

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARK MASON, Director
Minnesota Energy Agency

DATE: 12/10/80

Attn: DWIGHT S. WAGENIUS
SAAG

FROM : H. THEODORE GRINDAL
SAAG

PHONE: 297-3471

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing Procedures and Measures Reduced Demand and Increased Supply of Fuel Oil During a Fuel Oil Supply Emergency.

The above-captioned rules have been disapproved by this office for the following reasons:

1. In 6 MCAR § 2.3105, C. 2., the reference to Minn. Stat. § 41F seemingly is incorrect. This may or may not be a typographical error, but no such cite exists.

2. In 6 MCAR § 2.3105, D. 4., entitled Pollution Control Agency, there is seemingly an inappropriate delegation and mandate from the Energy Agency to the PCA for certain actions. If, in fact, the Minnesota Energy Agency was referencing to statutory powers that it has in relation to the PCA, it should make reference to the statute or re-phrase the section to reflect existing statutory power. The current usage is seemingly incorrect.

3. In 6 MCAR § 2.3108, A. 2., reference is made to certain duties the Office of Administrative Hearings and the Chief Hearing Examiner shall have under these rules. It is apparent to this office that the appeal procedure would in fact conflict with the existing rules and statutes governing contested case proceedings and the operations of the Chief Hearing Examiner and Office of Administrative Hearings. Therefore, the procedures outlined are inappropriate based upon the statutory authority and should be revised accordingly.

Upon consideration of the issues raised in this memorandum these rules may be resubmitted to this office. At the time of resubmission to this office, please insure that the original and two copies of the Amended Order Adopting and the Amended Rules as Adopted are submitted as they are necessary for filing with the Secretary of State. This office has retained copies of all other jurisdictional documents for administrative convenience. Please designate the rules as resubmitted rules at the time of resubmission. If you have any further question in regard to this memorandum, please contact me.

HTB/bw

cc: Duane Harves
Susan Robertson

Our File No. 658

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12/3/80
DATE FOR REVIEW 12/10/80
DATE DUE 12/10/80

Adopted w/a hearing _____
Adopted w/o a hearing _____
Temporary rule X

Approved _____ Disapproved ✓ Returned to Agency 12/10/80

Resubmitted 12/11 Due 12/17
Approved ✓ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____

- -

____ Rule as Adopted

____ Rule as Proposed

____ Order Adopting

____ Notice of Intent to Solicit Outside Opinion

____ Order for rulemaking
_____ Date of Hearing

____ Certificate of Board's Authorizing Resolution

____ Notice of rulemaking
_____ Sufficiency

____ Affidavit of Mailing Notice of rulemaking
_____ At least 30 days prior to hearing/adoption

____ Mailing list Certificate

____ Publication in State Register
_____ At least 30/20 days prior to hearing/adoption

____ Hearing Examiner's Report

____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

____ Agency's Findings of Fact

____ LCRAR Report or agency Affidavit

____ Certificate of Board's Resolution Adopting Rules

____ Order Approving Incorporation by Reference

____ Statement of Need and Reasonableness

____ Petition for Adoption of a Rule

____ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

____ Certificate of Compliance w/Rulemaking Procedures

____ Affidavit of Mailing Notice of Submission to Attorney General

____ Notice of Submission to the Attorney General

STATE OF MINNESOTA

DEPARTMENT: ATTORNEY GENERAL

Office Memorandum

TO: MARK MASON, Director
Minnesota Energy Agency

DATE: 12/11/80

Attn: DWIGHT S. WAGENIUS
Special Assistant
Attorney General

FROM: H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing Procedures and Measures Reduced Demand and Increased Supply of Fuel Oil During a Fuel Oil Supply Emergency.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing Procedures and Measures to Reduce Demand and Increase Supply of Fuel Oil During a Fuel Oil Supply Emergency

AMENDED ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register at Volume 5, Number 17, page 662 on October 27, 1980, as a proposed temporary rule pursuant to Minnesota Statutes section 15.0412, subdivision 5. After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 6 MCAR 2.3101-2.3108 are adopted this 9th day of December, 1980, pursuant to authority vested in me by Minnesota Statutes sections 116H.09 and 116H.08(a).

James H. Mann

Acting DIRECTOR
MINNESOTA ENERGY AGENCY

STATE OF MINNESOTA

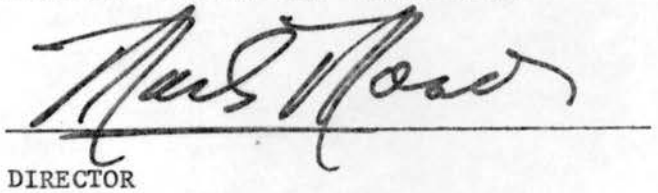
MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing Procedures and Measures to Reduce Demand and Increase Supply of Fuel Oil During a Fuel Oil Supply Emergency

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register at Volume 5, Number 17, page 662 on October 27, 1980, as a proposed temporary rule pursuant to Minnesota Statutes section 15.0412, subdivision 5. After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 6MCAR 2.3101 - 2.3108 are adopted this 24th day of November, 1980, pursuant to authority vested in me by Minnesota Statutes sections 116H.09 and 116H.08(a).



DIRECTOR

MINNESOTA ENERGY AGENCY

TEMPORARY RULES AS ADOPTED (AMENDED)

Temporary Rules Governing Procedures and Measures To Reduce Demand and Increase Supply of Fuel Oil During a Fuel Oil Supply Shortage.

