

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

#484 Energy Agency

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11-9 Temporary Rule _____

Resubmitted and Received 12/7

DUE DATE 11-29 / ~~12/15~~ 12/27

a. Returned to Agency w/o filing w/Secy of State 11/21
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable n/a
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable _____
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable n/a
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable n/a
17. Petition by Public, where applicable n/a.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOANNE E. HINDERAKER
Special Assistant Attorney General

DATE: 12/5/78

FROM : DWIGHT S. WAGENIUS
Special Assistant Attorney General

PHONE: 8278

SUBJECT: In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001-1091.

Pursuant to your memorandum of November 21, the adopted amended rules and the remainder of the file in the above-entitled matter are hereby resubmitted for review by and approval of the Attorney General. In accordance with your request, the Agency resubmitted a correct copy of the adopted amended rules to the Chief Hearing Examiner for his review. His approval of the resubmission is indicated in his Report of the Chief Hearing Examiner dated December 5, 1978, included in the enclosed material.

On behalf of the Agency I want to make it clear that the Agency considered and adopted on November 2, 1978, the amended rules as they appear in the resubmitted rules marked "Adopted November 2, 1978." The submission of the original proposed amendments marked as the adopted ones was purely an administrative error.

DSW/bm

Enclosure

cc: Duane R. Harves
David L. Jacobson

File No. 184

ATTORNEY GENERAL

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

11/21/78

JOANNE E. HINDERAKER
Special Assistant
Attorney General

296-4692

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

The above-captioned proposed rule amendments have not been approved by this office for the following reasons:

The copies of rule amendments provided to this office which are labeled "Adopted November 2, 1978" do not conform to the Agency's Findings, Conclusions and Decision. It appears that the Agency in fact adopted (or intended to adopt) amendments in the form set out in Exhibit A attached to the Agency's Post-Hearing Statement. Until this confusion is clarified this office cannot complete its review. After re-examination of the materials in the file please re-submit the amendments to the rules and the remainder of the file to this office. A copy of the requisite jurisdictional documents in this regard have been retained in our files.

It is further requested that the Agency re-submit a correct copy of the rule amendments to the Chief Hearing Examiner as it is not apparent from the Chief Hearing Examiner's Report which form of the proposed amendments the Chief Hearing Examiner reviewed.

JEH/bw
cc: Duane Harves

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

November 7, 1978

Lee E. Sheehy
Special Assistant Attorney General
Department of Administration
G-25 State Administration Building
St. Paul, Minnesota 55155

RE: In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001-1091.

Dear Mr. Sheehy:

Enclosed pursuant to Minn. Stat. § 15.0412, subd. 4 (Supp. 1977) and Minn. Regs. Atty. Gen. 301 et. seq. is the entire record of the above-captioned proceeding.

Very truly yours,

Dwight S. Wagenius

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

720 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-8278

DSW/bm

Enclosure

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries) for Petroleum Suppliers, EA 1001-1091.	DOCKET NO. EA-78-002-WS 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.

DATE: November 7, 1978

Dwight S. Wagenius

DWIGHT S. WAGENIUS

Special Assistant Attorney General

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	)	Docket No. EA-78-002-WS STATEMENT OF NEED AND EVIDENCE

STATEMENT OF EVIDENCE

Agency Staff will introduce the following evidence: Minn. Regs. EA 401 et seq.; Minn. Regs. EA 501 et seq.; Minn. Regs. EA 601 et seq.; ~~draft~~ proposed Minn. Regs. EA 701 et seq.; 6 MCAR § 2.0801 et seq.; 6 MCAR § 2.0901 et seq.; and Minn. Regs. EA 1001 et seq. The following documents will also be introduced: memorandum dated November 29, 1977 from Terry Hoffman of the Minnesota Department of Transportation, responding to the Notice of Intent to Solicit Outside Opinion; Report of Hearing Examiner, Docket No. EA-77-005A-HK, April 21, 1977; and Table B-1 of the Bonner-Moore Report, "Crude Supply Alternatives for the Northern Tier States," Volume II, 25 July 1976.

One or more of the following expert witnesses employed by the Minnesota Energy Agency may be called upon to testify: Dr. Leticia A. Chard, Energy Facility Analyst; David L. Jacobson, Acting Manager, Certificate of Need Activity; Karen R. Cole, Environmental Coordinator; Dr. Arthur L. Adiarte, Energy Facility Analyst; Dr. Richard A. Wallen, Manager, Policy Analysis Activity; and Daniel L. Quillin, Research Analyst. The named individuals played a substantial role in developing the proposed rules or have experience in the implementation of the other Agency rules. They will be available to testify on the need for and reasonableness of the proposed rules.

The following statutes and laws will be cited: Minn. Stat. ch. 116H (1976) (especially, but not exclusively, § 116H.13); Minn. Stat. ch. 116D (1976); Minn. Stat. § 16A.128 (1976); Minn. Stat. § 117.48 (1976); and Minn. Laws 1977 ch. 381 § 8.

The Notice of Intent to Solicit Outside Opinion on the subject matter of the proposed amendments to existing rules was published in the State Register at 2 S.R. 902.

STATEMENT OF NEED

The above-captioned rules are amendments to existing rules of the Minnesota Energy Agency. The rules became effective on November 28, 1976, and have not been amended previously.

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

It shall be the duty of the director to:

. . .

(f) Require certificate of need for construction of large energy facilities;

Minn. Stat. § 116H.07 subd. 1(f) (1976).

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. . . .

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 (1976). (Emphasis added.)

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

> . . .
>
> (c) 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 their derivatives, unless the facility would be at an existing petroleum storage site and would constitute an increase of less than 20 percent in the storage capacity at that site;
>
> (d) 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 their derivatives;
>
> (e) Any pipeline for transporting . . . synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;
>
> (f) Any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied . . . synthetic gas . . . .

Minn. Stat. § 116H.02 subd. 5 (1976), as amended by Minn. Laws 1977 ch. 381 § 8.

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 (1976).

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 (1976).

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 (1976).

The rules are needed to inform each petroleum supplier applying for a certificate of need for a large oil or LPG storage facility, large petroleum pipeline, or an oil refinery of the application procedures, the filing fees 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 proposed amendments are needed to incorporate amendments to Minn. Stat. ch. 116H (with respect to oil storage facilities) passed in 1977, make the rules internally consistent, effect better coordination between the subject set of rules and proposed rules governing large gas facilities so that petroleum suppliers proposing to build large LPG storage or pipeline facilities would be covered by the former rather than the latter set of rules, require a certificate of need for significant expansions of large petroleum pipelines, and reflect experience gained in processing the three certificate of need applications submitted to date pursuant to these rules.

Proposed changes to the existing rules have been indicated in the prescribed manner--deletions by crossing out the words or characters to be deleted and additions by underlining the words or characters to be added.

The justification of the need for and reasonableness of each of the amendments to the rules is as follows:

EA 1001 PURPOSE OF RULES:

The first amendment adds large liquefied petroleum gas (LPG) storage facilities proposed by petroleum suppliers to the type of large energy facility governed by these rules.

Propane and butane, the major constituents of LPG, either occur naturally or are produced in refining crude oil. Either way, under normal temperatures and pressures, these substances exist in the gaseous state. Thus they are more properly a subset of "natural or synthetic gas" rather than of "crude petroleum or petroleum fuels or oil or their derivatives."

Categorizing LPG under "crude petroleum derivatives" would exclude propane or butane produced in association with natural gas. Categorizing LPG under "petroleum fuels" would exclude propane or butane intended for nonenergy uses. In contrast, including LPG under "natural or synthetic gas" would provide a wider latitude in the application of these rules, as neither the end use nor the method of production would be a determining factor.

Making a separate provision for LPG storage is necessary in view of the lower threshold set by the legislature for liquefied natural or synthetic gas storage. The Agency has the option of including all large LPG storage facilities under the proposed Minn. Reg. EA Chapter Seven rules. However, the Agency Staff believes that the supply/demand data required to evaluate a certificate of need application for a liquefied gas storage facility depends upon whether the applicant is a gas utility, petroleum supplier, or liquefied gas user.

The second proposed modification changes the labelling of pipelines governed by these rules from oil pipelines to petroleum pipelines. This change is needed to draw attention to the more comprehensive definition being proposed for the type of pipeline facilities that would require a certificate of need under these rules. The proposed definition combines

the existing one (modified to conform to the language in the statute):

> . . . 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 their derivatives ~~thereof~~;

(Minn. Regs. EA 1004 M), with

> any pipeline for transporting . . . synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;

Minn. Stat. § 116H.02 subd. 5 (1976). In turn, the proposed modification to the definition of large pipeline facilities is needed to include under these rules LPG pipelines proposed by petroleum suppliers.

These two proposed changes recur in the rest of the rules and no further comment will be made in the other sections where these same changes are proposed.

EA 1002 APPLICABILITY OF RULES:

The proposal to eliminate "new" from EA 1002 A 1 arises from this change in Minn. Stat. § 116H.02 subd. 5 (Supp. 1977):

> Subd. 5. "Large energy facility" means:
>
> . . .
>
> (c) 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 their derivatives ~~thereof~~, unless the facility would be at an existing petroleum storage site and would constitute an increase of less than 20 percent in the storage capacity at that site;

The added clause not only specifies the amount of expansion significant enough to require a certificate of need; it also expresses futurity or tentativeness. The Agency Staff proposes that EA 1004 ~~N~~ M, defining "large oil storage facility," be amended to conform to the statute. With such a change, "new" is unnecessary in EA 1002 A 1.

