sufficient for other agencies to get their permits, so it should be sufficient with them. <u>I cannot see why they would need information above and beyond what's contained in those documents.</u> (Emphasis added)

Q. At least there would be no reason for the MEA to have to collect that data?

A. No. I would think that if they would like more data they should require a revision of the EAW or WPC.

From a practical standpoint, environmental data must be accumulated at the certificate of need stage to be evaluated by the Director in his determination of need. Of equal import is the fact that state agencies other than the Energy Agency are required by statute to present their position and to participate in the public hearing process prior to the issuance or denial of a certificate of need. Since the other agencies which are required to participate in the process have expertise in various areas of environmental matters, it is concluded that their participation is intended to be along the lines of their particular areas of expertise. The statute referred to herein is found at Minn. Stat. § 116H.13, subd. 7 as follows:

> "Other state agencies authorized to issue permits for siting, construction or operation of a large energy facility shall present their position regarding need and participate in the public hearing process prior to the issuance or denial of a certificate of need...."

Thus, both the Energy Agency (in order to make its determination of need) and sister agencies must have a data base to work from in order to follow statutory mandate to evaluate environmental considerations. The lack of an adequate data base to be analyzed by the involved agencies has produced a result which can be gleaned from the testimony of Dr. Wallen of the Energy Agency in another proceeding.* Dr. Wallen was

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*Testimony given in the transcript of proceedings held April 28, 1976 at pp. 147-148 in Hearing Examiner Docket No. EQC-76-003-WS regarding the matter of the amendment of the rules of the Minnesota Environmental Quality Council relating to the environmental review of large electric power generating plants and high voltage transmission lines.

This Hearing Examiner presided over the above-mentioned Docket No. EQC-76-003-WS. Based on his participation therein, the Hearing Examiner has particular knowledge with regard to that matter. The introduction of those proceedings into this Report is based on the proposition that when a hearing examiner has expertise in a particular area of the law and has knowledge of information in prior proceedings which are relevant to the proceeding at hand, such prior information and knowledge can be applied within the hearing examiner's area of expertise to the case under consideration.

Administrative agencies have at their command, information acquired through adjudication, rulemaking, prosecuting and supervising. Such agencies employ men trained in various disciplines who develop specializations within specializations. Such procedures permit the agency to bring to bear upon an individual case all the skills and understanding that only an organized group of specialists can provide. Even the United States Supreme Court has declared in many cases that "we take judicial notice of our own records". Indeed, in some cases, the Supreme Court has quite freely taken judicial notice of evidence and other materials in records of other cases that happened to be immediately at hand. [For support of the position taken herein by the Hearing Examiner and appropriate citations, see Vol. 2 Davis Administrative Law Treatise § 15.06 (1971)].

being cross-examined by an attorney representing industry in a hearing relating to the environmental review of large electric power generating plants and high voltage transmission lines. The testimony is as follows:

> Q. And in fact, the certificate of need process contemplates, for example, if you are concerned about state parks, wildlife, fishery, that the Department of Natural Resources shall appear to present their position at your process?
>
> A. That is correct.
>
> Q. And it is a mandatory requirement imposed upon what I would call the environmental protective type of agencies this State to appear in your proceedings?
>
> A. Yes, it is a statutory requirement.
>
> Q. So that during the course of the process and during the course of involving the whole system, all of those concerns, if they are in fact existent, would come to the forefront, if these agencies that are concerned with protecting state parks, whatever, would do their job?
>
> A. That would appear to be the case. I'm not convinced that it is the case.
>
> Q. Well, I forgot to ask you -- and what has been your experience in terms of the agencies following the mandatory requirement that is imposed upon them in terms of presenting and appearing, expressing their concerns at the energy agency hearings?
>
> A. The four hearings we have held so far, there has been no direct participation of any other state agency, other than the Energy Agency.
>
> Q. Has the State Planning Agency or the MEQC ever brought to your attention concepts concerning land uses, alternative utility corridors, appropriate sites for location of facilities, or anything in that regard?
>
> A. No.

In accordance with the foregoing, it is specifically found that environmental data should be supplied by an applicant so that all appropriate agencies can make their respective determinations at the certificate of need process. A question which still remains unanswered is whether or not the Energy Agency has authority to promulgate regulations requiring the submission of environmental data from applicants which, in turn, can be analyzed by the appropriate agencies which must consider such data in order to render their position.

It is specifically found that the Energy Agency has authority to require an applicant to submit environmental data to (1) assist the Director of the Energy Agency in making his determination of need; (2) assist the other state agencies in formulating a position

which must be presented at the certificate of need process. Statutory authority for the Energy Agency to adopt environmental data regulations for the benefit of sister agencies can be gleaned from Minn. Stat. §§ 116H.01, 116H.06, 116H.08(a) and 116D.03, subd. 2(c).

> "The legislature finds and declares...that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government." [Section 116H.01 (Emphasis added)].
>
> "...the Director shall consult with other state departments or agencies in matters related to energy..." [Section 116H.06].
>
> "The Director may: adopt rules and regulations, pursuant to chapter 15 necessary to carry out the purposes of sections 116H.01 to 116H.15..." [Section 116H.08(a)].
>
> "All departments and agencies of the state government shall: identify and develop methods and procedures that will insure that environmental ammenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations..." [Section 116D.03, subd. 2(c) (Emphasis added)].

In accordance with the above, the Energy Agency has authority to promulgate regulations requiring environmental data from applicants for a certificate of need. That the purpose for requiring such data is to assist the director of the Energy Agency in making his determination of need and to provide a data base for other state agencies to formulate a position regarding need so that they can meaningfully contribute and particpate in the public hearing process prior to the issuance or denial of a certificate of need.

27(E). That the industry incorrectly put forth the proposition that a 1976 legislative appropriation declared the legislature's intent to prohibit the Energy Agency from accumulating environmental information. The language cited in the 1976 appropriation is as follows:

> "It is the intent of the legislature that environmental impact statements shall not be prepared in conjunction with the certificate of need process defined in Minnesota Statutes 1974, Section 116H.13, and the sums appropriated by this Section shall not be expended for environmental reports of any kind." (Journal of the House, 107th day, page 6550 at 6558; Journal of the Senate, 107th day, page 5829 at 5836)

However, it is noted that that particular appropriation was a deficit appropriation. It is of substantial note that the original House Bill was substantially different than the Bill finally passed and cited

hereinabove. The House Bill read as follows:

> "It is the intent of the legislature that none of the energy agency's fundings shall be used to prepared environmental reports and the energy agency is not required to comply with the EIS section of the Minnesota Environmental Policy Act." [H.F. 2676, Section 6, subdivision 2]

Thus, as originally proposed in the House Bill, no Energy Agency funding could be used to prepare environmental reports and the Energy Agency was exempted from compliance with the EIS section of the Minnesota Environmental Policy Act. The language of the deficit appropriation finally adopted by the legislature rejected such limitation. It is specifically found that the legislative language is clear that environmental impact statements shall not be prepared in conjunction with the Certificate of Need process. However, by stating that [only] that particular deficit appropriation shall not be used for "environmental reports of any kind" , it is evident that the legislature acknowledges the propriety of some form of "environmental reports" at the Certificate of Need stage with the exception that that particular appropriation shall not be used for such reports. The authority to prepare such reports encompasses the corresponding authority to accumulate appropriate environmental information.

The one remaining question with regard to EA 1045, 1055 and 1065 as set forth in the Agency's revised proposal is whether or not the Energy Agency proposed environmental rules are reasonable. This cogent question is discussed in this Report hereinbelow at Paragraph 28.

28. That with the exception of an application for a certificate of need for certain existing oil storage facilities, applicants for a certificate of need under proposed EA 1045, 1055 and 1065 as set forth in the Agency's revised proposal , would be duplicative of data supplied in any required Environmental Assessment Worksheet (EAW). That the Energy Agency acquiesced on the record to the industry position of structuring the environmental data rules in such a way that they would not require more information than is required by environmental agencies. An example of such acquiescense appears in the transcript of proceedings where the Agency's principle witness is cross-examined by industry with regard to EA 1045 (June 30, 1976 Tr. pp. 114 and 115):

Q. ...if you pegged the environmental data to the reports that are already being required by other state agencies, do you feel that that type of a provision in your regulations would be sufficient to satisfy the legislative directive?