2.3101 Authority and Purpose of Rules: These rules are authorized by Minnesota Statutes §116H.09, especially subdivision 4. The purpose of these rules is to specify procedures to be used during a Fuel Oil Supply Emergency and to specify measures that may be employed to reduce demand for and increase supply of fuel oil and the method of implementing the measures.

2.3102 Applicability of Rules: The rules shall apply:

A. during a declared fuel oil supply emergency (see 6MCAR 2.3105);

B. during a declared fuel oil supply alert (see 6MCAR 2.3104); and

C. to the Minnesota Energy Agency when the Agency is preparing to recommend that a fuel oil supply alert or fuel oil supply emergency be declared.

2.3103 Definitions:

A. "Agency" means the Minnesota Energy Agency;

B. "Agriculture" means all the activities classified under the industry code numbers specified in paragraph 1 below as set forth in the Standard

Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph 2 which are excluded:

1. Activities included. (a) All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph 2 of this section. (b) All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in paragraph 2 below; and (c) All the following other industry code numbers:

1474 Potash, Soda and Borate Mineral (Potash mining only);

1475 Phosphate Rock;

2141 Tobacco Stemming and Redrying;

2411 Logging Camps and Logging Contractors;

2421 Sawmills and Planing Mills;

2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);

2873 Nitrogenous Fertilizers;

2874 Phosphatic Fertilizers;

2875 Fertilizers, Mixing Only;

2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;

4212 Local Trucking Without Storage (Farm to market hauling and log trucking only);

4971 Irrigation Systems (for farm use); and

5462 Retail Bakeries, Baking and Selling.

2. Activities excluded. (a) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);

0279 Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);

0742 Veterinary Services for Animal Specialties;

0752 Animal Specialty Services;

0781 Landscape Counseling and Planning;

0782 Lawn and Garden Services; and

0849 Gathering of Forest Products, Not Elsewhere Classified.

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

D. "Commercial Building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

E. "Communications" means telecommunications

including the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communication common carrier, newspaper production and distribution, excluding sales and routine administrative activities;

F. "Consumer" means a person that consumes natural gas, electricity, middle distillate, residual, or propane;

G. "County and/or Municipal Fuel Coordinator" means any person who has been appointed by his/her county board or city council to perform certain actions with regard to the Federal Fuel Allocation Program;

H. "Demand" means that quantity of products or services for which there are willing and able purchasers;

I. "Division" means the Division of Emergency Services of the Department of Public Safety;

J. "Electric Utility" means any entity engaged in the generation, transmission, or distribution of electric energy for sale;

K. "Emergency Services" means law enforcement, fire fighting, snow removal, emergency medical services, search and rescue activities, telecommunications services and utilities services;

L. "Energy Production" means the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, power plants, transmission lines and similar capital goods. Excluded from this definition is electrical generation whose power source is petroleum based;

M. "Environmental Standards" means those laws and regulations, both federal and state, intended to protect the environment;

N. "Essential Government Services" means court and judicial activities, jails and prisons, meetings of duly elected political officials, the Division of Emergency Services and the Emergency Operating Center, Local Energy Conservation Boards, Department of Natural Resources enforcement activities, minimum services to provide AFDC, SSI, and Social Security checks and other welfare payments including food stamps;

O. "Essential Transportation" means emergency vehicles, public transporation including bus, rail, taxi, and van pool services, energy distribution such as heating oil delivery, transportation of perishable food items, postal delivery and mail hauling, and transportation of medicine and medical materials;

P. "Forecast" means a projection of future demand

or supply for some specified time period;

Q. "Fuel Oil" means any liquid or liquefiable petroleum product with a flashpoint above 100°F which is used to generate heat or power;

R. "Health and Residential Care Facilities" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including but not limited to drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

S. "Home Owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

T. "Middle Distillate" means any derivatives of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 370° and 700°F. Products specifically excluded from this definition are kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV-F-815C of ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes, and process oil;

U. "Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or sub-division thereof, or a charitable, educational or other institution;

V. "Plant Protection" means minimum plant maintenance necessary to secure buildings and prevent damage from inclement weather

W. "Residence" means the place where a natural person or persons actually live including hotels and motels, and including buildings being used as emergency housing facilities;

X. "Residual Fuel Oil" means the fuel oil commonly known as: 1. No. 4, No. 5 and No. 6 fuel oils; 2. Bunker C; 3. Navy Special Fuel Oil; and 4. all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test;

Y. "Sanitation Services" means the collection and disposal for the public of solid wastes and hazardous wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services includes the provision of water supply services by public utilities, whether privately or publicly owned and operated;

Z. "Shortage" means a situation in which demand exceeds supply and normal market forces will not act to equalize supply and demand within a reasonable period of time;

AA. "State Set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state for use to meet emergencies and hardship needs, pursuant to 10 Code of Federal Regulations §211.17;

BB. "Supplier" means any firm or any part of a subsidiary which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) any petroleum product to wholesale purchasers or end users, including but not limited to refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers; and

CC. "Tenant" means any person who occupies but does not own a dwelling under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit, and all other regular occupants of such dwelling unit.

2.3104 Fuel Oil Supply Alert. A fuel oil supply alert will be declared to inform the citizens of a potential fuel oil shortage, encourage conservation, and initiate a state of readiness for such a shortage.