The second major amendment to this rule proposed by the Agency Staff would require that the need for significant expansions in the capacity of an existing petroleum pipeline be certified by the director. The need for this amendment became apparent in processing the two pipeline certificate of need applications submitted pursuant to these rules. This was recognized by the Hearing Examiner who presided over those proceedings when he wrote:

> IT IS FURTHER RECOMMENDED: That the Director seek legislative and rule revisions to require certification of need for future expansion of this and other lines.

p. 14, Report of Hearing Examiner, Docket No. EA-77-005A-HK, April 21, 1977.

Existing rules apply the certificate of need requirement for large pipelines to new pipelines only. This restriction stemmed from the old language in Minn. Stat. § 116H.13 subd. 4 (1976), which was amended in 1977 to read:

> Subd. 4. After promulgation of the criteria for assessment of need, any ~~utility, coal supplier or petroleum supplier~~ person proposing to construct a large energy facility shall apply for a certificate of need ~~to construct a new large energy~~ prior to the construction of the facility . . .

The amendment to subdivision 4 eliminated whatever conflict may have existed between this subdivision and other statutory provisions:

> 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 subd. 2 (1976). (Emphasis added.)

> Subd. 9. "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.

Minn. Stat. § 116H.02 subd. 9 (1976). (Emphasis added.)

The Agency Staff proposes that an expansion in the capacity of an existing large petroleum pipeline in excess of 20% of capacity or 10,000 barrels per day is significant enough to require a certificate of need. The 20 percent level is drawn by analogy to the threshold set by the legislature for expanding large oil storage facilities. [Minn. Stat. § 116H.02 subd. 5(c) (Supp. 1977)]. The 10,000 barrel per day figure was obtained from Minn. Regs. EA 1002 A 4 5. It is reasonable to have the same cutoff number for pipelines as for refineries. By coincidence, 10,000 barrels per day is the typical crude capacity of a 6-inch diameter pipeline (Exhibit 1).

Defining the time span during which the project expansion takes place removes an element of ambiguity in the rules. Without this specification, the capacity of a large pipeline could be doubled in theory after four expansion steps without ever requiring a certificate of need. A period of two years would be long enough to permit the completion of expansion projects (new pipelines, 750 miles long, take from 12 to 18 months to construct); it is also the leeway given to successful certificate of need applicants with respect to the project in-service date.

The proposed amendment to Minn. Reg. EA 1002 A 4 5 defines the time span during which the refinery expansion would take place, for the same reason noted above. In addition, the Agency Staff is proposing that the level of expansion for a refinery significant enough to warrant a certificate of need be dropped from 25% to 20%. This would make the significance level uniform for all the types of large energy facilities governed by these rules.

While drafting this set of proposed amended rules and proposed Minn. Regs. EA 701-791, the question of whether anhydrous ammonia pipelines are subject to the certificate of need requirement pursuant to Minn. Stat. chapter 116H arose. Ammonia is a gas at normal temperature and pressure, is generally considered nonflammable, readily liquefies with the application of pressure, is mainly produced using nitrogen from the air and hydrogen from hydrocarbons, and is used mainly as a fertilizer. Other uses or potential uses exist: as a refrigerant, as a working fluid for extracting energy from thermal gradients in oceans, or as a hydrogen (gaseous fuel) carrier. It is not clear that the proposer of an anhydrous ammonia pipeline has eminent domain powers under Minn. Stat. chapter 117, the statute that confers eminent domain rights to crude oil or petroleum product pipeline companies.

It appears that arguments exist on both sides of the issue. Requiring a certificate of need for an ammonia pipeline would further legislative intent as spelled out in Minn. Stat. § 116H.01:

> . . . the state must insure consideration of urban expansion, transit systems, economic development, energy conservation and environmental protection in planning for large energy facilities; . . .
>
> 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.

However, the key question remains: if an ammonia pipeline has at least 50 miles of its length in Minnesota, and either has a diameter greater than six inches or has an operating pressure greater than 200 pounds per square inch, is it a large energy facility that requires a certificate of need?

Agency Staff is uncomfortable in arguing that fertilizer, providing as it does fuel for plant growth, is a form of

energy. As the following excerpts from Minn. Stat. chapter 116H show, energy supply and demand is the rationale for the Agency's certificate of need program.

> (b) An estimate of statewide and geographical area energy need for the forthcoming five and ten year period which, in the judgment of the director, will reasonably balance requirements of public health and safety, preservation of environmental quality, and conservation of energy resources. Such forecasts established by the director shall serve as the basis for certification of large energy facilities in section 116H.13 . . . .

Minn. Stat. § 116H.11 subd. 1 (1976). (Emphasis added.)

> 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.
>
> Subd. 3. No proposed large energy facility shall be certified for construction unless the applicant has justified its need. In assessing need, the director shall evaluate:
>
> > (1) The accuracy of the long range energy demand forecasts on which the necessity for the facility is based;
> > (2) The effect of existing or possible energy conservation programs under sections 116H.01 to 116H.15 or other federal or state legislation on long term energy demand;
> > (3) The relationships of the proposed facility to overall state energy needs;
> > . . .
> > (7) Possible alternatives for satisfying the energy demand including but not limited to potential for increased efficiency of existing energy generation facilities . . . .

Minn. Stat. § 116H.13 (1976). (Emphasis added.)

A logical conclusion that may be drawn from these excerpts is that a large energy facility does not require a certificate of need from the Agency unless it is intended to supply energy.

Agency Staff is aware of possible problems that may arise from this interpretation of the statute. What if a proposed pipeline is intended to transport petroleum or petroleum derivatives solely for nonenergy use, or even for both energy and nonenergy use? What are the implications on

prioritizing the uses of energy sources? What about complications introduced by conversions of service, say from transporting energy sources to transporting nonenergy sources and vice versa? Agency Staff submits that these are questions more properly resolved in the public hearing process.

EA 1003 APPLICATION PROCEDURES AND TIMING:

The first proposed amendment is in the interest of simplicity. Rather than requiring the applicant's name and date of preparation on each page of the application, it would suffice to have this information on the title page of the application, and on each document filed with the application.

The second proposed amendment eliminates a minor requirement of the applicant. Given the type of facility, Agency Staff would know the rules and their subdivisions that the applicant should respond to. This information is not necessary in the cover letter.

The next proposed amendment takes cognizance of the creation of the Office of Hearing Examiners. A hearing officer is no longer appointed (one is assigned) to preside over the public hearings for a certificate of need application.

The last proposed amendment to EA 1003 is needed to require that the director justify each denial of a certificate of need application in accordance with Minn. Stat. § 116H.13 subd. 5 (1976). Agency Staff suggests that this provision be moved up to EA 1003 from EA 1091 to improve the organization of the rules.

EA 1004 DEFINITIONS:

Agency Staff proposes to delete "inch-mile" and substitute "Mbpd-mile" as the unit of measuring the size of a pipeline governed by these rules. The application fee is

determined by pipeline size. With the proposal to require a certificate of need for significant expansions of large petroleum pipelines, some basis other than diameter and length must be used in setting the application fee. The definition of "Mpbd-mile" is required because the proposed fee assessment for large petroleum pipelines is largely based upon it.

Three more new and interrelated terms are proposed for inclusion in this rule: "large LPG storage facility" (EA 1004 L), "liquefied petroleum gas" (EA 1004 O), and "synthetic gas" (EA 1004 W).

The definition of "large LPG storage facility" is based upon Minn. Stat. § 116H.02 subd. 5 (Supp. 1977):

> . . . any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural or synthetic gas; . . .

modified to conform to the amended definition of "large oil storage facility."

Neither "natural gas" nor "synthetic gas" is defined in the statute. The proposed definition of "synthetic gas," by implication, associates "natural gas" mainly with naturally-occuring methane. Other flammable gases, including methane produced in fuel conversion plants, would be classified as synthetic gas. The definition of "synthetic gas" is needed to clarify the definition of liquefied petroleum gas. It is also needed because of the proposed amendment to the definition of "large petroleum pipeline" (EA 1004 M N).

The definition of "liquefied petroleum gas" limits the applicability of these rules, as far as liquefied gas storage is concerned, to substances consisting mostly of hydrocarbons. This restriction is reasonable, since the rules are applicable to petroleum suppliers only.

The proposed amendment to the definition of "large petroleum pipeline" is needed for consistency in the treatment of propane and butane within these rules. These substances

readily liquefy under pressure and are usually stored or transported as liquids.

Other proposed amendments to this rule are due to amendments in the statute, on which several definitions are based.

EA 1005 FILING FEES AND PAYMENT SCHEDULE:

A major amendment proposed for this rule would modify the fee schedule for processing certificate of need applications for large petroleum pipelines.

Minn. Stat. § 116H.13 subd. 6 (1976) requires the fee schedule to be "based on the output or capacity of the facility and the difficulty of assessment of need."

The proposed unit of pipeline size, on which the fee schedule is based, takes both of these factors into consideration. Pipeline capacity must be specified in terms of fluid characteristics. For purposes of these rules, the standard fluid would have a viscosity of 100 SSU and specific gravity of .88, both measured at 60°F. Note that by proposed amended rule EA 1004 P these characteristics are specified only for the new or additional capacity.

The new or additional capacity would be multiplied by a "complexity" factor in accordance with the statutory requirement to base the fees on "the difficulty of assessment of need." The Agency Staff suggests that this complexity factor be the length of the new (sections of) pipeline, or 50 if the capacity of an existing large petroleum pipeline would be expanded by adding power. The longer the pipeline, the greater the impact on the natural and socioeconomic environments and thus the more difficult the assessment of need. Similarly, adding power brings into play questions on efficient use of resources.