A. Which legislative directive?

Q. The ones you are referring to here for the question of environmental data?

A. Yes.

Q. Would it satisfy the agency needs?

A. I could see no reason why it would not satisfy our agency needs and apparently the data is sufficient for other agencies to get their permits, so it should be sufficient with them. I cannot see why they would need information above and beyond what's contained in those documents.

Q. At least there would be no reason for the MEA to have to collect that data?

A. No. I would think that if they would like more data they should require a revision of the EAW or WPC.

Q. Through their own process?

A. Through their own process.

Q. A final question then, would you agree that going back to that type of a system would reduce the duplication of data that is being required by your agency and the other agencies such as the EQC and PCA?

A. I would agree that it would reduce complexity of it. I also think it would expedite the process.

Additionally, the Agency's principle witness testifed as follows on cross-examination concerning EA 1055 (June 30, 1976 Tr. pp. 130 and 131):

Q. Now I would just like to ask Mr. Wallen, would your conclusions with regard to pegging the environmental data to what other agencies wanted with regard to 1045 be the same for 1055?

A. With regard to 1055 I don't know if a comparable WPC 4 application form, and I think there also the environmental impact of a pipeline is considerably greater, the environmental impact of an oil storage tank, at least the preceding environmental impact. And I think we need testimony from the other agencies here to talk about that.

Q. If we assume, and I believe with the pipeline itself, I think it's the Department of Natural Resources instead of the PCA with regard to a pipeline permit, but if we assume that the same type of permitting processes are required would your conclusions then be the same for 1055?

A. I would say surely that the data that is required at the certificate of need stage should not go beyond the data required for other permitting processes. Very definitely, I mean, if another agency would like to have data above and beyond what's required in its permitting process it should promulgate its own rules."

Again, the transcript of proceedings on June 30, 1976 at pp. 145-146 reflects the Agency's opinion regarding EA 1065 as follows:

> Q. ...I would like to ask Dr. Wallen the same questions I asked him on 1055, would your conclusions concerning relating the environmental data to the type of -- to the type of information that is now required or would be required by other agencies requiring environmental assessment be the same as they were for 1045?
>
> A. Well, not entirely because again I do not believe that WPC 4 application form is required for -- you may correct me if I am wrong, for refineries. There is a mandatory EAW that would be required. I do not have at hand a list of all the permit forms.
>
> Q. I assume there are necessarily permit forms, those would be acceptable to the agency?
>
> A. Yah. I will say that the Energy Agency, as far as in my opinion, should be collecting environmental data above and beyond that required by other agencies and clearly completed application forms for other agencies should be sufficient in order --
>
> Q. To provide the data needed?
>
> A. Provided in our hearing process.
>
> Q. Assuming that to be the case would you then say that a provision to the effect would be acceptable to replace both 1065 and 1071?
>
> A. I guess I would have to see the provision prior to that.
>
> Q. But it would be something replacing those rather than in addition to those?
>
> A. Replacing those provided that seems to meet the necessary requisite environmental data.

Thus, although the Energy Agency has statutory authority to adopt rules requiring environmental data from industry, the Agency has not shown the necessity or reasonableness for collecting data beyond that required by existing rules of the permitting and siting agencies. Therefore, if an EAW is required for a large energy facility applying for a certificate of need, the completion of such EAW should suffice for the environmental data otherwise required by the Agency in EA 1045, 1055 and 1065. If an EAW is not required for any particular large energy facility so applying for a certificate of need, the Energy Agency's data requirements in EA 1045, 1055 and 1065 are reasonable and necessary for the purposes of the Agency making an appropriate determination of need. Substituting an EAW, when otherwise required, for the Agency's herein proposed data requirements would avoid duplicity.

Accordingly, the record supports the necessity and reasonableness for environmental data rules to incorporate the use of EAWs, when otherwise required, to stand in lieu of the specific data required by EA 1045, 1055 and 1065. Appropriate language changes would be as follows:

EA 1045 ENVIRONMENTAL DATA

The Director may, upon a showing by the applicant, exempt the applicant from any or all of the requirements of this section. Such a showing shall conform to rules EA 1003(h) with respect to timing and content.

When a certificate of need application is submitted for a new oil storage facility ~~on~~ or an existing large oil storage site which ~~site~~ already has storage capacity of at least one million gallons, a copy of an Environmental Assessment Worksheet (EAW) required by other state agencies may be submitted in lieu of specific answers to the requirements below. If permits for construction of said facility are required by other state agencies, a copy of each permit application, or the informational equivalent, shall also be submitted .... (THERE ARE NO FURTHER LANGUAGE CHANGES SUGGESTED TO PROPOSED RULE EA 1045 AS SET FORTH IN THE AGENCY'S REVISED PROPOSAL)

Similarly, the language of EA 1055 should be changed to read as follows:

EA 1055 ENVIRONMENTAL DATA

When a certificate of need application is submitted for a large oil pipeline facility, a copy of an Environmental Assessment Worksheet (EAW) required by other state agencies may be submitted in lieu of specific answers to the requirements below. If permits for construction of said facility are required by other state agencies, and to the extent that such information is reasonably available to the applicant, a copy of each permit application, or the informational equivalent, shall also be submitted.

In all other cases each applicant shall provide environmental data for the proposed facility.... (THERE ARE NO FURTHER LANGUAGE CHANGES SUGGESTED TO PROPOSED RULE EA 1055 AS SET FORTH IN THE AGENCY'S REVISED PROPOSAL)

Similarly, the language of EA 1065 should be changed to read as follows:

EA 1065 ENVIRONMENTAL DATA

When a certificate of need application is submitted for an oil refinery, a copy of an Environmental Assessment Worksheet (EAW) required by other state agencies may be submitted in lieu of specific answers to the requirements below. If permits for construction of said facility are required by other state agencies, and to the extent that such information is reasonably available to the applicant, a copy of each permit application, or the informational equivalent, shall also be submitted.

In all other cases each applicant shall provide environmental data for the proposed facility.... (THERE ARE NO FURTHER LANGUAGE CHANGES SUGGESTED TO PROPOSED RULE EA 1065 AS SET FORTH IN THE AGENCY'S REVISED PROPOSAL).

29. That proposed environmental data rules EA 1045, EA 1055 and EA 1065 as set forth in the Agency's revised proposal and with the changes set forth hereinabove in Paragraph 28, are reasonable and necessary to establish by rule, development of the environmental criteria necessary for the Director to use in his determination of need and necessary for the purposes supplying a data base to other agencies so that such other agencies can comply with their statutory duty to meaningfully participate in the public hearing process prior to the issuance or denial of a certificate of need.

30. That industry's ascertion (as found in the record of proceedings and particularly in the REFINERIES' POST-HEARING BRIEF submitted August 4, 1976) that the Energy Agency made no timely affirmative showing as to the reasonableness of the proposed rules, is without merit. There has been no demonstration of any prejudice or harm suffered by industry because the Agency introduced its Statement of Evidence at the time of the public hearing rather than prior thereto. The Statement was introduced on June 30, 1976 at the time of the public hearing. The public hearing was continued to July 15, 1976. Thereafter, the recrod of the proceedings remained open for twenty days. Industry had adequate time to review the Agency's Statement of Evidence, and to prepare its response thereto.

The sole purpose for the requirement of submitting a prepared Statement of Evidence prior to the hearing date is to allow interested persons an adequate opportunity to prepare their response to the Agency's evidence (see records of public hearings on Rules of the Office of Hearing Examiners). In this case, the Agency agreed to a recess and reconvening of the hearing in order to allow such persons a full opportunity to prepare their response. Thus, no prejudice can be shown in this case, and the Rules should not be rejected on such basis.

31. That most of the changes suggested by industry during the public hearing process and prior to the close of the record have been adopted by the Agency by either utilizing the language suggested by industry or conceptually following industry's suggestions in the

revised proposal. Such action represents the true intent of a give-and-take process whereby proposed regulations are subject to public scrutiny, suggestions and comment.