A. A Fuel Oil Supply Alert may be declared in the

event that Agency forecasts indicate a reasonable likelihood that fuel oil supply will not be adequate to meet fuel oil demand, within a period of 6 months from the date of declaration.

B. The Director of the Agency shall have sole responsibility for declaring a Fuel Oil Supply Alert.

2.3105 Fuel Oil Supply Emergency. A Fuel Oil Supply Emergency is a state of declared emergency resulting from a shortage of fuel oil.

A. Determination of an Energy Emergency. Responsibilities of each organization are as follows:

1. Minnesota Energy Agency. When Agency forecasts of short-term demand for fuel oil exceed forecasts of short-term supply of fuel oil within a three month period of time, the Director of the Agency may recommend that an energy supply emergency be declared.

2. The Executive Council or Legislature. The Executive Council, consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State, or the Legislature has responsibility for declaring an energy supply emergency.

a. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature. Declaration of an energy supply emergency must be renewed every 30

days by the Legislature.

b. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the Division, the Agency, and the Secretary of State.

B. Priority Ranking of Users.

1. In an Energy Supply Emergency resulting from a fuel oil shortage, end-user suppliers shall deliver fuel oil according to the system of priorities set out below. Higher priority users shall have necessary requirements satisfied before lower priority uses.

a. First Priority Users are fuel oil users with no available alternative fuel whose continued operation is essential for the health and safety of the citizens of the State. These include:

1. Health and residential care facilities;
2. Residences;
3. Essential Transportation;
4. Plant Protection;
5. Emergency Services;
6. Communications;
7. Energy Production;

8. Agriculture; and

9. Sanitation Services; and

10. Essential Government Services.

b. Second Priority Users are those users whose continued operation is necessary for the health and safety of the citizens of the State but who have an available alternative source of fuel, such as residual oil or coal, the use of which would violate environmental standards.

Cargo and freight hauling, except those services listed in rule 2.3105 B.1.a., shall also be considered a second priority use of fuel oil.

c. Third Priority Users are those users whose continued operation is not essential for the immediate health and safety of the citizens of the State. These include:

1. Schools and religious institutions;

2. Government except those services listed in rule 2.3105 B.1.a.;

3. Commerce except those services listed in rule 2.3105 B.1.a.;

4. Industry except those services listed in rule 2.3105 B.1.a.

Within this category preference will be given to users who have no available alternative source of fuel and users who have demonstrated that they have engaged in energy saving measures.

d. Users who have an available alternative source of fuel the use of which would not violate environmental standards will not receive fuel oil during a fuel oil supply emergency. Natural gas is not considered 'available' to interrupted users.

e. Uses within priority categories are not ranked according to preference.

2. Major refineries, prime suppliers and suppliers representatives will be notified of the state of emergency by Agency staff and supplied with a written description of the priority system for distribution, within two (2) days of a declared emergency.

3. The Emergency Operating Center shall provide services necessary to answer questions and resolve conflicts regarding the priority ranking of individual firms or entities.

4. Appeals of priority status shall be made by following the Fuel Allocation Rules of Procedure, 6MCAR 2.0101 - 2.0107.

C. Measures.

1. Upon declaration of a fuel oil Energy Supply Emergency, the Governor shall select from the following measures to reduce the shortage.

a. Voluntary Measures:

(1) Home owners and renters shall be requested to voluntarily turn their thermostats back to between 62°F and 66°F during the day and

60°F and 58°F during the night and during unoccupied hours, and shall be requested to set back water heater thermostats to between 105°F and 115°F (or the lowest setting). Residences occupied by persons for whom such a measure endangers health shall be warned not to comply with this measure. Such persons include the elderly and sick and children under the age of one (1).

(2) Citizens shall be requested to refrain from driving diesel-powered automobiles.

(3) Voluntary industrial, commercial, government, and residential conservation targets shall be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage.

(4) Commercial and industrial establishments shall be requested to voluntarily reduce their hours of operations where this action saves energy.

(5) Commercial and industrial users shall be requested to voluntarily release fuel oil from inventory supplies. The Agency will use Fuel Allocation Rules of Procedure (See 6MCAR 2.0101 - 2.0107) to allocate voluntarily released inventory.

(a) Under this system suppliers shall be directed to deliver fuel oil supplies according to the system of priorities described in 2.3105 B.

(b) First priority users shall receive set-aside and voluntary inventory releases necessary to maintain health and safety for as long as such supplies last.

(6) Business, industrial and government institutions shall be requested to close nonessential buildings.

(7) Public information efforts shall be conducted to instruct Minnesotans in fuel oil, natural gas and electricity saving measures. These measures may include instruction in home heating techniques and truck and bus fuel economy measures. Regular information up-dates regarding the status and severity of the shortage shall also be issued.

b. Mandatory Measures:

(1) Commercial buildings shall be ordered to comply with the Emergency Building Temperature Restrictions (EBTR), 10 Code of Federal Regulations Part 490 (1979). Buildings which are exempted under EBTR will be exempted from this rule.

(2) Smoking within buildings shall be prohibited and reduction of the amount of outside air entering building ventilation systems may be ordered.

(3) All electric utilities with oil-fired generating facilities who are members of the Mid-Continent Area Power Pool shall be ordered to use oil of a

quality not suitable for home heating or to shut down these plants and purchase power from the Mid-Continent Area Power Pool when power from non-petroleum-fired generating facilities is available from the Pool.