The fee charged for a certificate of need application should approximate the cost of processing it. Based on experience to date, the minimum cost of a public hearing is $700 if the application is not contested, and $5,000 if the application is contested. The probability of an application being contested depends upon the perceived impact of, and consensus on the need for, the proposed facility.

The number of staff-hours required to process a pipeline certificate of need application is estimated to be:

prehearing - 75 to 300
hearing - 16 to 160
posthearing - 42 to 90

At a direct staff charge rate of $35/hour, the minimum cost of processing a pipeline application would be $5,~~215~~ 355 (129 hours x $35/hour + $700). If the capacity of an existing large petroleum pipeline is increased solely by adding power, the minimum fee under proposed amended rule EA 1005 B would be $5,500.

The second major amendment proposed for this rule would eliminate the lower ceiling on the application fee. The ceiling would simply be $50,000, as in Minn. Stat. § 116H.13 subd. 6 (1976). The alternative ceiling of 200% of the fee set according to the schedule was originally instituted because of the large disparity between $50,000 and the minimum fee under the schedule for an oil storage application. Industry representatives asserted that certificate of need applications for expanding storage capacity at an existing tank farm should be relatively quick and simple to process, and that applicants should not bear the additional costs imposed by the intervention of other parties who object to the construction of the proposed facility. With an amended definition of large oil storage facility, many of those applications that would have been quick and simple to process would no longer

be made. Furthermore, the Agency does not agree with the position that applicants should not bear the additional hearing and processing costs due to the intervention of adverse parties.

EA 1011 CRITERIA FOR ASSESSMENT OF NEED:

This rule specifies the criteria for assessment of need for proposed large oil or LPG storage facilities, large petroleum pipelines, and oil refineries.

The first proposed amendment explicitly acknowledges that the factors listed under each criterion may not always be applicable or pertinent. The determination of need for the proposed facility would not be invalidated because of lack of evaluation of a factor that is neither applicable nor pertinent. However, the director is required to make a specific written finding with respect to each of the criteria.

The second proposed amendment would clarify a point that has become a bone of contention in the past. Minn. Stat. § 116H.13 subd. 3(7) (1976) requires the director to evaluate "(p)ossible alternatives for satisfying the energy demand . . . ." However, the director is also required to decide "(w)ithin six months of the submission of an application" whether to grant or deny the certificate of need. Minn. Stat. § 116H.13 subd. 5 (1976). Proposed rule EA 1011 B specifies that if a more reasonable or prudent alternative exists, such a showing must be made on the record before the close of the public hearing. The criteria would have to be applied to the proposed alternative to assess whether it is indeed better than the proposed facility.

A general provision that is proposed for the factors listed under the first and third criteria would qualify "the proposed facility" by the phrase "or a suitable modification of it." This is needed so that if the director exercises the option to require modifications pursuant to Minn. Stat. § 116H.13 subd. 5 (1976), the modified certified facility shall have satisfied the criteria of this rule.

The proposed amendment to the second criterion, EA 1011 C 2, specifies that the burden of showing the existence of a more reasonable and prudent alternative is on parties other than the applicant.

Other proposed amendments to rule EA 1011 are relatively minor but would improve readability or clarify intent.

EA 1021 CONTENTS OF APPLICATION:

Proposed amendments to this rule are for the sake of grammar, or have been explained in justifying proposed amendments to EA 1001.

EA 1031 GENERAL INFORMATION:

The proposal to replace "inch-mile" by "Mbpd-miles" is for the sake of internal consistency within the rules.

EA 1041 HISTORICAL ENERGY DATA:

The proposal to delete "oil" and "or refinery" in rule EA 1041 C would simplify the rule while making it applicable to any storage site.

EA 1043 DESCRIPTION OF PROPOSED FACILITY:

The proposed amendment to EA 1043 B 4 would remove the contingency of the information requirement on the availability of the information asked for. Applicants for a certificate of need for a large oil or LPG storage facility are expected to conduct preliminary feasibility studies prior to applying for a certificate of need. Preliminary engineering drawings, blueprints, and specifications would be part of the output from such feasibility studies.

EA 1045 ENVIRONMENTAL DATA:

The first proposed amendment would allow an Environmental

Assessment Worksheet (EAW) on a proposed expansion of LPG storage facilities to be submitted in lieu of specific answers to the requirements of EA 1045 A through D. Such a provision already exists for oil storage capacity expansions.

The proposed amendment to require a list of trunk highways, railroads and airports within one mile of the site, as well as the proposed amendment to EA 1045 D 1, were suggested by the Minnesota Department of Transportation (Mn/DOT). These requirements will assist the department in evaluating the effect of the proposed facility on major state transportation systems.

The proposed amendments to EA 1045 C 3 are in recognition that fire and explosion hazards are as likely causes for concern as the potential of air or water pollution, oil spills or erosion, particularly where flammable gas is stored or transported in a liquid state.

EA 1051 HISTORICAL ENERGY DATA:

This rule requires historical energy data of applicants proposing to construct a large petroleum pipeline. Information submitted in response to this rule will assist the director in evaluating the accuracy of the applicant's forecast of energy demand, as required by Minn. Stat. § 116H.13 subd. 3 (1976).

The proposal to require identification of the gas plants associated with the applicant's transportation or distribution of petroleum products is needed because LPG may come from gas processing plants.

EA 1053 DESCRIPTION OF PROPOSED FACILITY:

The proposed amendment to ask for more detail in the costs associated with the proposed facility will assist the director in evaluating the following factors listed under the criteria: EA 1011 C 1(e); EA 1011 C 2(b); EA 1011 C 2(c); and EA 1011 C 3(b).

The proposal to ask for the diameter and length in Minnesota rather than the design size in inch-miles is related to the proposal to delete inch-mile as the measure of pipeline size.

As indicated in the errata sheet, the Agency proposes that the application indicate the maximum number of pumping stations in Minnesota as well as the nominal pumping station spacing. This information, complementing that provided pursuant to EA 1053 A 5(d), is needed in evaluating the resource and energy requirements of the proposed facility. Such an evaluation is required by EA 1011 C 1(e) and EA 1011 C 3(a).

EA 1055 ENVIRONMENTAL DATA:

Mn/DOT suggested the amendment to require a list of trunk highways, railroads and airports within one mile of the route, as well as the amendment to EA 1055 C 3. These requirements will assist the department in evaluating the effect of the proposed facility on major state transportation systems.

The proposed amendments to EA 1055 C 3 are in recognition that fire and explosion hazards are as likely causes for concern as the potential of air or water pollution, oil spills, or erosion.

EA 1091 CERTIFICATE OF NEED MODIFICATIONS:

The sentence proposed for deletion from EA 1091 A is essentially the same as proposed new rule EA 1003 I.

The proposed amendments to EA 1091 B are required by the Agency position that substantial capacity expansion of large petroleum pipelines should require a certificate of need. Thus, the old rules, EA 1091 B 1 and EA 1091 B 3, can be consolidated and made to apply to large petroleum pipelines as well.

The proposed amendment to EA 1091 C is needed to correct

a situation overlooked when the rules were originally proposed for adoption. Existing rules do not provide for the procedure that would be followed if the applicant wanted to or had to institute changes other than those specified in EA 1091 B. By this omission, the rules could have been interpreted to mean that changes other than those specified in EA 1091 B were of no concern to the Agency.

Dated: March 2, 1978

Respectfully submitted,

Leticia A. Chard

Leticia A. Chard
Energy Facility Analyst
Minnesota Energy Agency

EXHIBIT 1

TABLE B-1

TYPICAL PIPELINE CAPACITIES[1,2]

DIAMETER, INCHES, OD	CRUDE[3]	PRODUCTS[4]
6	10.2	16.8
8	21.5	35.0
10	39.8	64.1
12	65.0	89.0
16	127.0	200.0
20	229.0	355.9
24	376.0	576.3
30	618.0	935.1
36	1070.0	1589.8
40	1367.0	1996.2
42	1508.0	2219.1
48	2034.3	3160.2

[1] Data provided by Koch Industries, Wichita, Kansas.

[2] Pump stations 50 mile spacing; 1440 psig maximum working pressure or 72% of minimum yield strength of X-60 pipe.

[3] 200 SSU and 25° API (Service Pipeline formula).

[4] Product Mix: 2/3 gasoline + 1/3 heating oil (Miller equation).

Adopted November 2, 1978

Proposed

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

my Working Copy

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 OR LPG 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~~ PETROLEUM 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

MINNESOTA ENERGY AGENCY PROPOSED AMENDMENTS
TO RULES GOVERNING CONTENTS OF
APPLICATIONS FOR CERTIFICATES OF NEED AND
CRITERIA FOR ASSESSMENT OF NEED FOR
LARGE LPG STORAGE FACILITIES, LARGE OIL
STORAGE FACILITIES, LARGE ~~OIL~~
PETROLEUM 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 or LPG storage facilities, large ~~oil~~ petroleum 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 or LPG storage facility;
2. a new large ~~oil~~ petroleum pipeline facility;
3. a new oil refinery; ~~and~~
4. any project which, within a period of two years, would expand an existing large petroleum pipeline in excess of either 20% of its rated capacity or 10,000 barrels per day, whichever is greater; and
4. 5. any project which, within a period of two years, would expand an existing oil refinery in excess of either ~~25%~~ 20% 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~~ shall 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 references to the applicable rules by the titles and numbers given in these rules. The date of preparation and the applicant's name shall appear on the title page of the application, as well as on each document filed with the application.

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, and the number of copies of the application filed, ~~and the~~

~~rules and subdivisions thereof to which the applicant has responded.~~

E. A hearing examiner shall be ~~appointed~~ assigned, 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, EA 500 et seq., and the Hearing Examiner Rules of Contested Case Procedures, 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.