CONCLUSIONS

A. That the Minnesota Energy Agency duly acquired and now has jurisdiction over the within proceeding.

B. That all relevant legal and procedural requirements of statute and regulation have been properly complied with.

C. That the Energy Agency has statutory authority to promulgate and adopt the within-subject rules and regulations.

D. That the within proposed rules and regulations are reasonable and necessary for the purposes of establishing the necessary data base and assessment of need criteria to be used by the Energy Agency and its Director in making the determination of whether or not to issue a certificate of need. Furthermore, the within proposed rules and regulations are reasonable and necessary to supply the requisite data base for other state agencies to appropriately and meaningfully participate in the certificate of need process.

E. That in proposing the language changes suggested by this Hearing Examiner in the Findings of Fact, consideration was given to Minn. Reg. HE 108 which sets forth the criteria necessary to determine whether a rule, as finally adopted, is substantially different from the rule as originally proposed. In the event that it is determined that a substantial change has been made, the proposing agency must either withdraw the proposed final rule or reconvene the rule hearing. This Hearing Examiner concludes that the amendments, additions and language suggestions made hereinabove will not result in a substantial change from either the originally proposed rules or the revised proposed rules as submitted by the Energy Agency. Furthermore, the revised proposed rules as submitted by the Energy Agency do not result in a substantial change from the originally proposed rules.

RECOMMENDATIONS

IT IS HEREBY RESPECTFULLY RECOMMENDED: That the Minnesota Energy Agency adopt the within proposed rules as revised by the Energy Agency with the hereinabove suggested language changes.

Dated: September 20, 1976.

William Seltzer

WILLIAM SELTZER
Hearing Examiner

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

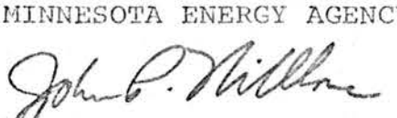
In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities, Large Oil Pipelines, and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	Docket No. EA-76-003-WS ORDER ADOPTING RULES

The above-entitled matter came on for hearing before William E. Seltzer of the Minnesota Office of Hearing Examiners for the Director of the Minnesota Energy Agency at 9:30 a.m. on June 30, 1976, in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota and, in a continuation of the hearing, on July 15, 1976, at 9:30 a.m. in Conference Room A of the Veterans Service Building, Saint Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (Supp. 1975) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced, and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules and the reasonableness thereof,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minn. Regs. EA 1001-1091 are adopted this 1st day of October, 1976, pursuant to authority vested in me by Minn. Stat. § 116H.08(a) (1974).

STATE OF MINNESOTA
MINNESOTA ENERGY AGENCY



JOHN P. MILLHONE
DIRECTOR

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large Oil Storage Facilities, Large Oil Pipelines, and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	Docket No. EA-76-003-WS DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS AND DECISION

The hearing in the above-captioned matter was ordered on May 26, 1976, and was convened for the Minnesota Energy Agency (hereinafter "Agency") by Hearing Examiner William E. Seltzer of the Minnesota Office of Hearing Examiners at 9:30 a.m. on June 30, 1976, in Conference Room D of the Veterans Service Building, Saint Paul, Minnesota, and was continued and reconvened at 9:30 a.m. on July 15, 1976, in Conference Room A of the same building.

The hearing examiner made and issued his Findings of Fact, Conclusions and Recommendations to the Agency on September 20, 1976. The hearing examiner recommended to the Agency that it adopt the Agency's revised proposed rules incorporating the language changes suggested by the hearing examiner.

The director of the Agency, upon the record certified to him by the hearing examiner and the Findings, Conclusions and Recommendations made by the hearing examiner, hereby makes and issues the following Findings of Fact, Conclusions and Decision.

FINDINGS OF FACT

1. In general, the hearing examiner did a reasonable, thorough and excellent job of presenting his Findings in the above-captioned matter. The hearing examiner's Findings 1-10, 12-27C, 27E, and 29-31 and hereby adopted as the Findings of the director.

2. The director agrees with the substance of the hearing examiner's Finding No. 11 with respect to proposed rule EA 1003 H. However, the director believes the following language better expresses the intent of the findings than that proposed by the hearing examiner:

> H. Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in ~~a written statement to the director~~ the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption ~~may~~ must be filed ~~no later than~~ at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

3. It is the opinion of the director that environmental data on alternatives must be provided if the director is to adequately and carefully weigh alternatives. The director agrees with the hearing examiner's statements, in Finding 14 that the criteria should provide a "reasonable and necessary" structure for the director to determine need, and in Finding 26 that to use the criteria the director must be supplied with information on the various alternatives that may exist. The Agency's key witness, in the testimony quoted by the hearing examiner in Finding 27(D), stated that one of the factors to be considered in weighing alternatives would be environmental matters. Findings of Fact, Conclusions and Recommendations of the hearing examiner (hereinafter "H.E. Findings") 23.

The director further agrees with the hearing examiner's statement in Finding 27(D) that the other state agencies need environmental data to participate in the certificate of need hearings, as they are required to do by Minn. Stat. § 116H.13 subd. 7 (1974). The other state agencies argued in the course of the hearing that their participation in the certificate of need hearings would concern the evaluation of alternatives with respect to their environmental inputs. Transcript of June 30 Hearing (hereinafter "T. I") 148-50, 152-57, 160, 170-75; Transcript of July 15 Hearing (hereinafter "T. II") 140-43. Since the Agency is requiring environmental data for the other state agencies, it is imperative that their testimony with regard to this matter be given considerable weight. The Minnesota Public Interest Research Group in its statement to the hearing examiner also argued that a ". . . careful weighing of alternatives requires a complete environmental data base in the record."

The director finds that there is substantial evidence in the record that the other agencies would find that environmental assessment worksheets (hereinafter "EAW's") and applicable permits would not in themselves provide adequate environmental information regarding refineries, pipelines, and oil storage facilities to be constructed on a new site.

4. The director finds that the potential environmental impact of a pipeline, refining facility, or oil storage facility at a new site is significantly greater than an oil storage facility at an existing oil storage site.

Most of the discussion in the record on submitting an EAW and copies of permit applications centered on applications for oil storage facilities, most particularly oil storage at an existing site. The key Agency witness in addressing this issue clearly was referring primarily to oil storage facilities. With respect to pipelines, the witness testified in response to the questions of Mr. Burk, attorney for Koch Refining Company, as follows:

Q. Now I would just like to ask Mr. Wallen, would your conclusions with regard to pegging the environmental data to what the other agencies wanted with regard to 1045 be the same for 1055?

A. With regard to 1055 I don't know if a comparable WPC 4 application form, and I think there also the environmental impact of a pipeline is considerably greater, the environmental impact of a oil storage tank, at least the preceding environmental impact. And I think we need testimony from the other agencies in that regard and there are two other agencies here to talk about that.

Q. If we assume, and I believe with the pipeline itself, I think it's the Department of Natural Resources instead of the PCA with regard to a pipeline permit, but if we assume that the same type of permitting processes are required would your conclusions then be the same for 1055?

A. I would say surely the data that is required at the certificate of need stage should not go beyond the data required for other permitting processes. Very definitely, I mean, if another agency would like to have data above and beyond what's required in its permitting processes it should promulgate its own rules.

T. I 130-31.

With respect to refineries, the witness testified as follows:

MR. BURKE: Mr. Hearing Officer, for the record we would continue our objection to the environmental data in EA 1065 as was previously submitted with regard to the other areas of environmental data and I would like to ask Dr. Wallen the same questions I asked him on 1055, would your conclusions concerning relating the environmental data to the type of -- to the type of information that is now required or would be required by other agencies requiring environmental assessment by the same as they were for 1045?

DR. WALLEN: Well, not entirely because again I do not believe that WPC 4 application form is required for -- you may correct me if I'm wrong, for refineries. There is a mandatory EAW that would be required. I do not have at hand a list of all the permit forms.

Q. I assume there are necessarily permit forms, those would be acceptable to the agency?

A. Yah. I will say that the Energy Agency, as far as in my opinion, should not be collecting environmental data above and beyond that required by other agencies any clearly completed application forms for other agencies should be sufficient in order --

Q. To provide the data needed?

A. Provided in our hearing process.

Q. Assuming that to be the case would you then say that a provision to that affect would be acceptable to replace both 1065 and 1071?