(4) Fuel oil suppliers shall be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

(5) Business, industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil shall be ordered to convert to the residual oil during the crisis period, unless such action is specifically prohibited by other law or rule of the Pollution Control Agency or other agency.

(6) The 55 mph speed limit shall be strictly enforced.

2. When the Agency determines that actions listed in 6MCAR 2.3105 C.1. have not been or will not be sufficient to approximately equalize supply and demand the following options may be selected by the Governor:

a. Owners/operators of commerical, industrial, and government buildings shall be ordered to reduce heating thermostats to $62^{o}F$ during the day where such action does not violate Minnesota Rules MOSHC 41f. and $50^{o}F$ at night or during unoccupied periods.

b. Temporary rules shall be ordered adopted or rules may be ordered suspended to relax environmental standards, where such action would yield significant fuel oil savings.

c. Delivery of fuel oil supplies to specific industries, including commerce and government, shall be ordered to be curtailed according to the following criteria. A curtailment order shall be in writing and shall be delivered by registered mail to firms in the industry and area suppliers.

(1) Order of curtailment will be based on an industry's energy-labor ratio, defined as the sum of natural gas and fuel oil consumption in Btu's per year per employee. The industry with the highest energy-labor ratio will be the first to be curtailed, and so on. Such action will be rescinded in reverse order according to the industry's energy-labor ratio.

(2) Users who have First Priority Status under 6MCAR 2.3105 B. will be the last to be curtailed. Users who have second priority status will be curtailed after third priority users.

(3) A firm may be exempted from curtailment

of delivery of fuel oil supplies if it can demonstrate it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975 if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove that its energy-labor ratio is significantly below the industry average. Exemption may be granted by appeal pursuant to 6MCAR 2.3108.

(4) A firm's energy labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8400. The 30 year average of degree days shall be used.

(5) The order of curtailment and energy-labor ratio will be estimated by the Agency and published annually in the State Register during the month of October.

d. Homeowners and renters may be requested to close homes and move in with friends or relatives or move into emergency shelters. The Emergency Operating Center shall assist in this effort by designating shelters, aiding in securing homes, and providing emergency transportation.

3. Actions available for implementation under 6MCAR 2.3105 C. 1. will remain available under 6MCAR 2.3105 C. 2.

D. Operating Organization During an Emergency

1. Energy Emergency Operating Center. During a declared energy emergency, the Division and the Agency will set up an Energy Emergency Operating Center.

   a. The Director of the Emergency Operating Center shall be the Director of the Division. She/He shall direct the implementation of the emergency plan.

   b. The Emergency Operating Center shall be located at a site designated by the Director of the Center and staffed by personnel from the Division, the Agency and other State agencies as deemed necessary by the Director of the Center. While on detail at the Center, these personnel shall be primarily responsible to the Director of the Center.

2. Energy Agency.

   a. The Agency shall assist the Division by analyzing the fuel oil situation, evaluating alternatives courses of action included in the emergency plan, and advising as to the proper time and sequence of the implementation of emergency measures.

b. The Agency shall determine and recommend to the Governor the least restrictive measures specified under 6MCAR 2.3105 C. 1.-2. capable of eliminating the shortage of fuel oil.

3. Emergency Services.

a. The Division shall have the responsibility for implementing the energy emergency plan and coordinating the emergency operations of the governmental organizations involved in the Energy Emergency program.

b. The Division shall use a network of regional and local coordinators who are responsible for coordinating the emergency operations with the different geographic areas of the State.

c. By July 1, 1982, the Division shall develop procedures to monitor compliance with the mandatory measures listed in 6MCAR 2.3105 C. 1.-2.

4. Other Organizations with Important Responsibilities. The Division shall have the authority to call on any State Agency or cooperating organization, such as the Red Cross, if its services are deemed to be necessary.

2.3106 Penalties:

A. Penalties for the violation of any provision of the plan are set out in Minnesota Statutes §116H.15 (1978).

B. Any person who violates the plan or knowingly submits false information in any report required by the plan shall be guilty of a misdemeanor. Maximum penalty is $500 or 90 days or both. Each day of violation shall constitute a separate offense.

C. The plan may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county where the violation takes place. The existence of an adequate remedy at law shall not be a defense to such an action.

D. A court which finds that a person has violated a requirement of the plan or has knowingly submitted false information in any report required by the plan, or has violated a court order issued pursuant to the plan may impose a civil penalty of not more than $10,000 for each such violation. These funds are payable to the general fund in the state treasury.

2.3107 Local Energy Conservation Board

A. A Local Energy Conservation Board will be created to hear requests for exemption from manatory measures listed in 6MCAR 2.3105 C. 1.- C.2, except 2.c., in each county, in each city of the first class and in each city of more than one thousand population in St. Louis county.

B. Members:

1) The Chair of the County Board of Commissioners, shall appoint a five member county Local Energy Conservation Board to include, if available, an

elected county official, the county fuel coordinator, a health professional, the county director of Emergency Services (if different from the county fuel coordinator), and a member of the public. If the county fuel coordinator and county director of Emergency Services are the same person, the fifth member shall be selected from the public. The county attorney shall act as an advisor to the Local Energy Conservation Board.

2) Where appropriate under 6MCAR 2.3107 A., the Chair of the City Council shall appoint a five member municipal Local Energy Conservation Board to include an elected city official, the city fuel coordinator, a health professional, the city director of Emergency Services (if different from the city fuel coordinator), and a member of the public. If the city fuel coordinator and the city director of Emergency Services are the same person, the fifth member shall be selected from the public. The city attorney shall act as an advisor to the Local Energy Conservation Board.