I. When an application for a certificate of need is denied, the director shall state the reason(s) for the denial.

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

L. "Large LPG Storage Facility" means a facility on a single site designed for or capable of storing more than 100,000 gallons of liquefied petroleum gas (LPG) unless the facility would be at an existing LPG storage site and would constitute an increase of less than 20 percent in the LPG storage capacity at that site;

~~N.~~ M. "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 their derivatives ~~thereof~~ unless the facility would be at an existing oil storage site and would constitute an increase of less than 20 percent in the oil storage capacity at that site;

~~M.~~ N. "Large ~~Oil~~ Petroleum 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 their derivatives ~~thereof~~, or a pipeline for transporting synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;

O. "Liquefied Petroleum Gas" means synthetic gas, consisting mostly of hydrocarbons, stored or transported as a liquid;

P. "Mbpd-mile" means a descriptive unit used as a measure of the size of a pipeline, the quantity of which is determined by multiplying 1) either the length in miles of the new (section of) pipeline in Minnesota, or 50 if the capacity expansion is achieved by adding power, and 2) the new or additional design capacity in thousand barrels per day (Mbpd), at a viscosity of 100 SSU/60°F and specific gravity of .88/60°F. If the pipeline capacity would be expanded by a combination of looping and adding power, the Mbpd-mile corresponding to each method of expansion shall be calculated and the sum of the two shall be the size of the pipeline;

~~O.~~ Q. "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.~~ R. "Peak Day" means that day during a calendar year when the throughput is the greatest;

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

~~R.~~ T. "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.~~ U. "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 their derivatives ~~thereof~~ or LPG annually in this state; ~~and~~

Why? See H.02 suggested definition

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

W. "Synthetic Gas" means flammable gas created from gaseous, liquid, or solid hydrocarbons or other organic or inorganic matter. Synthetic gas shall include ethane, propane, butane, or their mixtures, whether extracted from gas streams lifted from oil and gas wells, or produced at refineries or fuel conversion plants. It shall also include hydrogen or methane produced at conversion plants.

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 or LPG storage facility;

B. ~~$10,000~~ $5,000 plus ~~$4~~ $1 for each ~~inch-mile of the Minnesota portion of~~ Mbpd-mile for a large ~~oil~~ petroleum 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 fees set according to above schedule~~. Fifty percent of the fee set according to item A, B, C, or D of rule EA 1005 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. §§ 116H.01 through 116H.15. The factors listed under each of the criteria set forth herein at rule EA 1011 C shall be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to these rules. The director shall make a specific written finding with respect to each of the criteria.

B. Consideration of Alternatives. The director shall consider only those alternatives proposed before the close of the public hearing and for which there exists substantial evidence on the record with respect to each of the criteria listed in rule EA 1011 C.

~~B.~~ C. Criteria. 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<u>ing</u>:

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<u>, or a suitable modification of it, in making</u> ~~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~~ <u>by a preponderance of the evidence on the record by parties or persons other than the applicant</u> consider<u>inged</u>~~ed~~:

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~~ effect of the proposed facility upon the natural and socioeconomic environments compared to the ~~impacts~~ effects of reasonable alternatives; and

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

3. the consequences to society of granting the certificate of need ~~outweigh~~ are more favorable than the consequences of denying the certificate, considering:

a. the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

b. the ~~impact~~ effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the ~~impact~~ effect of not building the facility;

c. the effects of the proposed facility, or a suitable modification of it, in inducing future development; and

d. socially beneficial uses of the output of the proposed facility, or a suitable modification of it, 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 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 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, when specified in these rules, 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 or LPG Storage Facility. Refer to rule EA 1040.

2. Large ~~Oil~~ Petroleum 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 or LPG storage), its maximum design throughput in barrels per day and its size in ~~inch-miles~~ Mbpd-miles (~~oil~~ petroleum 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 response to rule EA 1031 B 1 and needed by the applicant;

3. for each permit or certificate listed in

response to rule EA 1031 B 2, the date an application was filed or the projected date of future application;

4. for each permit or certificate listed in response to 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 listed in response to 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 OR LPG STORAGE FACILITY SECTION

In addition to the data required by rules EA 1031-1034, each applicant for a large oil or LPG 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 or LPG 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 or LPG storage facility shall provide answers to the questions below unless previously submitted to the Agency pursuant to 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 throughout 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 or LPG 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. preliminary 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 or LPG 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, or for a large LPG storage facility on an existing LPG storage site, which site already has storage capacity of at least 100,000 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 or LPG 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. trunk highways, railroads and airports within one mile of the site;

~~f.~~ g. 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.~~ 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 within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

~~h.~~ 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 within one mile of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

~~i.~~ 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 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 and explosion safeguards. Describe measures that would be taken to prevent oil spills and explosions or to minimize the environmental impact of a spill or an explosion. ~~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 due to construction activity and, later, operational needs.

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~~ PETROLEUM 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~~ petroleum 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 or LPG storage facility location, gas plant, 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~~ petroleum pipeline:

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

2. the estimated tariffs, capital cost, annual operating and maintenance costs and economic life;

pumping stations?

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~~ diameter, length in Minnesota, and maximum design pressure; and

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 each of 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; and

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~~ k 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 percentages 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 pipeline could flow;

h. trunk highways, railroads and airports within one mile of the route;

~~h.~~ i. 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.~~ j. 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; and

~~j.~~ k. 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.

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 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 and explosion safeguards. Describe measures that would be taken to prevent oil spills and explosions or to minimize the environmental impact of a spill or of an explosion. ~~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. Vehicular traffic. Estimate the amounts and types of vehicular traffic which would be generated by the facility due to construction activity and later, operational needs.

~~3.~~ 4. 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 unit 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 or LPG 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 1061 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; and

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;

<u>f. trunk highways, railroads, and airports within one mile of the site;</u>

~~f.~~ <u>g.</u> 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.~~ 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 within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency;

~~h.~~ 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 within five miles of the site, as mapped on the Inventory of Significant Resources by the State Planning Agency; and

~~i.~~ 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 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 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 due to construction activity and, later, operational needs.

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; and

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

~~4.~~ 3. changes of less than two years in the in-service date.

C. If an applicant determines that a change greater or other 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 application notify the applicant whether the proposed change is acceptable without recertification.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries, EA 1001-1091.	)	ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule amendments be held in Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue between Wabasha and Iglehart, Saint Paul, on March 27, 1978, 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.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: February 3, 1978

John P. Millhone
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries, EA 1001-1091.	NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above entitled matter will be held in Room D of the Veterans Service Building, Saint Paul, Minnesota 55155 on March 27, 1978, 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 William Seltzer, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone 612/296-8105, either before the hearing or for five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

All persons have the right to be notified of the date on which the Hearing Examiner's Report will be available, after which date the Agency may not take any final action on the rules for a period of five working days. All persons also have the right to be informed of the date on which the hearing record has been submitted to the Attorney General by the Agency. If you desire to be notified, you may so indicate at the hearing or by written request sent to the Hearing Examiner prior to the close of the record.

The proposed rule amendments, if adopted, would

reflect amendments to Minnesota Statutes chapter 116H passed in 1977 with respect to petroleum storage facilities, make the rules internally consistent, effect better coordination between the subject set of rules and proposed rules governing large gas facilities so that petroleum suppliers proposing to build LPG storage or pipeline facilities would be covered by the former instead of the latter set of rules, and extend the certificate of need requirement to significant expansions in the capacity of existing large petroleum pipelines.

Copies of the proposed amended rules are now available and one free copy may be obtained by writing to the Minnesota Energy Agency, 720 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101. Copies will also be available at the door on the date of the hearing. The Agency's authority to promulgate the proposed amended rules is contained in Minn. Stat. § 116H.08(a) and 116H.13 (1976).

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the Agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the Agency at the hearing justifying both the need for and the reasonableness of the proposed amended rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Please be advised that Minnesota Statutes, chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per

individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone 612/296-5615.

Dated: February 3, 1978

John P. Millhone
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

RECEIVED
MAR 2 1978
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificate of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries, EA 1001-1091.	AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S MAILING LIST

Leticia A. Chard, being first duly sworn upon oath, deposes and says:

1) That she is an employee of the Minnesota Energy Agency of the State of Minnesota.

2) That on the 13th day of February, 1978, she made of the Office of the Secretary of State of the State of Minnesota a request for a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412 (1976).

3) That on the 15th day of February, 1978, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference herein.

Further affiant sayeth not.

Leticia A. Chard

Subscribed and sworn to before me this 15 day of February, 1978.

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
MAR 2 1978
OFFICE OF HEARING EXAMINERS

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

AFFIDAVIT OF MAILING

Susan M. Carpenter, being first duly sworn upon oath, deposes and says:

That on the 21st day of February, 1978, 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 a true and correct copy thereof, properly enveloped, with first class postage prepaid, to all persons and associations at the addresses listed in the attached Certificate of the Secretary of State.

Susan M. Carpenter

Subscribed and sworn to before me this 21 day of February, 1978.