A. I guess I would have to see the provision prior to that.

Q. But it would be something replacing those rather than in addition to those?

A. Replacing those provided that seems to meet the necessary requisite environmental data.

T. I 145-46.

While the testimony of this witness acknowledges that the content of an EAW and applicable permit forms might satisfy the Agency's requirement for environmental information for the proposed facility, it also points out that refineries and pipelines have a greater environmental impact and that the other state agencies should provide input with respect to their needs for data on these facilities. Also apparent from the testimony is the fact that the requirements of other state agencies with respect to refineries and pipelines are not precisely known by the witness.

Witnesses of the other state agencies (Mr. Randall Dunnette of PCA, Mr. Kenneth Wald of DNR, and Mr. Charles Kenow of EQC) all testified that an EAW and a WPC4 form might be acceptable for an oil storage facility on an existing oil storage site. T. I 152-57, 160, 173-75; T. II 142-43. Mr. Wald specifically cited a new tank farm as a proposal that would require more assessment. T. I 175. All three of the witnesses were unwilling to accept the same procedure (EAW and copies of applicable permits) for refineries and pipelines. The witnesses stated that the certificate of need process forecloses consideration of certain alternatives at a later date, since the determination of need is understood to include size, type and timing. Also, pipelines and refineries require more permits than oil storage facilities. T. I 154. Basically, the position of these witnesses was that an EAW and copies of applicable permits would be acceptable only in those cases where alternatives to the proposed facility do not exist.

Industry spokesmen consistently stressed, both in their questions and in their testimony, that oil storage, particularly at an existing site, presents a situation quite different from that of pipelines and refineries. In discussing weighting of the eight statutory factors in assessment of need, Mr. Johnson admitted that ". . . (i)f you are going to talk about a tank in a tank farm, you would use certain weightings. If you are going to talk about a brand-new oil facility that's another one." T. II 72. Mr. Burk argued for perfunctory handling of an application ". . . for a tank in an existing refinery or terminal where the environmental impact would be so minimal, if existed at all . . . ." T. II 80-81. With respect to oil storage facilities, Mr. Johnson stated: ". . . but as to the tank itself I think you even get into differentiations as to whether the tank is in an existing tank farm, or if it's a new tank farm. It seems to me if we put in an EAW for a new tank farm that's something that the Environmental Quality Council is going to look more toward an environmental impact statement than an additional tank in a tank farm." T. II 102.

Industry spokesmen also indicated that oil storage differs from pipelines and refineries in the timing of the permit application. Mr. Johnson stated that for oil storage simultaneous applications may be filed. However, the applicant would probably seek a certificate of need for a pipeline or a refinery before applying for permits to the other state agencies. T. II 91-92. Industry spokesmen also made the general statement that although locations for each of the facilities under consideration would be known at the need stage, not all of the permits would be applied for at the same time. T. II 102-103.

5. The director believes that the hearing examiner's Findings 27(D) and 28 must be modified. Finding 27(D) is based largely on the testimony of the key Agency witness. It is

true that the witness argued that the requirements of the Agency with respect to environmental data should not exceed those of the other state agencies in granting permits. However, those comments relate to the proposed facility. The director finds that the scope of topics covered in proposed rules EA 1045, 1055 and 1065 do not substantially exceed other agency requirements with respect to the proposed facility. If the other state agencies believe that environmental data on alternatives is necessary for them to participate in the certificate of need process, then that data should be provided. The director requires the opinions of these other state agencies with respect to evaluation of environmental data in order to make a decision in accordance with the criteria for assessment of need.

The director also finds that, by itself, an EAW is not equivalent to the environmental information that is required by other state agencies, which is contrary to the implications of Finding 28. Finding 28 also states that "(i) If an EAW is not required for any particular large energy facility so applying for a certificate of need, the Energy Agency's data requirements in EA 1045, 1055 and 1065 are reasonable and necessary for the purposes of the Agency making an appropriate determination of need." This statement seems to be in conflict with the hearing examiner's finding that the Agency should accept an EAW as sufficient when one is required. Surely if the information requested in proposed rules EA 1045, 1055 and 1065 is necessary and reasonable when an EAW is not required, it must also be necessary and reasonable even when an EAW is required. The only difference between the two situations is whether or not an EAW is prepared. The question basically becomes whether or not the rather modest duplication of EAW data is justified by other circumstances.

It should also be pointed out that an EAW would scarcely ever be required for a pipeline or a refinery, because the perceived impact of these facilities would almost certainly

call for preparation of an environmental impact statement. The proposer of the facility could still demand that an EAW be prepared. However, in such a situation it could hardly be argued that an EAW should be accepted by the Agency to avoid duplication of requirements by state agencies.

Finally, the language proposed by the hearing examiner for the introduction of proposed rules EA 1045, 1055 and 1065 is deficient, even if the Agency were to accept an EAW as sufficient for its needs. The change recommended by the hearing examiner would appear to make the environmental data requirements for an oil storage facility more stringent in certain cases than the requirements for either a pipeline or a refinery. No one suggested during the hearing that such a situation is desirable; in fact, the bulk of the testimony indicates that the opposite is appropriate.

6. As a result of the foregoing, the director believes the environmental sections in the revised proposed rules are reasonable and necessary to enable the director to fulfill his statutory duty with respect to need determination. Specifically, the director finds that:

1) Environmental data on alternatives is required, and that it is proper that the applicant provide such data for alternatives that it considered.

2) Oil storage at an existing oil storage site differs significantly in environmental impact from the other facilities covered by these rules. Because the marginal impact of additional tanks at an existing site is small and because the applicant usually has no other reasonable alternatives in such a situation, the director finds that submission of an EAW and a completed WPC 4 form is all that is required in an application for a large oil storage facility at an existing oil storage site. For other facilities an application shall contain the information required by sections A through D of proposed rules EA 1045, 1055 or 1065.

7. The hearing examiner neglected to make findings concerning proposed rules EA 1081 and 1091. No testimony was offered in objection to the Agency's supporting testimony on these rules. These rules are found to be reasonable and necessary provisions which allow the applicant to present additional data not required by other rules, require the director to justify application denials, and specify those changes in circumstances which require recertification of facilities.

8. Certain other very minor changes have been made to the revised proposed rules. The bulk of those changes are comprised of the renumbering of rules to conform to the outline form suggested in Minn. Reg. RGSTR 6 D. Also, the references in rules to other portions of the rules have been clarified. The few other changes are typographical, spelling, grammatical, word usage, or order changes made solely for clarification.

CONCLUSIONS

The director concurs with the Conclusions made by the hearing examiner and hereby adopts them. The director's minor changes and additions to the hearing examiner's Findings, as described above, fall within the sense of the hearing examiner's Conclusion E.

DECISION

The director accepts the recommendation of the hearing examiner to adopt the revised proposed rules and in a separate Order adopts rules EA 1001-1091, incorporating the hearing examiner's changes as modified by the changes indicated in the director's Findings. A copy of rules EA 1001-1091, as adopted, is attached.

Dated: October 1, 1976

John P. Millhone
Director

MINNESOTA ENERGY AGENCY RULES

GOVERNING CONTENTS OF APPLICATIONS

FOR CERTIFICATES OF NEED AND CRITERIA

FOR ASSESSMENT OF NEED FOR

LARGE OIL STORAGE FACILITIES,

LARGE OIL PIPELINES

AND OIL REFINERIES FOR

PETROLEUM SUPPLIERS

Chapter 10
EA 1001-1091

Rule Number	Title of Rule
EA 1001	Purpose of Rules
EA 1002	Applicability of Rules
EA 1003	Application Procedures and Timing
EA 1004	Definitions
EA 1005	Filing Fees and Payment Schedule
EA 1011	Criteria for Assessment of Need
EA 1021	Contents of Application
EA 1031	General Information
EA 1032	Need Summary
EA 1033	Summary of Additional Considerations
EA 1034	Conservation Programs
EA 1040	LARGE OIL STORAGE FACILITY SECTION
EA 1041	Historical Energy Data
EA 1042	Forecast Data
EA 1043	Description of Proposed Facility
EA 1044	Alternatives
EA 1045	Environmental Data
EA 1050	LARGE OIL PIPELINE FACILITY SECTION
EA 1051	Historical Energy Data
EA 1052	Forecast Data
EA 1053	Description of Proposed Facility
EA 1054	Alternatives
EA 1055	Environmental Data
EA 1060	OIL REFINERY FACILITY SECTION
EA 1061	Historical Energy Data
EA 1062	Forecast Data
EA 1063	Description of Proposed Facility
EA 1064	Alternatives
EA 1065	Environmental Data
EA 1081	Other Data Filed with the Application
EA 1091	Certificate of Need Modifications

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE MINNESOTA ENERGY AGENCY)
GOVERNING CONTENTS OF APPLICATIONS FOR)
CERTIFICATE OF NEED AND CRITERIA FOR) NOTICE OF HEARING
ASSESSMENT OF NEED FOR LARGE OIL STORAGE)
FACILITIES, LARGE OIL PIPELINES AND OIL)
REFINERIES.)