C. The appointed members shall not be named until after the declaration of an emergency. In making the appointments, the Chair of the County Board of Commissioners and Chair of the City Council shall make every reasonable effort to avoid any conflicts of interest.

D. Three members shall constitute a quorum.

2.3108 Appeals

A. Appeals shall be delivered by mail or in person to the following locations:

1. Appeals of mandatory measures described in 6MCAR 2.3105 C., except 2.c., shall be decided by the Local Energy Conservation Board and directed to the County Courthouse, or the Mayor's office, whichever is appropriate. Persons residing in a municipality where a Local Energy Conservation Board exists shall direct appeals to the municipal Local Energy Conservation Board.

2. Appeals of orders to curtail delivery of supplies described in 6MCAR 2.3105 C.2.c. shall be decided by the Fuel Allocation Appeals Board, described in Minnesota Rules EA 105 (6MCAR 2.0105) and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

3. Appeals of priority status shall be decided by the Fuel Allocation Appeals Board described in 6MCAR 2.0101 - 2.0107 and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Procedures for appeals are fully set out in 6MCAR 2.0101 - 2.0107 and the procedural requirements set out in this rule are not applicable.

B. Content of Appeals.

1. Each appeal from an action taken pursuant to a declared energy supply emergency shall be in writing and shall be signed by the appellant. Each appeal shall state:
   a. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the appeal;
   b. the reason for the appeal, including the reasons the appellant believes the action to be unjust or unwise;
   c. the names and addresses of any persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal; and
   d. the nature of the relief sought, whether reversal, modification or some other relief.
2. Each appeal of an order to curtail delivery of fuel oil supplies based on conservation effort, shall also include:
   a. a detailed description of petroleum savings resulting from conservation efforts since 1977;
   b. calculation of the firm's energy-labor ratio; and
   c. degree days for the area where the firm is located.

C. Timing and Procedures

1. Within two (2) calendar days after receipt of an appeal, the appropriate Board or a designate shall set a hearing date. The date of hearing shall not be more than five (5) calendar days after the receipt

of an appeal. The Chair or his/her designate, shall notify the parties to an appeal, either verbally or in writing, of the appeal and the time and place for hearing, not less than two (2) calendar days before the hearing.

2. The parties to an appeal shall be the appellant and the Emergency Operating Center. Any party may be represented by counsel, but need not be.
3. The order to curtail delivery of fuel oil supplies shall remain in effect during an appeal of such an order.
4. Informal disposition may be made of an appeal or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings. The Fuel Allocation Appeals Board or Local Energy Conservation Board may dispose of an appeal adversely to a party which defaults. Disposition by default shall occur only after the party against whom default is proposed, having received timely notice, fails to appear. The Board may order a prehearing conference to be held at any time prior to hearing, if a determination is made that such conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two (2) working days before the date of the conference.

5. Appeals from an action taken pursuant to an energy supply emergency shall not be heard if received more than ten (10) working days after the termination or expiration of an energy supply emergency.

D. Hearings.

1. Anyone submitting an appeal shall have the right to a hearing before the Appropriate Board, at which hearing the parties may present and cross-examine witnesses and present evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.
2. The Board shall prepare an official record of each hearing. Any party requesting a verbatim transcript of the hearing must bear the expense of preparing the transcript.
3. The Chair shall use the procedures set by the Office of Administrative Hearings at the hearing. The Chair may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision:

1. No factual information or evidence which is not part of the record shall be considered by the Board in making a decision on an appeal.
2. Within two (2) calendar days after the hearing record is closed, the Board shall issue a decision in writing, including the findings

and conclusions on which the decision is based, a copy of which shall be given to all parties to the appeal.

3. The Fuel Allocation Appeals Board shall issue a final decision. The Local Energy Conservation Board shall issue a recommended decision to the Division Director. The Division Director may accept or overrule the Local Energy Conservation Board's decision, or may remand the appeal for further hearing on specified parts. The decision shall be in writing and served on all parties.
4. The appellant may seek judicial review of a final decision of the Division Director or the Fuel Allocation Appeals Board, in accordance with the Minnesota Administrative Procedure Act.

APPROVED AS TO FORM AND LEGALITY

Dec 11 19 80

WARREN SPANNAUS, ATTORNEY GENERAL

BY Theodore Grindal

SPECIAL ASSISTANT ATTORNEY GENERAL

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Energy

Office Memorandum

RECEIVED
DEC 3, 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

DATE: November 26, 1980

TO : Michael Miles,
Assistant Attorney General
Department of Administration

FROM : Mark Mason,
Director

PHONE: 296-6424

SUBJECT: Re: Adoption of Temporary Rules for Use During a Fuel Oil Emergency

Please find enclosed, for your review and approval, copies of the Temporary Rules for use during a Fuel Oil Emergency, Order to Adopt Rules, and comments submitted during the public comment period.

The Agency wishes to adopt temporary rules at this time so that an up-to-date emergency plan would be available in the event emergency conditions arise during the upcoming winter heating season. Minnesota's petroleum supply system is always strained during this season. Demand exceeds pipeline supply capacity making it necessary to draw down petroleum inventories. This year, however, inventories of home heating oil are approximately 25% below normal levels for this time of year. These low inventory levels make emergency conditions more likely during the next few months, especially if unusually cold weather sets in. Copies of a Minneapolis Tribune article reporting the potential for a shortage of home heating oil are attached. These conditions clearly constitute an "impending emergency", required in Minnesota Statutes 116H.09 subdivision 4 for the Agency to promulgate temporary rules. Although the permanent rulemaking process has begun, it will not be completed until April - well after the peak heating months. As a result, we will have to rely on these temporary rules if emergency conditions arise.