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
MAR 2 1978
OFFICE OF HEARING EXAMINERS

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

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached 484 labels, 4 sheets constitute the complete list of persons, associations, and interested groups who as of 9:30 o'clock A.M., this 15th day of February, 1978, have requested pursuant to Minn. Stat. § 15.0412 (1976) that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

JOAN ANDERSON GROWE
Secretary of State
State of Minnesota

By Cheri L. Mattson

EA-78-002-WS

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

2nd Report

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE LPG STORAGE FACILITIES, LARGE OIL STORAGE FACILITIES, LARGE PETROLEUM PIPELINES AND OIL REFINERIES FOR PETROLEUM SUPPLIERS, EA 1001-1091.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on March 27, 1978, 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 Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Minnesota Energy Agency on July 27, 1978; and

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

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

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Minnesota Energy Agency has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Minnesota 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 5th day
of December, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

EA-78-002-WS

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

1st Report

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING CONTENTS OF APPLICATIONS FOR CERTIFICATES OF NEED AND CRITERIA FOR ASSESSMENT OF NEED FOR LARGE LPG STORAGE FACILITIES, LARGE OIL STORAGE FACILITIES, LARGE PETROLEUM PIPELINES AND OIL REFINERIES FOR PETROLEUM SUPPLIERS, EA 1001 - 1091.

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

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Energy Agency has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

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 3rd day
of November, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	)	Docket No. EA-78-002-WS **ORDER ADOPTING RULE AMENDMENTS**

The above-entitled matter came on for hearing before William Seltzer of the Minnesota Office of Hearing Examiners for the Director of the Minnesota Energy Agency at 9:30 a.m. on March 27, 1978, in Conference Room "D" of the Veterans Service Building, St. Paul, Minnesota. Proper notice required by Minn. Stat. § 15.0412 (Supp. 1977) 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 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 amended rules identified as Minn. Regs. EA 1001-1091 are adopted this 2nd day of November, 1978, pursuant to authority vested in me by Minn. Stat. §§ 116H.08(a), 116H.13 (1976).

STATE OF MINNESOTA
MINNESOTA ENERGY AGENCY

JOHN P. MILLHONE
Director

MINNESOTA ENERGY AGENCY
720 AMERICAN CENTER BUILDING
150 EAST KELLOGG BOULEVARD
ST. PAUL, MINNESOTA 55101

612-296-5120

April 17, 1978

William Seltzer
Hearing Examiner
Office of Hearing Examiners
Room 300
1745 University Avenue
Saint Paul, Minnesota 55104

Re: Energy Agency Proposed Amended Rules EA 1001-1091
Docket No. EA-78-002-WS

Dear Mr. Seltzer:

Enclosed herewith for filing in the above-entitled matter is the Energy Agency Staff Post-Hearing Statement.

Sincerely,

Dwight S. Wagenius

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

DSW:sc
Enc.

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STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

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OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	Docket No. EA-78-002-WS ENERGY AGENCY STAFF POST-HEARING STATEMENT

I. INTRODUCTION

The Energy Agency (hereinafter "Agency") staff takes this opportunity, within the 20-day period designated by the Hearing Examiner during which the record remains open in the above-entitled matter pursuant to Minn. Stat. § 15.0412 subd. 4 (Supp. 1977), to submit its response to comments given and questions raised during the course of the public hearing held on March 27, 1978. The Agency staff will also address further the issue of ammonia pipelines, taking into consideration the questions and comments of the representatives from the Minnesota Department of Transportation (hereinafter "Mn/DOT") and the Minnesota Department of Agriculture.

There is attached hereto as Exhibit A and incorporated herein by this reference a final draft of amended rules EA 1001-1091 which incorporates the changes which are being suggested by the Agency staff. The deletions from and additions to the amended rules as distributed at the public hearing are appropriately indicated. None of the revised proposed rules is substantially different from the amended rules as discussed at the public hearing.

II. AGENCY JURISDICTION OVER AMMONIA PIPELINES

In discussing ammonia pipelines in the Statement of Need,

the Agency staff raised the larger issue of whether large energy facilities that are not intended to supply energy require a certificate of need from the Agency. This is not an academic question. The new, 12-inch diameter Cochin (Dome) pipeline through Minnesota would batch ethylene and ethane along with propane and butane. Though flammable, the first two are used mostly as feedstock by the petrochemical industry. Propane and butane could also be used as feedstock for petrochemical plants; however, they are used mainly for energy. The resolution of the larger issue posed in the Statement of Need would thus have ramifications for the Cochin pipeline, should that pipeline's capacity be expanded in the future.

Currently, the major source of hydrogen for ammonia production is natural gas. With declining natural gas supplies, industrial users are increasingly being curtailed. This means that domestic ammonia demand would increasingly be met either by imports, or by ammonia produced from other sources. If ammonia were produced from petroleum or from coal, then any pipeline for transporting it and having the physical characteristics specified in Minn. Stat. § 116H.02 subd. 5 (Supp. 1977) would be a large energy facility.

Given the current situation, it would be stretching the definition of "synthetic gas" for the Agency to claim jurisdiction over ammonia pipelines. It may well be, as suggested by the Minnesota Department of Agriculture, that the public interest would be served if the Agency had certificate of need jurisdiction over ammonia pipelines. More specific legislative direction is required to resolve the issue.

On the other hand, the Agency need not go to the extreme of disavowing jurisdiction over all large energy facilities that are not intended to supply energy. The term "energy demand" in Minn. Stat. ch. 116H could be validly applied in the sense of derived demand. As an example of the use of this concept,

demand for plastic products gives rise to a derived demand for the resources, such as petroleum, used in manufacturing plastic.

The Agency could also look at the precedents set by the Federal Power Commission (hereinafter "FPC") and the Federal Energy Administration. These agencies exercised pricing and/or allocation authority over particular types of energy sources, whether or not the commodities of interest were intended for energy purposes.

Unlike the FPC (now the Federal Energy Regulatory Commission), the Agency does not have jurisdiction over the abandonment of facilities that have been granted a certificate of need. Handling abandonments and, in general, facility retirements (an issue raised in NSP's letter dated March 9, 1978), as well as conversions of service, would require statutory and regulatory changes.

To sum up, the Agency staff's opinion at this point is that if a proposed project meets the statutory and regulatory definitions of "large energy facility" and "construction," then the project requires a certificate of need from the Agency.

III. DEMONSTRATION OF THE NEED FOR AND REASONABLENESS OF THE PROPOSED RULES IN EXHIBIT A

The need for and reasonableness of each rule was demonstrated at the hearing, as required by Minn. Stat. § 15.0412 subd. 4 (Supp. 1977) and Minn. Regs. HE 104(g).

The LPG industry in the state, represented by Mr. Dean Nolt, suggested that the amendments to the rules should be more tailored to the characteristics of the industry. Mr. Nolt believes that dealers who want to expand their LPG storage facilities would be unduly burdened by the informational requirements of the proposed amended rules. In particular, he cited the sections requiring environmental data, historical energy data, and energy forecasts as imposing requirements beyond the

capability and expertise of the dealers. An inference was also drawn that the Agency's Certificate of Need Program would create a barrier to LPG storage expansions, thus fostering mergers and discouraging independent operators.

Mr. Nolt suggested that one way of dealing with the problem is to increase the threshold for large LPG storage facilities above 100,000 gallons. As pointed out at the hearing, that is a recommendation more appropriately made to the legislature. The Agency staff is already making an exception for expansions of existing LPG storage facilities, by proposing an alternative threshold of 25% of the existing storage capacity at the site.

The Agency staff disagrees with the assertion that the proposed amended rules impose an onerous burden on LPG dealers. Corresponding sections on large oil or liquefied gas storage in the Agency (proposed) Chapter 7 rules (EA 735-743), Chapter 8 rules (6 MCAR §§ 2.0841-2.0845) and Chapter 10 rules (EA 1040-1045) show that the data requirements for petroleum suppliers are on par with those for energy users but are much less than those for gas utilities or gas pipeline companies. It should also be noted that "petroleum suppliers" refers to refineries and petroleum wholesalers; thus petroleum or LPG retailers are not covered at this time. The Agency will most likely propose amendments to 6 MCAR § 2.0801 et seq. in the future, to include in that set of rules large LPG storage facilities proposed by energy users and LPG retailers.

Within the Chapter 10 rules are provisions that applicants can use under special circumstances. The most important is EA 1003 H, which allows an applicant to be exempted from any data requirement of the rules. Then there is EA 1003 F, which provides for an expeditious processing of an urgent application. Finally, EA 1045 allows the substitution of an Environmental Assessment Worksheet for the detailed requirements of that rule.

With respect to the argument that the Certificate of Need Program fosters mergers and discourages independent operators, the Agency staff would point to the first criterion, amended EA 1011 C 1, which specifically addresses 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. Of course the Agency would also require that the proposed facility be the best alternative available (second criterion), that meeting the demand be in the public interest (third criterion), and that the proposed facility be legal (fourth criterion).

The remainder of this statement will consist of a rule-by-rule discussion of the proposed rules, and the reasons for any changes resulting from comments and questions during the hearing.

EA 1001. There were no comments on this amended rule. It should be adopted for reasons given in the Statement of Need.

EA 1002. This rule specifies the types of large energy facilities and construction which require a certificate of need under the Chapter Ten rules.

At the hearing, the Agency staff suggested that the period specified in the rule for refinery expansions should be increased from two to four years, since such projects may take longer than two years to complete. Specifying too short a period defeats the intent of the original amendment, which was to prevent from being undertaken without a certificate of need seriatim expansions that cumulatively add a significant amount to the facility's capacity.

Other amendments to this rule are proposed by the Agency staff at this time. These amendments are prompted by public comments and questions on amended rule EA 1004. EA 1004

defines certain terms which are used within the rules. Mr. LeRoy Lindbloom finds the proposed definition of "large LPG storage facility" (EA 1004 L) ambiguous because of the qualifying phrase preceded by "unless." Rather than re-phrasing the definition in positive terms as Mr. Lindbloom suggests, an alternative would be to remove the qualifying phrase from the definition altogether, as in proposed rule EA 701 N, and separate EA 1002 A 1 into a component to deal with new facility construction and another component to deal with facility expansions. The definition of "large oil storage facility" (EA 1004 M) which served as the model for EA 1004 L should be modified in a similar fashion.