NOTICE IS HEREBY GIVEN that a public hearing in the above entitled matter will be held in Room D, 5th Floor of the Veterans Service Building, Saint Paul, Minnesota 55155 on June 30, 1976 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to State of Minnesota, Office of Hearing Examiners, William Seltzer, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would establish the contents of applications for certificates and criteria for assessment of need for large oil storage facilities, large oil pipelines and oil refineries. After the assessment of need criteria have been promulgated, no large energy facility covered by these rules, shall be sited or constructed in Minnesota without the issuance of a Certificate of Need by the Director of the Minnesota Energy Agency. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, 740 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. §116H.08. A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. §10A.01, Subd.11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

John P. Millhone, Director

Date: May 26, 1976

MINNESOTA ENERGY AGENCY PROPOSED RULES

GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATE OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES, LARGE OIL PIPELINES AND OIL REFINERIES FOR PETROLEUM SUPPLIERS

Chapter 10
EA 1001-1091

Rule Number	Title of Rule
EA 1001	Purpose of Rules
EA 1002	Applicability of Rules
EA 1003	Application Procedures and Timing
EA 1004	Definitions
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EA 1021	Contents of Application
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EA 1033	Summary of Additional Considerations
EA 1034	Conservation Programs
EA 1040	LARGE OIL STORAGE FACILITY SECTION
EA 1041	Historical Energy Data
EA 1042	Forecast Data
EA 1043	Description of Proposed Facility
EA 1044	Alternatives
EA 1045*	Environmental Data
EA 1050	LARGE OIL PIPELINE FACILITY SECTION
EA 1051	Historical Energy Data
EA 1052	Forecast Data
EA 1053	Description of Proposed Facility
EA 1054	Alternatives
EA 1055*	Environmental Data
EA 1060	OIL REFINERY FACILITY SECTION
EA 1061	Historical Energy Data
EA 1062	Forecast Data
EA 1063	Description of Proposed Facility
EA 1064	Alternatives
EA 1065*	Environmental Data
EA 1071*	Environmental Data
EA 1081	Other Data Filed with the Application
EA 1091	Certificate of Need Modifications

* Rule EA 1071 is an alternative proposed by the Agency to rules EA 1045, 1055, 1065. The Agency expresses no preference.

MINNESOTA ENERGY AGENCY RULES GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE OIL STORAGE FACILITIES, LARGE OIL PIPELINES AND OIL REFINERIES FOR PETROLEUM SUPPLIERS

Chapter 10
EA 1001-1091

EA 1001 PURPOSE OF RULES

The purpose of these rules is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for large oil storage facilities, large oil pipelines and oil refineries for petroleum suppliers pursuant to Minn. Stat. §§ 116H.13.

EA 1002 APPLICABILITY OF RULES

A. Each petroleum supplier applying for a certificate of need for one of the following types of large energy facilities shall provide all information required by these rules:

1. a new large oil storage facility;
2. a new large oil pipeline facility;
3. a new oil refinery; and
4. an expansion of an existing oil refinery in excess of either 25% of its rated throughput or 10,000 barrels per day, whichever is greater.

B. Exception. Any person who as of the effective date of these rules has begun or has completed construction of a large energy facility shall not be subject to these rules for that facility.

EA 1003 APPLICATION PROCEDURES AND TIMING

A. Each applicant for a certificate of need shall apply in a form and manner prescribed by the director.

B. A minimum of seven (7) bound copies and one (1) unbound copy of the application shall be filed with the director. The director may require additional copies, not to exceed 50 copies total. All documents, forms, and schedules filed with the application must be typed on 8½" x 11" paper except for blueprints, engineering drawings, maps, and similar materials. The date of preparation and the applicant's name shall appear on each page of the application. Each application shall contain a title page and a complete table of contents which includes the applicable rules by the titles and numbers given in these rules.

C. Subsequent to the filing of an application, any changes or corrections to the application shall comply with rule EA 1003 B as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

D. Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, the number of copies filed, and the rules and subdivisions thereof to which the applicant has responded.

E. A hearing examiner shall be appointed and a public hearing shall be scheduled to commence no later than eighty days after the receipt of the application, in accordance with the Minnesota Energy Agency Rules of Procedure Governing Certificate of Need Program, Minn. Regs. EA 500 et seq., and the Hearing Examiner Rules of Contested Case Procedures, Minn. Regs. HE 201 et seq.

F. A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as filed is substantially complete. Upon an affirmative showing by the applicant that an urgent need exists for an early decision on the application, said application may be given priority consideration over other applications, except for other priority applications previously filed.

G. The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct the deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

H. Prior to the submission of an application, a person may be exempted from any data requirement of these rules upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement 1) is unnecessary to determine the need for the proposed facility or 2) may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

EA 1004 DEFINITIONS

For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency;

B. "Applicant" means the person or persons submitting a certificate of need application;

C. "Application" means a document submitted by a person or persons to the director for the purpose of obtaining a certificate of need, the contents of which are described in these rules;

D. "Barrel" means that quantity of liquid which is equal to 42 gallons;

E. "BTU" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

F. "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies;

G. "Demand" means that quantity of a petroleum product from the applicant's facilities for which there are willing and able purchasers, or the burden placed upon the applicant's interim storage facilities and production processes resulting therefrom;

H. "Director" means the director of the Agency;

I. "Forecast" means a prediction of future demand for some specified time period;

J. "Forecast Years" means the sixteen-year period consisting of the year in which an application is filed plus the next fifteen years;

K. "Inch-Mile" means a descriptive unit used as a measure of the size of a pipeline, the quantity of which is determined by multiplying the diameter of the pipe in inches by the length of the pipe in miles;

L. "Joint Application" means an application submitted to the director by two or more persons;

M. "Large Oil Pipeline" means a pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum or petroleum fuels or oil or derivatives thereof;

N. "Large Oil Storage Facility" means a facility on a single site designed for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or derivatives thereof;

O. "Oil Refinery" means any facility on a single site which processes crude or synthetic crude oil for the purpose of separating it into marketable products;

P. "Peak Day" means that day during a calendar year when the throughput is the greatest;

Q. "Peak Demand" means the highest demand for a petroleum product occurring within a designated period of time;

R. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit or agency, other than a court of law;

S. "Petroleum Supplier" means a petroleum refinery in the state and any entity engaged in transmission or wholesale distribution of more than 100,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof annually in this state;

T. "Substantially Complete Application" means an application which is deemed by the director to be in substantial compliance with the informational requirements of these rules.

EA 1005 FILING FEES AND PAYMENT SCHEDULE

The fee for processing an application shall be;

A. $2,000 plus $10 per one hundred thousand gallons of design storage capacity for a large oil storage facility; or

B. $10,000 plus $4 for each inch-mile of the Minnesota portion of a large oil pipeline;

C. $10,000 plus $200 per thousand barrels of design daily throughput for a new oil refinery; or

D. $5,000 plus $100 per thousand barrels of additional daily throughput for an expansion of an existing oil refinery;

plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of any applicant exceed the lesser of $50,000 or 200% of the fee set according to above schedule. Fifty percent of the fee set according to item A, B, C, or D of rule EA 1055 shall accompany the application and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when any additional fees are due and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

EA 1011 CRITERIA FOR ASSESSMENT OF NEED

A. Purpose of the Criteria. The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minn. Stat. $\frac{ss}{ss}$ 116H.01 through 116H.15.