The Temporary Rules include a description of the criteria for declaration of an energy supply emergency or energy alert in rules 3104 and 3105. Several Commentors noted that these criteria were too general. We disagree. These definitions were used rather than quantifiable percentages or probabilities because such specific measures could not capture the many factors contributing to an energy emergency.

An energy alert may be declared based not only on the probability a shortage will occur, but also on such factors as anticipated severity of a shortfall, immediacy of the shortfall, and expected duration of the shortfall. For example, a change in political power in Saudi Arabia may create a relatively small chance of a petroleum disruption; but if the disruption would occur it would result in a very severe shortage. In this case, the Agency may need to call an alert to mobilize emergency operations and encourage conservation. Thus the phrase 'reasonable likelihood' gives the Agency the necessary flexibility to adequately respond to a variety of potential shortage situations.

The criterion for declaration of an energy supply emergency is simply that forecasts of demand exceed forecasts of supply, rather than demand exceeding supply by a specific amount or proportion. This criterion was selected, similar to the case of an energy alert, to allow adequate flexibility in response capability. The size of the shortage is not the only factor determining the seriousness of a shortage.

The Agency must also consider such factors as the time of year during which a shortage occurs and the expected duration of the shortfall.

For example, a very small forecasted shortfall - 3 or 4 percent - that is projected to last 6 or 7 months may require an emergency level response. In contrast, a serious shortage lasting only a few days may require no State intervention. This criterion, expressed in rule 3105 A.1., allows the Agency to consider the many dimensions of a fuel shortage in determining whether declaration of an emergency should be recommended.

These criteria protect citizens from overuse of emergency powers by requiring that the Agency be able to demonstrate that forecasts indicate a shortage within a fixed number of months of the declared emergency. Thus, a recommendation that an emergency or alert be declared must be based on documentable evidence.

The movement of the category of cargo and freight hauling from third to second priority status is the single most significant change from the Proposed Rules to the Adopted Rules. The Minnesota Transport Association argued in their written comments that the secondary economic impacts resulting from disruption of cargo and freight hauling would be extremely serious. Firms could neither receive raw materials nor ship finished products. In addition, it was noted that cargo and freight hauling has first priority status under Federal gasoline rationing and gasoline allocation systems. Thus, if fuel oil and gasoline shortages occurred simultaneously, trucks using diesel fuel would have different status than trucks using gasoline.

The Agency is convinced that assigning cargo and freight hauling second priority status would minimize the economic disruption resulting from the shortage and avoid inconsistency with Federal guidelines. We have not assigned cargo and freight hauling to first priority status because the enabling legislation requires that providing the basic needs of food, protection and shelter to the citizens of the state have higher priority status than commercial or industrial categories.

The measure raising road weight limits to a uniform 80,000 pounds was deleted because the Minnesota Department of Transportation found that this measure would not realize any fuel savings in the long run. Their comments are among those attached. A firm's energy-labor ratio was changed to include an adjustment for the local climate. Firms located in northern parts of the state were at a disadvantage under the proposed rules. The proposed rules did not take into consideration that northern firms naturally consume more fuel because it is colder than in southern parts of the state. Dividing the energy-labor ratio by a ratio of local degree days to statewide degree days simply corrects for this bias.

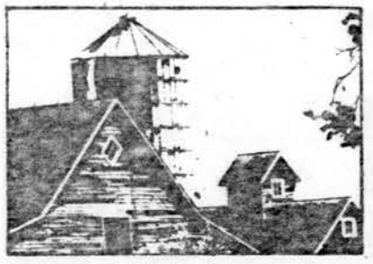
Finally, the Office of Administrative Hearings recommended that the timing for the appeals process be lengthened by replacing the words "working day" for "calendar day" each time it occurs. The Agency believes it is extremely important that the appeals process be as compact as possible. Orders to curtail supplies of fuel oil to industries remain in effect during the appeal of such orders. Thus, firms are effectively prevented from operating and employees are prevented from earning a living during that time. As a result, I believe it is required, in order to protect the citizens of the state, that the appeals process be completed in the shortest possible period of time and so the recommended change was not made.

I don't believe you will find a problem with any section of these rules, but if you do, I hope you will withhold only that section and approve the remainder of the rules. I am anxious to have rules ready for the peak of the winter heating season that begins in December.

Please contact me or Dwight Wagenius, Special Assistant Attorney General, if you have any questions.

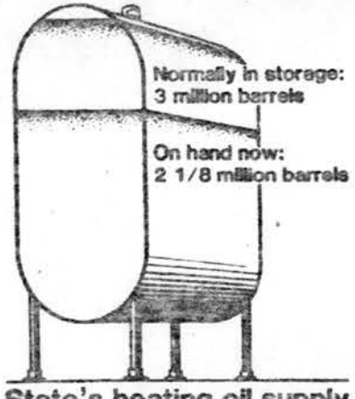
Attachments.

Minneapolis Tribune



3B. State news
Monday/November 17/1980

State stock of fuel oil is 29 pct. below normal



State's heating oil supply

By Robert J. Hagen
Staff Writer

Minnesota's stock of fuel oil is about 29 percent below normal for this time of year, the Minnesota Energy Agency says.