A period of one year would be adequate for delimiting oil or LPG storage expansion projects. This period is one half that suggested for liquefied gas storage expansion projects proposed by gas utilities. However, the competitive situation petroleum suppliers are in requires that they be able to respond quickly to changing market situations. Gas utilities can put the cost of storage facilities in their rate base. Hence, it is only fair to require them to be more circumspect in adding to their storage facilities.

With these changes, which have been incorporated in Exhibit A, amended rule EA 1002 should be adopted for reasons given in the Statement of Need.

EA 1003. There were no comments on this amended rule. It should be adopted for reasons given in the Statement of Need.

EA 1004. The proposed amendments to this rule were discussed under EA 1002 and in the Statement of Need. This amended rule should be adopted.

EA 1005-1040. There were no comments on these amended rules.

They should be adopted for reasons given in the Statement of Need.

EA 1041. Williams Pipe Line Company, through a letter from Mr. Keearns, suggested that this amended rule is ambiguous. It seems to apply only to expansions of existing storage facilities. Williams' interpretation of this rule is correct. For a new site, there is no history of oil or LPG storage or throughput so the rule would not apply.

There were no other comments on this amended rule. It should be adopted for reasons given in the Statement of Need.

EA 1042-1044. There were no comments on these amended rules. They should be adopted for reasons given in the Statement of Need.

EA 1045. Other than asking for clarification, the public made no comments on this amended rule. It should be adopted for reasons given in the Statement of Need.

EA 1050-1054. There were no comments on these amended rules. They should be adopted for reasons given in the Statement of Need.

EA 1055. Exhibit A incorporates the change to proposed EA 1055 A 1(h) suggested by the Mn/DOT. The amended rule asks for a listing of trunk highways, railroads and airports along the route rather than within one mile of the route. With this change, amended rule EA 1055 should be adopted for reasons given in the Statement of Need.

EA 1060-1091. There were no comments on these amended rules. They should be adopted for reasons given in the Statement of

Need.

Dated: April 17, 1978

Respectfully submitted,

Leticia A. Chard

Leticia A. Chard
Energy Facility Analyst

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 — 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

July 27, 1978

Director John P. Millhone
Minnesota Energy Agency
Room 740, American Center Building
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101

Re: In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001 - 1091. Docket No. EA-78-002-WS.

Dear Director Millhone:

Enclosed and served upon you by mail, please find the original copy of my Report in the above-entitled matter.

By carbon copy of this letter, I am also serving Mr. Dwight Wagenius, Special Assistant Attorney General, with a copy of my Report, together with the official record, including exhibits and transcripts of the proceedings.

Sincerely,

Wm Seltzer

WILLIAM SELTZER
Hearing Examiner

WS:sw
Enc(s).

cc: Mr. Dwight Wagenius

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001 - 1091.	REPORT OF HEARING EXAMINER

The above-entitled matter came duly on for hearing before William Seltzer, Hearing Examiner, on the 27th day of March, 1978, in Conference Room D, Veterans Service Building, Saint Paul, Minnesota, commencing at approximately 9:30 a.m.

Dwight Wagenius, Special Assistant Attorney General, appeared for and on behalf of the Minnesota Energy Agency Staff (hereinafter sometimes referred to as "Agency Staff") in support of the within considered proposed rules.

A panel from the Minnesota Energy Agency was in attendance to offer direct testimony and respond to questions from the public. The panel consisted of: Leticia A. Chard, Energy Facility Analyst; David L. Jacobson, Acting Manager of the Certificate of Need Activity; Dr. Arthur L. Adiarte, Energy Facility Analyst; and Karen R. Cole, Environmental Coordinator.

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 record of the proceedings remained open through the 17th day of April, 1978.

Pursuant to Minn. Stat. § 15.052, subd. 4 (1977 Supp.), this Report shall be available for review to all affected individuals upon request for at least five days. The Minnesota Energy Agency shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including

its Findings and Order to the Chief Hearing Examiner no earlier than ten days subsequent to the receipt of this Report. Such submission shall also clearly indicate any changes made to the rules as originally proposed and noticed for hearing in the State Register, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his Report to the Minnesota Energy Agency on the issue of substantial changes, if any, in the proposed rules within ten calendar days after receipt of the Findings and Order of the Director of the Minnesota Energy Agency. Thereafter, the Minnesota Energy Agency shall be responsible for filing the rules with the Minnesota Attorney General.

The proposed rule amendments were offered by Agency Staff on their belief that the proposed amendments would reflect amendments to Minnesota Statutes Chapter 116H passed in 1977, with respect to petroleum storage facilities, make the rules internally consistent, effect better coordination between the subject set of rules and proposed rules governing large gas facilities so that petroleum suppliers proposing to build LPG storage or pipeline facilities would be covered by the former instead of the latter set of rules, and extend the certificates of need requirement to significant expansions in the capacity of existing large petroleum pipelines.

FINDINGS OF FACT

1. That the Order for Hearing issued on the Third day of February, 1978, 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 was properly served and filed on the Third day of February, 1978.

3. That in timely fashion, the following documents were filed and accepted by the Minnesota Office of Hearing Examiners as proper and correct as to form and content:

(a) Order for Hearing;
(b) Notice of Hearing;
(c) Affidavit of Receipt of the Secretary of State's list;
(d) Affidavit of Mailing;
(e) Secretary of State's Certificate and list;
(f) Statement of Need; and
(g) Statement of Evidence.

The said documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of hearing.

All other relevant, substantive and procedural requirements of statute or rule have been complied with for the purpose of establishing jurisdiction of the subject matter to proceed to public hearing pursuant to law.

4. During the public hearing, Agency Staff proposed certain changes instanter to their supporting documentation. Such changes are set forth in the Transcript of Proceedings at Pages 17 - 20. The changes are, in part, found to be reasonable and necessary and accepted by the Hearing Examiner; and rejected, in part, as evidenced by the Findings hereinbelow.

5. Except as noted elsewhere herein, the Minnesota Energy Agency's Statement of Need affirmatively established the need for and reasonableness of the herein considered proposed rule amendments.

6. By letter dated April 14, 1978, and received April 17, 1978, Peoples Natural Gas Company stated:

> Essentially, we feel the proposed rules are unnecessary and not required. . . .

The above-quoted assertion is without merit for many reasons including the fact that the Minnesota Energy Agency has statutory authority to amend the within considered proposed rules and has the obligation to establish a certificate of need program for large energy facilities which, in fact, are the subject matter of the within considered hearing process. The Minnesota Energy Agency's statutory authority is as follows:

> It shall be the duty of the director to:
>
> . . .
>
> (f) Require certificate of need for construction of large energy facilities;

Minn. Stat. § 116H.07, subd. 1(f) (1976).

> 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. . . .
>
> 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 and 116H.15 and consistent with the criteria for assessment of need.

Minn. Stat. § 116H.13, subds. 1-2 (1976). (Emphasis added)

It is further provided in the Rules of Procedure Governing Certificate of Need Programs 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:

> . . .
>
> (c) 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 their derivatives, unless the facility would be at an existing petroleum storage site and would constitute an increase of less than 20 percent in the storage capacity at that site;
>
> (d) 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 their derivatives;
>
> (e) Any pipeline for transporting. . .synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;
>
> (f) Any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied. . .synthetic gas. . . .

Minn. Stat. § 116H.02, subd. 5 (1976), as amended by Minn. Laws 1977, ch. 381, § 8.

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 (1976).

> 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 (1976).

> 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 development 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 (1976).

7. [EA 1001] There were no comments on this amended rule. It is found to be reasonable and necessary and should be adopted for reasons given in the Statement of Need.

8. [EA 1002] This rule specifies the types of large energy facilities and expansions thereof which require a certificate of need under the Chapter Ten rules. The proposed amendments include additional types of large energy facilities specified in Chapter Ten which must obtain a certificate of need from the Energy Agency.

The proposed amended rule includes, for the first time, large liquefied petroleum gas (LPG) storage facilities. This inclusion is reasonable and necessary. However, the rules as originally noticed for hearing regulated both new and existing LPG

storage facilities which met the following criteria:

> Large LPG Storage Facility means a facility on a single site designed for or capable of storing more than 100,000 gallons of liquefied petroleum gas unless the facility would be at an existing LPG storage site and would constitute an increase of less than 20 percent if the LPG storage capacity at that site.

On the other hand, the rule as finally proposed by Agency Staff in its Post-Hearing Statement differentiated further between new and existing LPG facilities by changing the original proposal as follows:

> EA 1002A. 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. . .LPG storage facility;
>
> * * *
>
> 4. Any project which, within a period of one year, would expand the LPG storage capacity of an existing LPG storage facility in excess of either 20% of capacity or 100,000 gallons, whichever is greater;

Agency Staff also requests to change the definition of "Large LPG Storage Facility" from the definition originally noticed for hearing as follows:

> . . .means a facility on a single site designed for or capable of storing more than 100,000 gallons of liquefied petroleum gas (LPG) ~~unless the facility would be at an existing LPG storage site and would constitute an increase of less than 20% in the LPG storage capacity at that site;~~

It is obvious that the rule as finally proposed has three changes from the rule as originally noticed for hearing. First, the finally proposed rule treats separately new and existing large LPG storage facilities. This change is not substantial and could be considered both reasonable and necessary. Second, the rule as finally proposed and supported by Agency Staff limits the time of expansion for an existing facility to one year while the originally proposed rule did not contain the one year limiting factor. It is assumed the original proposal regulated expansions to an existing facility wherein the proposed expansion is to be a single event without regard to time elements. Finally, the

rule as finally proposed by Agency Staff brings within its purview existing LPG storage facilities which are expanded in excess of either 20 percent of capacity or 100,000 gallons, whichever is greater. The rule as originally proposed and noticed for hearing only exempted expansions of existing LPG storage facilities wherein expansion was to be less than 20 percent of total LPG storage capacity at that site. If one assumes a 100,000 gallon facility that plans to increase its storage capacity by 50 percent (50,000 gallons), it is obvious that such expansion would have required a certificate of need under the rule as originally proposed, but would be exempt under the rule as finally proposed by Agency Staff. Such change in language is not only a substantial change wherein facilities may be exempt under Chapter Ten which would not have been exempt under the rule as originally proposed; but, may have invited opposition or comment from environmental groups or others if the impact of the rule as finally supported by Agency Staff were known at the time of hearing.