B. A certificate of need shall be granted to the applicant if it is determined that:

1. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. In making this determination, the director shall consider:

   a. the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

   b. the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

   c. the effects of the applicant's promotional practices which may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

   d. the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and

   e. the effect of the proposed facility in making more efficient use of resources;

2. a more reasonable and prudent alternative to the proposed facility has not been demonstrated. In making this determination, the following factors shall be considered:

   a. the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

   b. the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

c. the impact of the proposed facility upon the natural and socioeconomic environments compared to the impacts of reasonable alternatives; and

d. the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

3. the consequences of granting the certificate of need outweigh the consequences of denying the certificate, considering:

a. the relationship of the proposed facility to overall state energy needs;

b. the impact of the proposed facility upon the natural and socioeconomic environments compared to the impact of not building the facility;

c. the effects of the proposed facility in inducing future development; and

d. socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality;

and that

4. it has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state agencies, federal agencies, and local governments which have been considered during the hearing process.

EA 1021 CONTENTS OF APPLICATION

A. Each application for a certificate of need shall provide all information required by rules EA 1031-1034, plus additional information for specific types of facilities as indicated in rule EA 1021 D.

B. Joint Application. If the proposed application for a certificate of need is jointly submitted by two or more persons, then, when specified in these rules, each such person shall submit the information required by these rules.

C. Multi-Party Ownership and Use. Each application for a certificate of need for a facility which is owned and used by two or more persons shall be considered as a joint application for purposes of these rules.

D. Additional information shall be provided for specific types of facilities as indicated below.

1. Large Oil Storage Facility. Refer to rule EA 1040.

2. Large Oil Pipeline Facility. Refer to rule EA 1050.

3. Oil Refinery. Refer to rule EA 1060.

EA 1031 GENERAL INFORMATION

A. Each application shall contain a general information section which shall include the following information:

1. the applicant's complete name and address, telephone number, and standard industrial classification code(s);

2. the complete name, title, address and telephone number of the official or agent to be contacted concerning the applicant's filing;

3. a brief description of the nature of the applicant's business and of the products which are manufactured, produced, or processed, or of the services rendered;

4. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its design capacity in gallons (oil storage),

its maximum design throughput in barrels per day and its size in inch-miles (oil pipeline), or its design throughput in barrels per day (oil refinery);

5. the total fee for the application as prescribed by rule EA 1005, and the amount of the fee submitted with the application; and

6. the signature(s), and title(s) of the applicant's officer(s) or executive(s) authorized to sign the application and the signature of the preparer of the application if prepared by an outside agent.

B. Each application shall contain a schedule in the general information section which shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

1. the names of all known federal, state, or local agencies or authorities with which the applicant must file;

2. the title of each required permit or certificate issued by the authorities named in rule EA 1031 B 1 and needed by the applicant;

3. for each permit or certificate in rule EA 1031 B 2, the date an application was filed or the projected date of future application;

4. for each permit or certificate in rule EA 1031 B 2, the actual date a decision was made on the application, or the anticipated decision date; and

5. for each permit or certificate in rule EA 1031 B 2 for which an application was filed, the disposition or status of the permit or certificate.

EA 1032 NEED SUMMARY

Each application shall contain a section which summarizes the major factors which justify the need for the proposed facility. The summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

EA 1033 SUMMARY OF ADDITIONAL CONSIDERATIONS

Each application shall contain a section which discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities which may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

EA 1034 CONSERVATION PROGRAMS

Each application shall contain a section which relates to the conservation of energy. Separate responses are required from each person submitting a joint application.

A. Does the applicant have an energy committee or an individual responsible for determination or coordination of its energy needs?

B. Has the applicant defined energy or conservation goals or objectives?

C. What major energy efficiency or conservation programs has the applicant considered?

D. What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

E. What major energy efficiency or conservation programs will be implemented within the next five years?

EA 1040 LARGE OIL STORAGE FACILITY SECTION

In addition to the data required by rules EA 1031-1034, each applicant for a large oil storage facility shall provide the information required by rules EA 1041-1045, and, optionally, EA 1081.

In a joint application, separate responses are required from each person for information required by rules EA 1041-1042 and EA 1044.

EA 1041 HISTORICAL ENERGY DATA

Each applicant for a large oil storage facility shall provide the following information:

A. the end-of-year total storage capacity at the site where the proposed facility will be located for each of the five years preceding the year of application;

B. identification of the specific facilities in rule EA 1041 A which are normally used to store the type of petroleum product(s) which would be stored in the proposed facility; and

C. for the oil storage site or refinery where the proposed facility would be located, a list of the annual throughput in gallons for the five most recent calendar years for the type of petroleum product(s) which would be stored in the proposed facility.

EA 1042 FORECAST DATA

Each applicant for a large oil storage facility shall provide answers to the questions below unless previously submitted to the Agency pursuant to Minn. Regs. EA 401 et seq., in which case a copy of such submission may be incorporated into the application to satisfy the requirements of this rule.

A. What are the applicant's projected storage capacity requirements, during the next five years, for the type of petroleum product(s) which would be stored in the proposed facility?

B. What impact, if any, would the proposed facility have upon the applicant's ability to manage its inventory and supply its customers during the next five years, compared to its current situation?

C. What impact, if any, would the proposed facility have upon the applicant's annual throughput or its ability to maintain current throughput levels during the next five years?

D. What specific assumptions are made by the applicant for the next five years concerning supply of the type(s) of petroleum products which would be stored in the proposed facility?

EA 1043 DESCRIPTION OF PROPOSED FACILITY

Each application for a large oil storage facility shall include the following information:

A. the purpose and planned use of the proposed oil storage facility, including its relationship to the facility which requires it;

B. a description of the proposed oil storage facility, including:

1. its design capacity in gallons;
2. the type(s) of petroleum products to be stored;
3. the dimensions;
4. engineering drawings, blueprints, and specifications (if available); and
5. the estimated cost of the proposed oil storage facility and its expected economic life;

C. the complete name and address of the engineer, if known, or (if designed by an outside agent) the firm, which designed the proposed oil storage facility;

D. the complete name and address, if known, of the contractor or firm which would construct the oil storage facility; and

E. the approximate planned date for starting construction and the approximate planned in-service date.

EA 1044 ALTERNATIVES

Each applicant for a large oil storage facility shall respond to the following questions.

A. Are there any known restrictions or limitations on the availability of alternatives to the applicant's proposed oil storage facility?

B. Specifically, what other alternatives were examined? For each alternative examined provide the following information:

1. a description of the alternative;
2. when it was studied;
3. who performed the study;
4. why it was rejected; and
5. whether economics were considered and to what extent.

EA 1045 ENVIRONMENTAL DATA

The director may, upon a showing by the applicant, exempt the applicant from any or all of the requirements of this section. Such a showing shall conform to rule EA 1003 H with respect to timing and content.

When a certificate of need application is submitted for a large oil storage facility on an existing oil storage site, which site already has storage capacity of at least one million gallons, a copy of an Environmental Assessment Worksheet (EAW)

may be submitted in lieu of specific answers to the requirements below. If permits for construction of said facility are required by other state agencies, a copy of each permit application, or the informational equivalent, shall also be submitted.

In all other cases the applicant for a certificate of need for a large oil storage facility shall provide environmental information for the proposed facility and for each alternative facility discussed in response to rule EA 1044. Such information shall be provided in the format given below, to the extent that such data is applicable and reasonably available.

A. Location

1. If the specific location for the proposed (or alternative) facility is known, provide the county, township, range, and section(s) of that site. If a specific location has not been chosen, provide the county, township, range and section(s) for each parcel of land which in the opinion of the applicant could serve as the site for the facility.

2. For each site identified in response to rule EA 1045 A 1, list:

a. the nature of the terrain at the site;

b. the general soil type at the site;

c. the depth of groundwater at the site;

d. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;

e. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within one mile of the site;

f. lakes, streams, wetlands or drainage ditches within one mile of the site and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

g. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

h. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

i. national historic sites and landmarks national monuments, National Register Historic Districts, registered state historic or archeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within one mile of the site, as indicated by the Minnesota Historical Society.

B. Wastewater, Projected Air Emissions and Noise Sources

1. Discharges to Water

a. Point Discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area Runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

2. Point Sources of Airborne Emissions. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

3. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution Control and Safeguards Equipment

1. Air Pollution Controls. Indicate types of emission control devices and measures that would be used.

2. Water Pollution Controls. Indicate types of water pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Oil Spill Safeguards. Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface waters and groundwaters of the state.

4. Other Safeguards and Controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced Developments

1. Vehicular Traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility.

2. Water Use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

3. Agriculture. Estimate the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed. Indicate known circumstances with regard to the facility that could lead to reduced productivity of surrounding agricultural land.

4. Relocation of Human Beings. Estimate the number of people that would have to relocate if the facility were constructed.

EA 1050 LARGE OIL PIPELINE FACILITY SECTION

In addition to the data required by rules EA 1031-1034, each applicant for a certificate of need for a large oil pipeline facility shall provide the information required by rules EA 1051-1055.

In a joint application, separate responses are required from each person for information required by rules EA 1051-1052 and EA 1054.

EA 1051 HISTORICAL ENERGY DATA

A. For the geographical area to be served by the proposed facility, the applicant shall provide the following:

1. a list of the petroleum products by major categories (such as crude oil, gasoline, fuel oil, and so forth) transported or distributed by the applicant in that geographical area during the five most recent calendar years;

2. for each category listed in response to rule EA 1051 A 1 and for each of the five most recent calendar years, a list of the annual and peak day quantities transported or distributed in the appropriate units of measure;

3. a list of sources of supply of petroleum products for transportation or distribution during the five most recent calendar years, designated as either in-state or as out-of-state, the dates and durations of the contracts with the 25 largest suppliers or shippers, the categories of petroleum products and quantities involved and, for sources of crude oil, the geographical areas of origin of the crude oil; and

4. for each of the five most recent calendar years and for each category of petroleum product, the percentage of in-state delivery of the annual amounts given in response to rule EA 1051 A 2.

B. List each large oil storage facility location, large pipeline facility, and oil refinery associated with the transportation or distribution of the categories of petroleum products named in response to rule EA 1051 A 1. Provide maps which represent the locations and interconnections of these facilities.

C. For each large energy facility or location listed in response to rule EA 1051 B, located in Minnesota and owned or operated by the applicant, provide the average percentage of use of its full design capacity during the summer season and during the winter season.

EA 1052 FORECAST DATA

For the geographical area to be served by the proposed facility, the applicant shall provide the following:

A. a list of the categories of petroleum products the applicant expects to transport or distribute in that geographical area during the first six forecast years, the eleventh forecast year (the tenth year after the year of the application), and the sixteenth forecast year;

B. for each category of petroleum product listed in response to rule EA 1052 A and for each of the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, a list of the annual and peak day quantities expected, using the appropriate units of measure;

C. a discussion of the methods, assumptions and factors employed for purposes of estimation in response to items A and B of rule EA 1052;

D. a discussion of the effect on the forecast of possible changes in the key assumptions and key factors requested in rule EA 1052 C; and

E. considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.

EA 1053 DESCRIPTION OF PROPOSED FACILITY

A. Design. The applicant shall provide the following information pertaining to the design of the proposed large oil pipeline:

1. if known, the complete name and address of the engineer and firm to be responsible for the design;

2. the estimated cost and economic life;

3. a list of the categories of petroleum products the large oil pipeline is intended to transport;

4. its initial and ultimate design capacities in barrels per day and its design size in inch-miles;

5. engineering data, including the following:

a. a pipeline system map showing the route, mileage, location of pumping stations, mainline valves, petroleum storage facilities, and interconnections;

b. specifications for pipe (diameter, length, wall thickness, grade) and valves (diameter and American National Standards Institute rating) with the maximum allowable operating pressure for each;

c. for the pumps, representative specifications including diameter, allowable maximum operating pressures and maximum capacities; and

d. for the prime movers, representative specifications, including type, allowable maximum power capacity in horsepower, efficiency, allowable maximum and minimum operating temperatures, and energy requirement in BTU per barrel per mile of petroleum product pumped.

B. Construction. The applicant shall provide the following information pertaining to the construction of the proposed facility:

1. if known, the complete name and address of the company to be responsible for the construction;

2. the proposed date for commencement of construction and the proposed in-service date; and

3. an estimate of the in-service date if the construction were to be on a fully-expedited basis.

C. Operation. The applicant shall provide the following information pertaining to the operation of the proposed facility:

1. the expected average percentage of use of the full design capacity of the proposed facility during the first five years of operation;

2. the expected maximum operating pressure and capacity of the proposed facility at peak demand;

3. the expected power requirement from the prime movers at each station at peak demand (in kilowatts, thousands of cubic feet per hour, or gallons per hour);

4. a list of expected sources of supply or shippers of petroleum products for transportation during the first five calendar years of operation, designated either as in-state or as out-of-state, the expected dates and durations of the contracts with the 25 largest suppliers or shippers, the categories of petroleum products and quantities expected to be involved and, for sources of crude oil, the expected geographical areas of origin of the crude oil; and

5. a list of expected recipients of transported petroleum products during the first five calendar years of operation, designated either as in-state or as out-of-state, the expected dates and durations of the contracts with the 25 largest recipients, and the categories of petroleum products and quantities expected to be involved.

EA 1054 ALTERNATIVES

The applicant shall provide information pertaining to the alternatives that have been considered, and the information shall be presented in the following format:

A. a description of the alternative, including:

1. a discussion of the design and the geographical area affected;

2. an estimate of the in-service date;

3. a discussion of the method of operation;

4. its cost;

5. its economic life; and

6. its reliability;

B. a summary of the conclusions reached with respect to the alternative and the reasons for its rejection.

EA 1055 ENVIRONMENTAL DATA

Each applicant shall provide environmental data for the proposed facility and for each alternative discussed in response to rule EA 1054, to the extent that such data is reasonably available. Environmental data for each pipeline considered shall conform to the format given in subdivisions A through D of rule EA 1055. Information for each of the other types of alternatives considered shall include 1) a list of the natural and cultural resources, as given in items g through j of rule EA 1055 A 2, that would be directly impacted and 2) a discussion of those applicable areas of environmental concern that are detailed in subdivisions B through D of rule EA 1055.

A. Location

1. If a particular route has been selected for the pipeline, indicate that route on an appropriate map. If no particular route has been selected, indicate on an appropriate map each possible route that has been given serious consideration.

2. For each route identified in response to rule EA 1055 A 1, list:

a. the names of cities or population centers through which the route passes;

b. the number of miles of the route which passes through, respectively, federal lands,

state lands, county or tax-forfeit lands, incorporated areas, and private land outside incorporated areas;

c. the general soil types along the route and the approximate percentage of each;

d. the general terrain along the route;

e. the types of vegetation along the route (including forest, brush, marsh, pasture, and cropland) and the approximate percentage of each;

f. the predominant types of land use along the route (such as residential, forest, agricultural, commercial, and industrial) and the approximate percentage of each;

g. the names of major lakes or streams and the number of wetlands of five acres or more through which the route passes, as well as any others into which liquid contaminant from the pipeland could flow;

h. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, and national waterfowl production areas through which the route passes, as mapped on the Inventory of Significant Resources by the State Planning Agency;

i. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes through which the route passes, as mapped on the Inventory of Significant Resources by the State Planning Agency;

j. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources through which the route passes, as indicated by the Minnesota Historical Society.

B. Wastewater, Projected Air Emissions and Noise Sources

1. Discharges to Water of the Site.

a. Point Discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate source, the amount and the nature of the discharge. (Provide quantitative data if possible.)

b. Area Runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

2. Point Sources of Airborne Emissions. Estimate the quantity of gaseous and particulate emissions that would occur during full operation of the pipeline from each emission source and indicate the location and nature of the release point.

3. Noise. Indicate the maximum noise levels (in decibels, A scale) expected along the route. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution Control and Safeguards Equipment

1. Air Pollution Controls. Indicate types of emission control devices and dust control measures that would be used.

2. Water Pollution Controls. Indicate types of pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Oil Spill Safeguards. Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface waters or groundwaters of the state.

4. Other Safeguards and Controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce the impact of the pipeline. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced Developments

1. Utility Use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

2. Water Use. Indicate the amount of water which would be appropriated for use in connection with the pipeline, the expected source of water, and the manner in which the water would be used.