But Dorothy Dahlenburg, the energy agency's assistant director for communications services, said the state probably will not have a shortage unless this winter is colder than normal. She said the decline in the amount of fuel oil stored at Minnesota-area refineries and at pipeline terminals was anticipated.

"Koch Refinery, the largest in the state, was shut down for about three weeks in October for regular maintenance and to make some modifications," she said, "so fuel oil stocks were drawn down during that period. Koch is up and running flat out now."

About 30 percent of the products refined by Minnesota-area refineries are middle distillates: diesel fuels, kerosene and fuel oil. Diesel is the same product as fuel oil, except that certain ingredients are added to it after refining.

Refineries can increase the amount of fuel oil they produce by about 3 percentage points, and they usually do so as the heating season approaches. In the spring they revert to making more gasoline.

However, Dahlenburg said the energy agency does not expect fuel oil stocks to be replenished rapidly. And if the state has a lot of cold weather, demand could exceed supply, which includes the stored fuel oil and the ability of pipelines and the area's refineries to produce it fast enough.

"However, there are some reasons to be optimistic," she said. "Demand is down and the system will be able to provide more than it did last winter. Canada is still exporting crude oil to us and we don't expect that to change this winter.

"A segment of the pipeline between Wood River, Ill., and Mason City, Iowa, should be finished in January. That should enable crude oil and finished products to flow through the line from Mason City to Minnesota. In addition, people are conserving fuel oil or they're switching to other fuels."

The demand for fuel and diesel oil in Minnesota from January through August was down was down 29 percent from the comparable period last year, partly because the temperature was higher than normal. And it was down 16 percent [illegible]pared [illegible] the first eight months of 1978.

Fuel oil prices in the Twin Cities metropolitan area range from 93 cents a gallon to $1.02, down slightly from the end of last winter.

In trying to gauge demand for fuel oil the energy agency relies partly on the level of middle-distillate shipments from refineries and terminals, so-called primary storage, to oil product jobbers. Jobbers are wholesalers who buy fuel oil and gasoline from refiners and resell it.

Minnesota has about 2⅛ million bar-

Fuel oil continued on page 12B

Fuel oil Continued from page 3B

rels of fuel oil in primary storage, compared with the 3 million barrels normally in storage at this time of the year.

As fuel oil moves down the chain of distribution to the end user, the energy agency's information about the amount stored at each level becomes less reliable.

Fuel stored by wholesalers and retailers could make up for part of any shortfall, the energy agency has acknowledged.

"The fuel oil situation is always something we watch very closely, because it's used as a backup fuel," Dahlenburg said. "Whenever we have severe cold, most large natural gas users are cut off gas so that residences may be given first priority. These large energy users then switch over to fuel oil.

"We've gone through some periods when supplies were pretty tight, but we've never had to go beyond a voluntary program in dealing with them."

Minnesota's only declared energy emergency occurred in January 1977, after a rapid decrease in fuel oil inventories.

Rules that the energy agency wants to use in the event of a fuel oil supply emergency are expected to take effect next month on a temporary basis. If a fuel oil shortage should occur, the agency's plan calls for voluntary efforts by various sectors of the state's economy to reduce consumption.

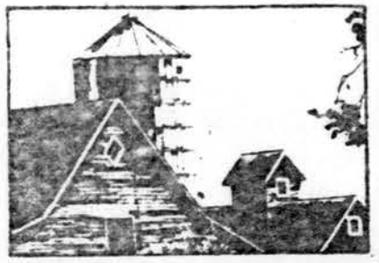
If voluntary conservation failed, stricter measures would be implemented gradually, depending on the severity of the shortage. If the shortage were severe, critical users, such as hospitals, residences, key transportation, communications and emergency services and agriculture would get first access to remaining supplies.

Supplies to others would be curtailed based on how much natural gas and fuel oil an industry uses per employee. The greater the ratio, the more likely the industry would be ordered to reduce fuel oil use.

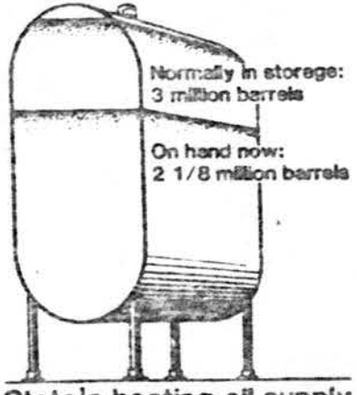
Minneapolis Tribune

3B. State news

Monday/November 17/1980



State stock of fuel oil is 29 pct. below normal



State's heating oil supply

By Robert J. Hagen
Staff Writer

Minnesota's stock of fuel oil is about 29 percent below normal for this time of year, the Minnesota Energy Agency says.

But Dorothy Dahlenburg, the energy agency's assistant director for communications services, said the state probably will not have a shortage unless this winter is colder than normal. She said the decline in the amount of fuel oil stored at Minnesota-area refineries and at pipeline terminals was anticipated.

"Koch Refinery, the largest in the state, was shut down for about three weeks in October for regular maintenance and to make some modifications," she said, "so fuel oil stocks were drawn down during that period. Koch is up and running flat out now."

About 30 percent of the products refined by Minnesota-area refineries are middle distillates: diesel fuels, kerosene and fuel oil. Diesel is the same product as fuel oil, except that certain ingredients are added to it after refining.