Accordingly, the changes in proposed EA 1002A 1 and 4 and proposed EA 1004L as finally proposed by Agency Staff are found to be unreasonable for lack of sufficient notice of the rules' impact to the general public and in accordance with applicable statute cannot be adopted. However, proposed EA 1002A 1 and proposed EA 1004L as originally proposed and notice for hearing are found to be reasonable and necessary and may be adopted for reasons given in the Statement of Need.

The existing rules [EA 1002] are applicable to: New large oil storage facilities. The existing rule defines large oil storage facility as follows:

> 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.

The existing rule is somewhat ambiguous as to whether it applies only to new large oil storage facilities which never existed before or whether the existing rule uses the word "new" in

the sense that any facility meeting the regulatory definition of "large oil storage facility" is to be considered "new" even though the new expansion is part of an existing facility.

Originally proposed amended EA 1002A 1 eliminates the ambiguity of the existing rule by deleting the word "new" leaving the rule applicable to all large oil storage facilities falling within the regulatory definition thereof.

The rule as finally proposed by Agency Staff in its Post-Hearing Statement specifically differentiates between new large oil storage facilities and expansions to existing large oil storage facilities. Also, the rule as finally proposed by Agency Staff would exempt from the certificate of need process expansions to existing facilities which comprise 20 percent or less of existing capacity, or one million gallons, whichever is greater. The original exemption would only exclude from the certificate of need process expansions to existing oil storage facilities which are 20 percent or less of existing capacity. The rule, as finally proposed by Agency Staff, is found to be a substantial change from the rule as originally noticed for hearing because facilities would be exempt under Chapter 10 which would not have been exempt under the rule as originally proposed. Furthermore, such exemption may have invited opposition or comment from environmental groups or other interested parties if the impact of the rule as finally supported by Agency Staff were known at the time of hearing.

Accordingly, the changes in proposed amended EA 1002 A 1, EA 1002 A 5, and EA 1004 M, as they pertain to large oil storage facilities and as finally proposed by Agency Staff are found to be unreasonable for lack of sufficient notice to the public. However, proposed amended EA 1002 A 1 and EA 1004 M, as originally proposed and noticed for hearing are found to be reasonable and necessary and may be adopted for reasons given in the Statement of Need.

Proposed amended EA 1002 A 2, which pertains to the applicability of the rules to new large petroleum pipeline facilities,

is found to be reasonable and necessary and should be adopted for the reasons set forth in the Statement of Need. Similarly, originally proposed EA 1002A 4, which pertains to the expansion of existing large petroleum pipeline facilities, is found to be reasonable and necessary and should be adopted for the reasons set forth in the Statement of Need.

Proposed EA 1002 A 3 pertains to the applicability of Chapter 10 to new oil refineries. The proposed amended rule is substantially the same as the existing rule and is found to be reasonable and necessary and may be adopted for the reasons set forth in the Statement of Need.

Proposed amended EA 1002 A 5 pertains to the applicability of Chapter 10 to expansions of existing oil refineries. The existing rule brings within the certificate of need process the following:

> 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.

The amended rule as originally proposed reads as follows:

> Any project which, within a period of two years, would expand an existing oil refinery in excess of either 20% of its rated throughput or 10,000 barrels per day, whichever is greater.

At the beginning of the public hearing, Agency Staff changed the proposed amendment instanter by substituting the term "four years" for the originally proposed term of "two years".

It is found that the inclusion of a time period during which expansions must take place for purposes of Chapter 10 is reasonable and necessary. However, the change of from "two years" to "four years" is found to be of a substantial nature that may have invited opposition or additional comment if made known to the public prior to the hearing process. For this reason, Agency Staff's instanter amendment is found to be unreasonable and contrary to public notice provisions or Minnesota Law. However, the inclusion of a two year time period is found to be reasonable and necessary and may be adopted for the reasons

set forth in the Statement of Need.

Industry opposed the reduction from 25 percent to 20 percent for the expansion capabilities of an oil refinery before a certificate of need is mandatory. Industry based its opposition on the following: (1) the 25 percent increase was proposed by the Minnesota Energy Agency at the time the original rules were proposed in 1976, and concurred with by industry, (2) since the rules have been adopted, no refinery has applied for a certificate of need or embarked on a major expansion so that the Energy Agency has not yet had the opportunity to test the existing rules, (3) because the Energy Agency has not yet had the opportunity to test the existing rules, there is no justification for changing the size of an applicable refinery expansion project, and (4) the Energy Agency failed to affirmatively justify the change of 25 percent to 20 percent. The Hearing Examiner cannot agree with industry.

It is found that the Energy Agency adequately demonstrated the need for and reasonableness of the proposed percentage change for reasons set forth in the Statement of Need, and further finds that the amendment may be adopted as originally proposed and noticed for hearing. The mere fact that the Energy Agency has not had experience with expansions under the existing rule is not a basis to find the proposed amendment unreasonable. There is no one fixed or magic percentage figure. However, in order to further its responsibilities of energy conservation, the Energy Agency is wise to bring within the purview of the certificate of need process oil refinery expansions which would otherwise be exempt from the certificate of need process under the existing rule. Unquestionably, the Agency has expert standing in the community in energy-related matters and based on that expertise, it is in the best interest of the State of Minnesota to follow the suggestions of the Energy Agency in this particular matter.

Accordingly, it is found that originally proposed amended EA 1002A 5 should be adopted.

9. [EA 1003] There were no comments on this proposed amended rule. It is found to be reasonable and necessary and should be adopted for reasons given in the Statement of Need.

10. [EA 1004] The definitions contained in proposed amended EA 1004 are found to be reasonable and necessary and should be adopted for reasons given in the Statement of Need.

11. [EA 1005] There was some industry opposition to the proposed amendments of this rule which pertains to "Filing Fees and Payment Schedule". However, opposition by industry is rejected by the Hearing Examiner and it is found that the proposed amended rule is reasonable and necessary and should be adopted for reasons given in the Statement of Need. The reader of this Report is referred to other Reports issued by the Minnesota Office of Hearing Examiners for the Energy Agency addressing the issue of filing fees and payment schedules. (Example: Docket No. EA-77-008-WS)

12. [EA 1011 - 1040] There were no substantial comments on these proposed amended rules. It is found that these proposed amended rules are reasonable and necessary and should be adopted for reasons given in the Statement of Need.

13. [EA 1041] Williams Pipe Line Company, through a letter from Mr. Keearns, suggested that this amended rule is ambiguous. That Company argued that the amended rule seems to apply only to expansions of existing storage facilities. The Company's interpretation of this rule is correct. For a new site, there is no history of oil or LPG storage or throughput so the rule would not apply.

It is found that the proposed amended rule is reasonable and necessary and should be adopted for the reasons given in the Statement of Need.

14. [EA 1042 - 1054] There were no substantial comments on these amended rules. It is found that the proposed amended rules are reasonable and necessary and should be adopted for the reasons given in the Statement of Need.

15. [EA 1055] The amended rule as finally proposed and supported by Agency Staff incorporates certain minor logical changes and changes suggested by the Minnesota Department of Transportation. The rule as finally proposed reasonably asks for a listing of trunk highways, railroads and airports along the route, rather than within one mile of the route. Also, the rule as finally supported by Agency Staff reasonably asks for an application to designate the new sections where a proposed pipeline will be located and requires safeguard information pertaining to "fire" as well as explosions.

Proposed amended EA 1055 as finally supported by Agency Staff is found to be reasonable and necessary and should be adopted for the reasons set forth in the Statement of Need with the non-substantial and logical changes finally suggested by Agency Staff.

16. [EA 1060 - 1091] There were no substantial comments on these amended rules. The proposed amended rules are found to be reasonable and necessary and should be adopted for the reasons set forth in the Statement of Need.

CONCLUSIONS

A. The Minnesota Energy Agency and the Hearing Examiner duly acquired and now have jurisdiction over the within proceedings.

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

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: That the Director of the Minnesota Energy Agency adopt the within subject rules, in accordance with the Findings hereinabove. Any language changes, deletions or additions necessitated by the Findings hereinabove will be reviewed by the Chief Hearing Examiner when determining the issue of "substantial change".

Dated: July 27, 1978.

William Seltzer

WILLIAM SELTZER
Hearing Examiner

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

EA-78-002-WS

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 27th day of July 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me
this 27th day of July, 1978.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

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STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	)))))))	Docket No. EA-78-002-WS **DIRECTOR'S FINDINGS OF FACT, CONCLUSIONS AND DECISION**

The hearing in the above-captioned matter was ordered on February 3, 1978, and was convened for the Minnesota Energy Agency (hereinafter "Agency") by Hearing Examiner William Seltzer of the Minnesota Office of Hearing Examiners at 9:30 a.m. on March 27, 1978, in Conference Room "D" of the Veterans Service Building, St. Paul, Minnesota.

The hearing examiner made and issued his Report of Hearing Examiner on July 27, 1978. The hearing examiner recommended to the Agency that it adopt the Agency's proposed rules amendments incorporating the language changes suggested by him.

The cross-outs and underlinings in the rules that are included below indicate changes from the rules as originally proposed for amendment.

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

FINDINGS OF FACT

1. In general, the hearing examiner did an excellent, thorough job of presenting his Findings of Fact in the above-captioned matter. The hearing examiner's Findings 1-3, 6-7 and 9-16 are hereby adopted as Findings of the Director.

2. The director agrees in part with the hearing examiner's Findings 4 and 5, which deem the proposed changes to be necessary and reasonable with some exceptions. The director disagrees with the exceptions taken by the hearing examiner, for reasons given in the findings below, and instead finds the proposed changes to be both reasonable and necessary without exception.

3. The issue raised by hearing examiner's Finding 8 is whether some of the changes proposed by the Agency staff during the public hearing constitute substantial changes requiring either withdrawal of the proposed amended rule or reconvening the rule hearing in accordance with Minn. Stat. § 15.052, subd. 4 (Supp. 1977) and Minn. Reg. HE 108.

The Legislature has given the Agency certificate of need jurisdiction only over large energy facilities. Large energy facilities are defined in Minn. Stat. § 116H.02, subd 5,

by threshold, or minimum, capacities. The definition of construction in subdivision 9 of section 116H.02 makes it clear that enlargements, or expansions, of large energy facilities are covered as well as initial installations of such facilities. The Agency has always maintained the position that, to allow the Agency to assert its need certification jurisdiction over an enlargement, or expansion, of a large energy facility, the enlargement or expansion must itself be of jurisdictional size, i.e., equal to or greater than the size expressed in subdivision 5 of section 116H.02. Reasoning by analogy from the 1977 amendment of subdivision 5(c) of section 116H.02, the Agency has perceived a legislative intention to further limit Agency jurisdiction over expansions of large energy facilities, i.e., expansions of facilities at existing sites must not only be of jurisdictional size, they must also constitute an increase of 20% or more in the storage capacity at that site.

The Agency believed that the original proposed language in rule EA 1004 L. defining the LPG storage facilities over which the Agency has jurisdiction satisfied the legislative requirement, i.e., it set a threshold size - 100,000 gallons of LPG, and further provided that if the "more than 100,000 gallons of LPG" facility was at an existing site (was an expansion) then it must also constitute an increase of 20 percent or more in the total storage capacity at that site to be considered a large energy facility. Questions and comments at the public hearing indicated that the Agency's proposed language was not completely clear. Agency representatives explained the Agency's language to everyone's apparent satisfaction (Transcript 51-58) but felt that a clarification of the proposed rule was called for.

The staff suggested that the original proposed rules be changed to require a certificate of need for,

> EA 1002 A.1. a <u>new</u> large . . . LPG storage facility; [and]
>
> . . .
>
> EA 1002 A.4. <u>any project which, within a period of one year, would expand the LPG storage capacity of an existing LPG storage facility in excess of either 20% of capacity or 100,000 gallons, whichever is greater;</u>

where a large LPG storage facility is defined as,

> EA 1004 L . . . a facility on a single site designed for or capable of storing more than 100,000 gallons of liquefied petroleum gas (LPG) ~~unless the facility would be at an existing LPG storage site and would constitute an increase of less than 20 percent in the LPG storage capacity at that site;~~

The hearing examiner perceived three changes in the final proposed language from the rules noticed for hearing. First, the rules as finally proposed more clearly state the separate treatment of new and existing large LPG storage facilities. While not substantial, the change clarifies the applicability of the rules to new and expanded LPG storage facilities and clarifies the definition of such facilities. It is both reasonable and necessary.

A second change perceived by the hearing examiner concerns the exemption of certain projects which would expand the capacity of existing LPG storage facilities. The hearing

examiner interpreted the original proposed rules as exempting from the certificate of need requirement only those projects which would add less than 20 percent to the existing LPG storage capacity at the given site. According to the examiner's interpretation, those projects that add at least 20 percent to the existing capacity require a certificate of need, even though the additional capacity would be less than the defined minimum of 100,000 gallons (Report of Hearing Examiner at 8). The rule as finally proposed appropriately exempts all projects smaller than the 100,000 gallon threshold size.

Since the Legislature has set the threshold defining large energy facilities, the Agency does not deem it reasonable or proper to lower the threshold for specific facilities through its rulemaking authority. The statutory language, after which the originally-proposed definition of large LPG storage facility was patterned, excludes from the definition of large energy facility additions to existing oil storage capacity of 1 million gallons or more where such additions constitute an increase of less than 20 percent of existing storage capacity at the site. The change is both reasonable and necessary.

The third change perceived by the hearing examiner would limit the time of expansion for an existing large LPG facility to one year, whereas the original proposed rule had no time limitation. If specifying a time period is reasonable and necessary for pipelines and refineries (Statement of Need at 7-9) as determined by the hearing examiner (Report of Hearing Examiner at 10), it seems even more so for LPG storage facilities which can be "put . . . up in five days and be gone. . . ." (Transcript at 56).

It is hereby noted that large LPG storage facilities proposed by gas utilities are governed by a different set of rules, the EA chapter seven rules, that the notice for the instant proceeding referenced the chapter seven rules and was mailed to interested parties along with the notice for chapter seven, and that the one year period proposed for storage expansion projects by petroleum suppliers is one-half that for similar projects by gas utilities. The shorter period provides more leeway for petroleum suppliers by allowing them to add twice as much capacity within the same time period without going through need certification proceedings, thus acknowledging their competitive situation. (Agency Post-Hearing Statement at 6).

If the time period is not specified, the Agency could always use as the basis the existing capacity at each site when the rules become effective. The threshold for such sites would be the larger of 100,000 gallons and 20 percent of the base (LPG) storage capacity for LPG storage facilities, and the larger of one million gallons and 20 percent of the base (oil) storage capacity for oil storage facilities. This would prevent the rules from being circumvented, and the capacity of a large storage facility could not be doubled using four expansion steps without a certificate of need being applied for. There is also no doubt that enforcement of the rules in this manner would be more restrictive than the finally proposed rules from the large

energy facility proposer's point of view.

Specifying a time period for proposed expansions of liquified gas storage facilities by gas utilities was not of such import as to invite comment or opposition from public interest groups. Yet, such projects add to the rate base of the utility. Petroleum suppliers, on the other hand, may be precluded by market forces from adequately recovering the cost of storage facilities. The Director finds that petroleum suppliers should not be subject to more restrictive rules than gas utilities, which they would be if no time period were specified for LPG storage expansion projects. The change is both reasonable and necessary.

The changes proposed for oil storage facilities are similar to the ones for LPG facilities. They address deficiencies brought out in the public hearing process and are both reasonable and necessary.

The last change deemed by the hearing examiner to be of a substantial nature concerns the staff suggestion, made at the public hearing, to increase from two years to four years the period defining oil refinery expansion projects in the applicability section, originally proposed EA 1002 A.5, later EA 1002A.7. The amendment was proposed because the staff learned, prior to the hearing but after the proposed amended rules had been published in the State Register, that two years may not be long enough to complete refinery expansion projects. (Transcript at 19, 70-72). This was not refuted by industry testimony or submission. The two-year specification would thus exclude the major expansion projects that take more than two years to complete. Obviously this would be worse than the situation which the proposal to include a time period was intended to correct, i.e., to prevent uncertified seriatim, incremental expansion that cumulatively adds significantly to a refinery's capacity.

The Director therefore finds the proposed amendment to EA 1002 A.7 both reasonable and necessary.

4. The Director hereby adopts as a Finding of the Director the two complete paragraphs on page 11 of the Report of Hearing Examiner (Finding 8).

CONCLUSIONS

A. The Minnesota Energy Agency has duly acquired and now has jurisdiction over the subject proceeding.

B. All relevant substantive and procedural legal requirements have been complied with.

C. The Minnesota Energy Agency demonstrated the need for and reasonableness of the adopted rules by an affirmative presentation of facts.

D. It is the Director's opinion that the slight amendments, additions and language changes appearing in the adopted rules do not result in a substantial change from the rules as proposed for adoption.

DECISION

The Director accepts the recommendation of the hearing examiner to adopt the proposed rules and in a separate order adopts amended rules EA 1001-1091, incorporating the changes indicated in the Director's Findings. A copy of amended rules EA 1001-1091, as adopted, and indicating changes from the rules as proposed for adoption, is attached.

DATED: November 2, 1978

JOHN P. MILLHONE
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Amendment of Rules of the Minnesota Energy Agency Governing Contents of Applications for Certificates of Need and Criteria for Assessment of Need for Large LPG Storage Facilities, Large Oil Storage Facilities, Large Petroleum Pipelines and Oil Refineries for Petroleum Suppliers, EA 1001-1091.	)	Docket No. EA-78-002-WS **ORDER ADOPTING RULE AMENDMENTS**

The above-entitled matter came on for hearing before William Seltzer of the Minnesota Office of Hearing Examiners for the Director of the Minnesota Energy Agency at 9:30 a.m. on March 27, 1978, in Conference Room "D" of the Veterans Service Building, St. Paul, Minnesota. Proper notice required by Minn. Stat. § 15.0412 (Supp. 1977) 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 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 amended rules identified as Minn. Regs. EA 1001-1091 are adopted this 2nd day of November, 1978, pursuant to authority vested in me by Minn. Stat. §§ 116H.08(a), 116H.13 (1976).

STATE OF MINNESOTA
MINNESOTA ENERGY AGENCY



JOHN P. MILLHONE
Director