3. Agriculture. Estimate the number of farms and the number of acres of cropland and pasture land that would be affected by construction of the pipeline. Indicate known circumstances with regard to the pipeline that would tend to reduce agricultural productivity along the route. Estimate the amount of excavation, back filling, grading, soil compaction and soil mixture, and ditching to be done in farm fields. Estimate the number of drainage ditches to be impacted by the pipeline.

4. Relocation of Human Beings. Estimate the number of people that would have to relocate if the pipeline were constructed.

EA 1060 OIL REFINERY FACILITY SECTION

In addition to the data required by rules EA 1031-1034, each applicant for a certificate of need for an oil refinery facility shall provide the information required by rules EA 1061-1065.

In a joint application, separate responses are required from each person for information required by rules EA 1061-1062 and EA 1064.

EA 1061 HISTORICAL ENERGY DATA

A. For the geographical area to be served by the proposed facility, the applicant shall provide the following:

1. a list of the petroleum products by major categories (such as crude oil, gasoline, fuel oil, and so forth) associated with the refining process, or, if not associated with the refining process, distributed by the applicant in that geographical area during the five most recent calendar years;

2. for each category listed in response to rule EA 1061 A 1 and for each of the five most recent calendar years, a list of the annual quantities refined or distributed in the appropriate units of measure; and

3. for each category listed in response to rule EA 1061 A 1 and for each of the five most recent calendar years, the percentage delivered within Minnesota.

B. List each large oil storage facility location, large pipeline facility and oil refinery associated with the refining or distribution of the categories named in response to rule EA 1061 A 1. Provide map(s) which represent the locations and interconnections of these facilities.

C. For each oil storage facility location, pipeline and refinery described in response to rule EA 1061 B, located in Minnesota and owned or operated by the applicant, provide the average percentage (or, where applicable, the maximum percentage) of use of its full design capacity during the summer season and during the winter season.

EA 1062 FORECAST DATA

Each applicant for an oil refinery facility shall provide forecast data in the format given below unless such data has been previously submitted to the Agency pursuant to Minn. Reg. EA 401 et seq., in which case a copy of such submission may be incorporated into the application to satisfy the requirements of this rule. For the geographical area to be served by the proposed facility, the applicant shall provide the following:

A. a list of the categories of petroleum products the applicant expects to refine or distribute in that geographical area during the first six forecast years, the eleventh forecast year (the tenth year after the year of the application), and the sixteenth forecast year;

B. for each category listed in response to rule EA 1062 A and for each of the first six forecast years, the eleventh forecast year, and the sixteenth forecast year, a list of the annual quantities expected, using the appropriate units of measure;

C. a discussion of the methods, assumptions and factors employed for purposes of estimation in response to items A and B of rule EA 1062;

D. a discussion of the effect on the forecast of possible changes in the key assumptions and key factors requested in rule EA 1062 C; and

E. considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.

EA 1063 DESCRIPTION OF PROPOSED FACILITY

A. Design. The applicant shall provide the following information pertaining to the design of the proposed oil refinery or refinery expansion:

1. if known, the complete name and address of the engineer and firm to be responsible for the design;

2. the estimated cost and economic life;

3. a list of the crude oils (or equivalent) the oil refinery is intended to process, identifying each crude oil by general type, and a list of each refined petroleum end product intended;

4. for each petroleum product listed in response to rule EA 1063 A 3, the design capacity in barrels per day;

5. a simplified flow diagram of the refinery showing major products and process components; and

6. a map showing the likely location(s) for the proposed facility and its interconnections with major pipeline facilities.

B. Construction. The applicant shall provide the following information pertaining to the construction of the proposed facility:

1. if known, the complete name and address of the company to be responsible for the construction;

2. the proposed date for commencement of construction and the proposed in-service date; and

3. an estimate of the in-service date if the construction were to be on a fully-expedited basis.

C. Operation. The applicant shall provide the following information pertaining to the operation of the proposed facility:

1. the expected average percentage of use of the full design capacity of the proposed facility during the first five years of operation; and

2. for each of the first five calendar years of operation, the percentage of each refined petroleum end product expected to be delivered in-state.

EA 1064 ALTERNATIVES

The applicant shall provide information pertaining to the alternatives that have been considered, and the information shall be presented in the following format:

A. a description of the alternative, including:

1. a discussion of the design and the geographical area affected;
2. an estimate of the in-service date;
3. a discussion of the method of operation;
4. its cost;
5. its economic life; and
6. its reliability;

B. a summary of the conclusions reached with respect to the alternative and the reasons for its rejection.

EA 1065 ENVIRONMENTAL DATA

Each applicant shall provide environmental data for the proposed facility and for each alternative facility described in response to rule EA 1064. Information relating to construction and operation of each of these facilities shall be provided as indicated below, to the extent that such information is reasonably available to the applicant and applicable to the particular alternative.

A. Location

1. If the specific location for the proposed (or alternative) facility is known, provide the county, township, range and section(s) of that site. If a specific location has not been chosen, provide the county, township, range and section(s) for each parcel of land which in the opinion of the applicant could serve as the site for the facility.
2. For each site identified in response to rule EA 1065 A 1, list:

a. the nature of the terrain at the site;

b. the general soil type at the site;

c. the depth to groundwater at the site;

d. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;

e. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within five miles of the site;

f. lakes, streams, wetlands or drainage ditches within five miles of the site and any other lakes, streams, wetlands, drainage ditches, wells or storm drains into which liquid contaminants could flow;

g. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails and national waterfowl production areas within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

h. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

i. national historic sites and landmarks, national monuments, National Register Historic Districts, registered state historic or archeological sites,

state historical districts, sites listed on the National Register of Historic Places, and any other Cultural Resources within five miles of the site, as indicated by the Minnesota Historical Society.

B. Solid Wastes, Wastewater, Projected Air Emissions and Noise Sources

1. Solid Wastes. Indicate the types and estimated quantities of solid wastes that would be produced by or because of the facility. Also indicate the intended method of recycling or disposing of these wastes.

2. Discharges to Water

a. Point Discharges. Indicate the location, route and final receiving waters for any discharge points. For each discharge point indicate the source, the amount and the nature of the discharge. (Provide quantitative data if possible).

b. Area Runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

3. Airborne Emissions

a. Point Sources. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

b. Area Sources. Indicate locations which may be sources of fugitive dust and indicate the nature of the source (including type of material, amount, and turnover rate).

4. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

C. Pollution Control and Safeguards Equipment

1. Air Pollution Controls. Indicate types of emission control devices and dust control measures that would be used.

2. Water Pollution Controls. Indicate types of water pollution control equipment and runoff control measures that would be used to comply with applicable state and federal regulations and statutes.

3. Oil Spill Safeguards. Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface and groundwaters of the state.

4. Other Safeguards and Controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

D. Induced Developments

1. Vehicular Traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility.

2. Utility Use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

3. Water Use. Indicate the amount of water which would be appropriated and the amount which would be consumed by the facility, the expected source of the water, and how the water would be used.

4. Agriculture. Estimate the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed. Indicate known circumstances with regard to the facility that could lead to reduced productivity of surrounding agricultural land.

5. Relocation of Human Beings. Estimate the number of people that would have to relocate if the facility were constructed.

EA 1081 OTHER DATA FILED WITH THE APPLICATION

In addition to the information required by the director, the applicant may desire to file other data. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

EA 1091 CERTIFICATE OF NEED MODIFICATIONS

A. Issuance of a certificate may be made contingent upon modifications required by the director. When the director denies an application, he shall state the reason(s) for the refusal and the changes, if any, which would make the facility certifiable.

B. The following changes in a facility previously certified by the director shall not require recertification:

1. oil storage capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director;

2. oil pipeline length additions or subtractions of less than ten (10) percent of the length approved by the director;

3. oil refinery capacity additions or subtractions of less than ten (10) percent of the capacity approved by the director; and

4. changes of less than two years in the in-service date.

C. If an applicant determines that a change greater than those specified in rule EA 1091 B is necessary or desirable, it shall inform the director of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said statement notify the applicant whether the proposed change is acceptable without recertification.

APPROVED AS TO FORM AND LEGALITY
OCT 27 1976 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 27 1976 - 2:38 pm
Joan Anderson Growe
Secretary of State