Refineries can increase the amount of fuel oil they produce by about 3 percentage points, and they usually do so as the heating season approaches. In the spring they revert to making more gasoline.

However, Dahlenburg said the energy agency does not expect fuel oil stocks to be replenished rapidly. And if the state has a lot of cold weather, demand could exceed supply, which includes the stored fuel oil and the ability of pipelines and the area's refineries to produce it fast enough.

"However, there are some reasons to be optimistic," she said. "Demand is down and the system will be able to provide more than it did last winter. Canada is still exporting crude oil to us and we don't expect that to change this winter.

"A segment of the pipeline between Wood River, Ill., and Mason City, Iowa, should be finished in January. That should enable crude oil and finished products to flow through the line from Mason City to Minnesota. In addition, people are conserving fuel oil or they're switching to other fuels."

The demand for fuel and diesel oil in Minnesota from January through August was down was down 29 percent from the comparable period last year, partly because the temperature was higher than normal. And it was down 16 percent compared [illegible] the first eight months of 1978.

Fuel oil prices in the Twin Cities metropolitan area range from 93 cents a gallon to $1.02, down slightly from the end of last winter.

In trying to gauge demand for fuel oil the energy agency relies partly on the level of middle-distillate shipments from refineries and terminals, so-called primary storage, to oil product jobbers. Jobbers are wholesalers who buy fuel oil and gasoline from refiners and resell it.

Minnesota has about 2¼ million bar-

Fuel oil continued on page 12B

Fuel oil Continued from page 3B

rels of fuel oil in primary storage, compared with the 3 million barrels normally in storage at this time of the year.

As fuel oil moves down the chain of distribution to the end user, the energy agency's information about the amount stored at each level becomes less reliable.

Fuel stored by wholesalers and retailers could make up for part of any shortfall, the energy agency has acknowledged.

"The fuel oil situation is always something we watch very closely, because it's used as a backup fuel," Dahlenburg said. "Whenever we have severe cold, most large natural gas users are cut off gas so that residences may be given first priority. These large energy users then switch over to fuel oil.

"We've gone through some periods when supplies were pretty tight, but we've never had to go beyond a voluntary program in dealing with them."

Minnesota's only declared energy emergency occurred in January 1977, after a rapid decrease in fuel oil inventories.

Rules that the energy agency wants to use in the event of a fuel oil supply emergency are expected to take effect next month on a temporary basis. If a fuel oil shortage should occur, the agency's plan calls for voluntary efforts by various sectors of the state's economy to reduce consumption.

If voluntary conservation failed, stricter measures would be implemented gradually, depending on the severity of the shortage. If the shortage were severe, critical users, such as hospitals, residences, key transportation, communications and emergency services and agriculture would get first access to remaining supplies.

Supplies to others would be curtailed based on how much natural gas and fuel oil an industry uses per employee. The greater the ratio, the more likely the industry would be ordered

RECEIVED
DEC 31
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ENERGY

Office Memorandum

TO : Michael Miles
Assistant Attorney General

DATE: DECEMBER 10, 1980

FROM : Mark Mason
Director

PHONE: 296-6424

SUBJECT: Amendments to Temporary Rules as Adopted

Please find enclosed for your review and approval an Amended Order to Adopt Temporary Rules, and copies of the amended Temporary Rules.

Three changes have been made in the Temporary Rules as adopted. First, your office noted and we have corrected a typographical error referring to Minnesota Statute 41F. The correct reference is Minn. Rule MOSHC 41 f., and has been so changed.

Because there is some question about the Energy Agency's authority in this matter, we have deleted Rule 2.3105 D.4. requiring the PCA to develop standby procedures to relax environmental standards during energy emergencies. Our decision to delete this rule is based, in part, on our belief that the PCA will develop these plans in response to Minn. Stat. §116H.09, subd. 1(b) and 1(f) and without being required to do so by rule. Further, the date of July 1, 1982 for developing standby plans is substantially beyond the period of effectiveness of the Temporary Rules. Therefore, this rule is not an essential part of the Temporary Rules.

Finally, we changed the procedure for appeals of orders to curtail delivery of fuel oil supplies. Previously, these appeals were to be heard by the Office of Administrative Hearings (OAH). The OAH, however, found the timing for our appeals procedures in conflict with their procedures. We remain committed to this timing. As previously noted, the order to curtail fuel oil supplies remains in effect during an appeal, thereby banning firms in the affected industry from operation. Because this measure places such a heavy burden on the appealing firm, we believe that it is our responsibility to complete the appeals process in the shortest possible period of time, a time OAH finds unacceptable.

As a result, the Fuel Allocation Appeals Board has been designated to hear these appeals. This is an established board, representing wide-ranging interests, with expertise in energy issues. Furthermore, it is anticipated that appeals

of orders to curtail fuel oil supplies may be made based on the contention that a firm was inappropriately classified in the curtailed industry, and should have first priority status. Appeals of priority status are already heard by this Board, as specified in Rule 2.3105 B.4. Having one Board hear both these related appeals appears reasonable to the Agency.

When amending Rule 2.3108 to reflect this change, we made every attempt to make references to the appeals boards clear and unambiguous. We believe that we have accomplished this.

If you have any additional questions, please contact Dwight Wagenius, Special Assistant Attorney General at 296-8278 or Abby McKenzie, Emergency Rules Coordinator at 296-7043.

RECEIVED
DEC 10 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES