

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA

POLLUTION CONTROL AGENCY

In the Matter of the Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4306 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

STATEMENT OF NEED AND REASONABLENESS

MINNESOTA POLLUTION
CONTROL AGENCY
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December 15, 1983

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I. INTRODUCTION

Since its creation in 1967, the Minnesota Pollution Control Agency (Agency) has adopted a number of different rules which set forth the procedures for the issuance of permits to sources of air, water and land pollution. The existing permit rules are as follows:

Minn. Rule MPCA 5	Permits
Minn. Rule APC 3	Permits (Air Quality)
Minn. Rule APC 19	Permits for Indirect Sources
Minn. Rule WPC 4	Regulation Relating to Storage or Keeping of Oil and Other Liquid Substances Capable of Polluting Waters of the State
Minn. Rule WPC 36	Regulation for Administration of the National Pollutant Discharge Elimination System (NPDES) and State Disposal System Permit Programs
6 MCAR §4.8051	Rules for the Control of Pollution from Animal Feedlots
Minn. Rule SW 5	Plan Approval and Permit Issuance, Denial and Revocation (Solid Waste)
6 MCAR §4.6011	Exemptions for Solid Waste Disposal Facilities Located in Sparsely Populated Areas and County Solid Waste Management Plans
6 MCAR §4.6102	Permit and Letter of Approval Requirements (Sewage Sludge Disposal)
6 MCAR §4.9006	Hazardous Waste Facility Permit Program
6 MCAR §4.9007	Contents of Hazardous Waste Facility Permit Applications

Although the first of these rules, Minn. Rule MPCA 5, was intended to create a procedure applicable to all Agency permits,

the other permitting rules incorporate their own procedures, which were developed separately as a part of the particular program being administered by the Agency. As a result, there is no "standard" Agency permitting procedure.

The Agency believes that it would be desirable to establish a standard permitting procedure so that the public may more easily understand the Agency's manner of processing permit applications. The Agency also believes that it would be helpful to the public to have Agency rules relating to permits codified as an easily identifiable group so that permitting procedures for all kinds of Agency programs can be easily found without searching through all of the Agency's substantive rules.

The Agency has reviewed the current permitting rules to see whether it is feasible to create a standard permitting procedure for the Agency. The Agency believes that it is feasible to create such a procedure so long as the needs of individual programs are fulfilled through supplemental rules. Consequently the Agency is proposing a set of rules (6 MCAR §§4.4001 - 4.4021, entitled "Permits") to set forth the standard permitting procedure and four sets of supplemental rules which are uniquely applicable to certain Agency programs:

1. 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System permits.
2. 6 MCAR §§4.4201 - 4.4224, Hazardous waste facility permits.

3. 6 MCAR §§4.4301 - 4.4305, Air emission facility permits.

4. Amendments to Minn. Rule APC 19, renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect source permits.

The nature of all five sets of rules is briefly discussed below.

A. Description of 6 MCAR §§4.4001 - 4.4021, Permits.

This set of rules sets forth the "standard" permitting procedure for issuance, modification, revocation and reissuance, reissuance, and revocation without reissuance of permits. It applies to ten different types of Agency permits: 1) solid waste disposal permits, 2) hazardous waste facility permits, 3) sewage sludge landspreading permits, 4) letters of approval for sewage sludge landspreading sites, 5) disposal system construction permits (including sewer extension permits), 6) National Pollutant Discharge Elimination System Permits, 7) feedlot permits, 8) liquid storage permits, 9) air emission facility permits, and 10) indirect source permits. The rule does not create the requirement to obtain a permit. The requirement to obtain a permit will in all cases be found either in a statute or in another rule.

For some of the permits listed above, portions of the rule are specifically declared to be inapplicable. However, for most permits the rules provide the following procedures:

1. The applicant submits a written application containing specified information.

2. The Director of the Agency reviews the permit application for completeness. No further processing of the permit

application takes place until the Director finds that the application is complete.

3. The Director makes a preliminary determination as to whether the permit should be issued or denied. The Director prepares a draft permit. For certain facilities, the Director also prepares a fact sheet summarizing the basis for the draft permit and its conditions.

4. The Director prepares and distributes a public notice of the permit application and the Director's preliminary determination. The notice establishes a period during which any person, including the applicant, may submit comments on the draft permit or request a contested case hearing or public informational hearing.

5. If a contested case hearing or public meeting request is granted, the Agency holds the hearing or meeting.

6. The Agency makes its final decision.

The rules set forth some of the conditions which permits must contain. The rules also set forth the justifications for the Director to commence proceedings to modify a permit, revoke and reissue a permit, or revoke a permit without reissuance.

B. Description of 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits.

The set of rules relating to National Pollutant Discharge Elimination System (NPDES) permits supplements 6 MCAR §§4.4001 -

4.4021. It adds requirements which enable the Agency to issue NPDES permits in compliance with the Clean Water Act, 33 U.S.C. §§1251 et seq. and the regulations adopted by the U. S. Environmental Protection Agency (EPA).

C. Description of 6 MCAR §4.4201 - 4.4224, Hazardous Waste Facility Permits.

This set of rules also supplements 6 MCAR §§4.4001 - 4.4021. It adds requirements which will enable the Agency to issue hazardous waste facility permits in accordance with the Resource Conservation Recovery Act, 42 U.S.C. §§6901 et seq. and the regulations adopted by EPA. The Agency's efforts to obtain interim authorization to administer the federal hazardous waste permitting program in Minnesota are more fully discussed in the Statement of Need at pages 10-12.

D. Description of 6 MCAR §§4.4301 - 4.4305, Air Emission Facility and Air Pollution Control Equipment Permits.

This set of rules preserves some of the requirements applicable to air pollution sources set forth in existing Minn. Rule APC 3 and amends or adds other requirements. It is also supplementary to 6 MCAR §§4.4001 - 4.4021.

E. Description of Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits.

This set of rules is being amended to delete the permit issuance procedures which it contains. It is also being amended to clarify portions of the existing rule. It is also supplementary to 6 MCAR §§4.4001 - 4.4021.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The statutory authority of the Agency is set forth generally in Minn. Stat. chapters 115 and 116. The Agency's authority to adopt rules setting forth permitting procedures and requirements is found in Minn. Stat. §115.03, subd. 1(e) (1982) and Minn. Stat. §116.07, subd. 4 (1982).

Minn. Stat. §115.03, subd. 1(e) (1982) grants the Agency the following powers and duties:

> To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, regulations, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities.

(Emphasis supplied.) Therefore the Agency has adequate statutory authority to issue permits relating to sources of water pollution and to adopt rules applicable to permit issuance.

Minn. Stat. §116.07, subd. 4 (1982) grants the Agency broad authority to "adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws of 1969, Chapter 1046, for the prevention, abatement, or control of air pollution." The same authority to adopt, amend and rescind rules is granted to the Agency with respect to the "collection, transportation, storage, processing and disposal of solid waste" and with respect to the "management, identification, labeling, classification, storage, collection, treatment,

transportation, processing and disposal of hazardous waste and location of hazardous waste facilities." The Agency's authority to issue permits for sources of air pollution and to solid and hazardous waste facilities is described in Minn. Stat. §116.07, subds. 4a and 4b (1982). The Agency has adequate statutory authority to issue permits to these types of facilities and to prescribe by rule permitting procedures and requirements.

III. STATEMENT OF NEED

The discussion below addresses the need for each set of rules which the Agency proposes to adopt, amend or repeal.

A. Need for 6 MCAR §§4.4001 - 4.4021, Permits.

As previously discussed at page 2, the Agency believes that it is desirable to have a standard permitting procedure to aid the public in understanding the Agency's manner of processing permit applications. The Agency also believes that it is desirable to codify its permitting rules as an easily identifiable group. Since the Agency does not now have a standard procedure and since the current permitting rules are scattered throughout other Agency rules, there is a need to adopt new rules to accomplish this purpose.

B. Need for 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits.

The NPDES permit rules are proposed, along with 6 MCAR §§4.4001 - 4.4021, to replace the existing Minn. Rule WPC 36,

"Regulation for Administration of the National Pollutant Discharge Elimination System (NPDES) and State Disposal System Permit Program." It should be noted that the issuance of state disposal system permits, which are required by Minn. Stat. §115.07 (1982), is covered entirely by 6 MCAR §§4.4001 - 4.4021 and is therefore not a part of the newly proposed 6 MCAR §§4.4101 - 4.4111.

To understand the need for the proposed NPDES permit rule it is useful to know the history of the NPDES program.

In 1972, the United States Congress adopted Amendments to the Federal Water Pollution Control Act (P.L. 92-500) which established the NPDES permit program for the purpose of regulating the discharge of pollutants into the waters of the United States. The program was to be administered on the federal level by the EPA. The amendments established national goals for the improvement of water quality and also recognized the need for achieving existing and future state goals for the improvement of water quality. The issuance of NPDES permits establishing discharge limitations is the means of reaching these goals.

Although the NPDES program is a federal program, Congress specifically provided for the delegation of the administration of the program to the states. The State of Minnesota took the necessary actions to qualify for delegation of administration of the program. One of these actions was to adopt Minn. Rule WPC 36. The State requested authority to administer the NPDES program and

was granted this authority on June 30, 1974. Since that time the Agency has issued NPDES permits pursuant to that rule.

In 1977, Congress adopted the Clean Water Act, 33 U.S. §§1251 et seq., which amended P.L. 92-500. The Act required some changes to be made to the NPDES permit program, both on the federal and state level where administration of the program had been delegated.

EPA, under Congressional mandate to develop rules for a new permitting program relating to hazardous waste facilities, undertook a major effort to consolidate its rules under which it administered several of its permitting programs. As a part of that effort, EPA updated its rules relating to the NPDES program to conform to the new requirements of the Clean Water Act. The results of this effort was the promulgation on May 19, 1980, of 40 C.F.R. Parts 122 and 124, entitled "EPA Administered Permit Programs: the National Pollutant Discharge Elimination System; the Hazardous Waste Permit Program; and the Underground Injection Control Program" and "Procedures for Decisionmaking." These rules are commonly referred to as the "Consolidated Permit Regulations." They provided uniform permitting procedures for five programs administered by EPA.

More recently, EPA revised the format of the Consolidated Permit Regulations, deconsolidating 40 C.F.R. Part 122 (permit requirements) and Part 123 (state program requirements). The

revised rules were published at 48 Fed. Reg. 14146 (April 1, 1983).

Under EPA's regulations set forth in 40 C.F.R. Part 123 (48 Fed. Reg. 14178 - 14189), in order for a state to maintain its authority for administering the NPDES program, the state's permitting program must include the same requirements as those imposed by EPA in its rules.

In developing the standard permitting procedure of 6 MCAR §§4.4001 - 4.4021, the Agency incorporated many of the procedures and requirements contained in EPA's regulations. However, the Agency tried to keep 6 MCAR §§4.4001 - 4.4021 as streamlined as possible and as general as possible so that those rules could apply both to permits issued pursuant to federal law and to permits issued purely under state law. The need for the adoption of 6 MCAR §§4.4101 - 4.4111 arises from the need to supplement the standard permitting rules so that federal and state requirements specifically relating to NPDES permits are included in Minnesota's NPDES program.

C. Need for 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

The hazardous waste facility permit rules are proposed, along with 6 MCAR §§4.4001 - 4.4021, to replace existing 6 MCAR §§4.9006 and 4.9007, "Hazardous waste facility permit program" and "Contents of hazardous waste facility permit applications."

The existing hazardous waste facility permit rules were

adopted pursuant to Minn. Stat. §116.07, subds. 4 and 4a (1982), which allow the Agency to issue permits to hazardous waste facilities and to adopt rules concerning hazardous waste facilities. Since the adoption of those rules, EPA has adopted comprehensive rules relating to the permitting of hazardous waste facilities. These rules are set forth in 40 C.F.R. Parts 270 and 124 (48 Fed. Reg. 14146 et seq.)

EPA is authorized under the Resource Conservation Recovery Act, 42 U.S.C. §§6901 et seq. to delegate its permitting program to a state if the state establishes its own hazardous waste facility permit program and that program is equivalent to (at least as stringent as) EPA's program. The Agency desires to obtain delegation from EPA to administer the hazardous waste facility permit program in Minnesota. In order to obtain this delegation the Agency needs to adopt 6 MCAR §§4.4201 - 4.4224 so that the Agency's program will contain the same requirements as those imposed by the EPA regulations.

6 MCAR §§4.4201 - 4.4224 are necessary for the further reason that the standard permitting rules, 6 MCAR §§4.4001 - 4.4021, do not contain all of the essential requirements of the existing hazardous waste facility permitting rules. These rules are needed to identify who must obtain a permit and to add application requirements, terms and conditions which are specific

to hazardous waste facility permits.

D. Need for 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits.

As in the case of the NPDES and hazardous waste facility programs, the need to adopt 6 MCAR §§4.4301 - 4.4305 arises from the need to supplement the standard permitting rules to address the needs of the Agency in permitting sources of air pollution. The rules as proposed: 1) specify the persons who do and do not need to obtain a permit, 2) enable the Agency to obtain the information it needs to evaluate a permit application, and 3) adds permit conditions which are appropriate to sources of air pollution. All of these provisions are needed to make the permitting procedures for air pollution sources clear to regulated parties and to the public.

E. Need for Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits.

The amendments to Minn. Rule APC 19 are proposed as a part of the Agency's effort to make the standard permitting procedure applicable to as many of its permitting programs as possible. Minn. Rule APC 19 contains a permit procedure as well as other requirements. The Agency is not proposing to make any substantive changes to the current Minn. Rule APC 19 or the indirect source permitting program administered by the Agency.

The amendments to Minn. Rule APC 19 are needed to conform the rule to the format established in 6 MCAR §§4.4001 - 4.4021 and

to eliminate the procedural language of the present Minn. Rule APC 19, which would now be redundant, and in some cases slightly inconsistent with, the standard permitting procedure. The Agency is also taking the opportunity to amend the rule to clarify portions of it for the purpose of making it more easily understandable to the public.

F. Need for Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3.

The Agency's creation of a standard permitting procedure could have been accomplished by amending Minn. Rule MPCA 5, and all of the proposed supplements to the rule could have been accomplished by amending Minn. Rule WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3. However, due to the desire of the Agency to create a uniform format for all of these rules, it was much easier in most cases to draft the new version of the rules "from scratch," incorporating the language of the older rules where desirable. The Agency's proposal to adopt new rules to accomplish the purposes previously described creates the need to repeal Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3.

IV. STATEMENT OF REASONABLENESS

The discussion below addresses the reasonableness of the provisions of each set of rules which the Agency proposes to adopt, amend or repeal.

A. Reasonableness of 6 MCAR §§4.4001 - 4.4021, Permits.

The proposed rules 6 MCAR §§4.4001 - 4.4021 establish a permitting procedure which is logical, fair, and gives the public and the applicant an adequate opportunity to comment on the permit. The rules provide an opportunity for the holding of a contested case hearing or public informational meeting. They set forth reasonable conditions to be included in the permit.

The rules do not create a procedure which is different in any fundamental way from the procedure currently being followed by the Agency under its existing rules. The basic premises of the proposed procedure have always been followed by the Agency in issuing permits for major facilities of all types. Adoption of the rules will therefore not create any unreasonable inconvenience to persons who have been familiar with the Agency's previous permitting procedures.

The rules are consistent with the procedures followed by the EPA pursuant to its permitting regulations (48 Fed. Reg. 14146 et seq.) It is reasonable to make the rules consistent with EPA's rules because this will aid the Agency in obtaining delegation of the hazardous waste facility permitting program pursuant to RCRA and in maintaining its control over the NPDES program.

In many respects, the procedures of 6 MCAR §§4.4001 - 4.4021 are identical to those set forth in EPA's regulations 40 C.F.R. Parts 122, 270, and 124 (48 Fed. Reg. 14146 et seq.). When EPA

published the version of its regulations known as the Consolidated Permit Regulations, it also published a preamble which explains the basis of many of the requirements. The preamble begins at 45 Fed. Reg. 33291 (May 19, 1980). To the extent that the discussion therein supports the reasonableness of 6 MCAR §§4.4001 - 4.4021, it is hereby incorporated herein by reference.

It is also reasonable to make Agency permitting procedures consistent for all Agency permits because consistency will help the public to understand the process for obtaining permits.

The following discussion addresses the reasonableness of the individual provisions of the rules.

6 MCAR §4.4001, Definitions.

Section A. of this rule incorporates by reference a number of definitions contained in 6 MCAR §4.3002, which is one of the Agency's rules of procedure. Adoption of existing definitions by reference is reasonable because it promotes consistency between Agency rules governing the administration of its programs.

Section B. of the rule contains three additional definitions.

"Draft permit" is defined for the purpose of making it clear that if the Director's preliminary determination on a permit application is to deny, to refuse to reissue, or to revoke a permit, the public is to be given notice of that preliminary determination in the same manner as if a permit were proposed to be issued, reissued, modified, or revoked and reissued. It is reasonable to define this term because the definition helps the

public to understand the public notice requirements.

"Permit" is defined to clarify the fact that the rules are intended to apply only to permits and not to orders, variances, stipulation agreements or certifications issued by the Agency. It is reasonable to define this term to clarify this point.

"General permit" is defined to clarify that this term applies only to those permits issued under 6 MCAR §4.4021 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar. This is a new term for the Agency, and thus it is reasonable to define it in order to inform the public of the type of permit to which the term applies.

6 MCAR §4.4002, Applicability.

It is the desire of the Agency to make its standard permitting procedure applicable to as many Agency permitting programs as possible. Sections A. - J. specifically list those permits to which the rule applies. It is reasonable to specify those permits to which the rules apply.

Due to the nature of certain permits, it was necessary to make certain exceptions to the rules. These exceptions are found in sections D., E., G., H., I. and J. and are discussed further below.

Section D. (letters of approval for sewage sludge landspreading sites): Section D. provides exceptions from 6 MCAR §§4.4004 A. and C., 4.4010 D. and E. and 4.4011 for letters of

approval for sewage sludge landspreading sites.

6 MCAR §4.4004 A. provides that, except as otherwise required by 6 MCAR §4.4106 and 4.4204, a permit application for a new facility or activity may be submitted at any time. However, it is recommended that applications for new permits be submitted at least 180 days before the planned date of the commencement of facility construction of the activity. 6 MCAR §4.4004 C. provides that applications for permits to be reissued shall be submitted at least 180 days before the expiration date of the existing permit. The main purpose for this lead time is to assure that the Agency will have adequate time to review permit applications and follow the permitting procedures.

6 MCAR §4.4004 D. provides that the time periods referenced in 6 MCAR §4.4004 A. and C. shall be 30 days instead of 180 days. This is reasonable because persons needing a letter of approval for sewage sludge landspreading sites typically find themselves in circumstances where they do not have 180 days advance notice of the need for the new or reissued permit. In addition, the Agency has in the past handled these types of approvals in a short period of time and does not need the full 180 days to process the permit application.

6 MCAR §4.4010 D. and E. and 4.4011 provide for public notice of the permit application and preliminary determination and for a public comment period. The purpose of the public notice provisions of the rules is to give the public 30 days' notice of

the pendency of significant actions which are proposed and which may have an adverse impact on the environment. Section D. exempts letters of approval for sewage sludge landspreading sites from these requirements. This is reasonable because public participation requirements for sewage sludge letters of approval are specifically set forth in 6 MCAR §4.6107 C. That rule establishes a 14 day notice period for these approvals.

Section E. (sanitary sewer extensions): Section E. provides exceptions from 6 MCAR §§4.4004 A. and C., 4.4010 D. and E., 4.4011, and 4.4015 for sanitary sewer extension permits.

Section E. provides that the time periods referenced in 6 MCAR §4.4004 A. and C. shall be 60 days instead of 180 days. It is reasonable to shorten the application period for sanitary sewer extension permit applications because these applications have in the past been processed in a reasonably short period of time.

6 MCAR §§4.4010 D. and E. and 4.4011 relate to public notice procedures. The Agency has been issuing sanitary sewer extension permits for many years and has not used a public notice procedure as set forth in 6 MCAR §§4.4010 D. and E. and 4.4011. The reason for this is that, although there is a need to review applications for sanitary sewer extension permits to determine whether the receiving disposal facility can handle the additional wastewater load, an approval to construct a sewer extension does not authorize an additional discharge to the waters of the state.

It authorizes construction of a system to carry wastewater to a publicly owned treatment works (POTW). The owner or operator of the POTW is also required to have an Agency permit and to operate the POTW in compliance with applicable standards, schedules of compliance and permit conditions. This permit is issued only after full public notice procedures. It is reasonable to continue to issue sewer extension permits in the same manner as the Agency has in the past becaue it allows the Agency to act expeditiously on these types of permit applications and because the Agency's experience is that, in the vast majority of cases, there is not a great deal of public interest in sewer extension permits from the standpoint of impacts on water quality. Where a particular case may be controversial from that standpoint, however, the rules do not preclude the Agency from voluntarily seeking public input on the proposed Agency action.

6 MCAR §4.4015 relates to the terms and conditions of permits. The provisions of 6 MCAR §4.4011 make sense in terms of a facility which will be constructed and then actively operated for a period after completion of construction. Sanitary sewer extensions, once in place, are not actively operated in the same manner as other facilities. They remain in place underground and act as a conveyance to a POTW. The terms and conditions described in 6 MCAR §4.4015 do not make sense in this context. It is therefore reasonable to exempt sanitary sewer extension permits from the requirements of that rule.

Section G. (feedlot permits): Section G. provides exceptions from 6 MCAR §§4.4004 - 4.4007 for permits for the construction or operation of a feedlot. This is reasonable because the Agency's rules 6 MCAR §§4.8051, "Rules for the Control of Pollution from Animal Feedlots," and 5.8052, "Rules for the Processing of Animal Feedlot Applications by Counties," already cover the subject matter addressed by 6 MCAR §4.4004 - 4.4007.

Section H. (liquid storage permits): Section H. provides exceptions from 6 MCAR §§4.4004 A. and C., 4.4010 D. and E., 4.4011, and 4.4015.

Section H. provides that the time periods referenced in 6 MCAR §4.4004.A. and C. shall be 90 days instead of 180 days. It is reasonable to establish a 90 day application period for liquid storage permits because these applications in the past have been processed in a relatively short time.

6 MCAR §§4.4006 C., D. and E. relate to public notice procedures. It is reasonable to exclude liquid storage permits from public notice requirements because liquid storage permits have been issued for many years under Minn. Rule WPC 4 without public notice. Permitted facilities are not designed to result in a discharge to surface or ground water, and the primary thrust of the permit requirement is to ensure proper construction of the storage facility. This exclusion does not preclude the Agency from seeking public input in controversial cases.

Section I. (air emission facility permits):

Section I. provides that the standard permitting procedure does not apply to permits issued pursuant to Minn. Rule APC 8, which relates to open burning. Section I. also exempts from the public notice requirements of 6 MCAR §§4.4010 D. and E. and 4.4011 permits for the construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of less than 100 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of less than 500 tons per year. The rule exempts from the requirements of 6 MCAR §4.4010 E.3. permits for the construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of 100 tons per year to 250 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of 500 tons per year to 5,000 tons per year. Finally, the rule provides that the recommended time period for submission of applications for new permits is 180 days, except that for a permit not subject to a Minnesota or federal public notice requirement, the recommended time period shall be 90 days.

It is reasonable to exempt the open burning permit program from the standard permitting procedure because of the difference in purpose of the open burning permit program and the other permit

programs of the Agency. An open burning permit does not authorize construction or operation of an on-going facility; rather, its purpose is to ensure that when a person conducts open burning, it is conducted in compliance with the physical requirements of the rule, such as distance requirements and restrictions from burning certain materials. There is not, as there is with facility permits, a need to establish on-going monitoritoring and operational requirements in the permit. The activity to be permitted is generally a one-time event of limited duration. The need for the action usually becomes known on short notice, which makes it reasonable not to require extensive applications, draft permits, and a 30-day public comment period.

The rule as proposed exempts from the notice requirements specified in 6 MCAR §§4.4010 D. and E. and 4.4011 permit applications for new, modified, or reconstructed facilities with emissions of less than 100 tons per year of a single criteria pollutant. Ths rule as proposed has the same exemption for renewal of existing permits for facilities with an actual emission rate of a single criteria pollutant of less than 500 tons per year. The purpose of this exemption is to require full public notice procedures only for facilities which the Agency considers to be "major." It is reasonable to select a 100 ton cut-off for new, modified, or reconstructed facilities because this has traditionally been the cut-off point for classifying sources as

"major." It is reasonable to select a higher cut-off point for renewal of existing permits because when the facilities with emissions of between 100 and 500 tons emissions were originally permitted, they would have gone through public notice, and if renewed permit provides no change in emissions, there is unlikely to be significant public interest in renewal of permits for facilities of this size. The reasonableness of these exemptions is borne out by Agency experience, which has shown that the above-described types of permits have not generated much public interest in the past.

The proposed rule also exempts from the requirements of 6 MCAR §4.4010 E. facilities with emissions in the range of 100 tons per year to 250 tons per year for new, modified or reconstructed facilities and 500 tons per year to 5000 tons per year for existing facilities. 6 MCAR §4.4010 E. requires circulation of the public notice of the permit application and preliminary determination in the geographical area of the facility. This exemption is reasonable because the past experience of the Agency has demonstrated that members of the public who are interested in facilities of the size ranges are adequately informed if the Agency notifies "interested persons" as required 6 MCAR §4.4010 E.2. However, it is reasonable to require full public notice for facilities above these size ranges because these facilities have greater potential for adverse environmental

impacts and are thus more likely to generate interest from the general public.

Section J. (permits for facilities which attract mobile sources of air pollutants): Section J. exempts indirect source permits from 6 MCAR §4.4015 A. and B. Section 4.4015 A. specifies a five-year term for permits. Section 4.4015 B. requires that certain types of special conditions be included in permits. This permitting program constitutes a preconstruction review of facilties which attract cars, which may result in unacceptably high concentrations of carbon monoxide. Once a facility receives a construction permit from the Agency, the Agency does not regulate the operation of the facility in the same manner as it regulates a facility which emits air pollutants. It is reasonable to exempt this type of permit from 6 MCAR §4.4015 A. because it is a permit which primarily gives preconstruction approval to a project, negating the need for a specific term of the permit. It is reasonable to exempt this type of permit from 6 MCAR §4.4015 B. because the type of special conditions required in that rule are not applicable to indirect source permits.

6 MCAR §4.4003, Permit Required.

This rule makes it clear that a person who is required to obtain a permit shall not install, modify or operate the facility to be permitted until the permit has been issued by the Agency. This provision parallels other statutes (see, e.g., Minn. Stat.

§116.081 (1982)) and rules which relate to the requirement to obtain Agency permits. It is reasonable to include this provision to clarify and emphasize that construction, installation, modification, or operation must not begin until after a permit has been issued.

6 MCAR §4.4004, Application Deadlines.

This rule addresses the time for filing applications. Sections A. - C. are discussed below.

Section A., Application for new permit: This rule provides that applications for new permits may be filed at any time but that it is recommended that applications be filed 180 days prior to the planned date of commencement of the activity for which a permit is sought. It is reasonable to recommend advance submission of applications for new permits and to require advance submission of applications for permit reissuance because the Agency needs adequate time to review the permit application.

Section B., Modification or revocation and reissuance of existing permits: This rule provides that application for modification of a permit may be made at any time, except that if the need for the modification stems from a federal requirement, then the rule requires the application to be filed in accordance with the time limits specified by EPA. This is reasonable because this situation will only occur where the Agency has been delegated the authority to administer a federal program,

such as the NPDES permit program.

Section C., Reissuance of existing permits: This rule requires that an application for reissuance of a permit must be filed 180 days prior to the expiration of the existing permit. It is reasonable to require advance submission of applications for permit reissuance because the Agency needs adequate time to review the permit application. The applicant has certain knowledge of the expiration date of the permit, and thus can easily plan to meet the application deadline.

6 MCAR §4.4005, Written Application.

This rule sets forth the information required to be submitted by the applicant. It is reasonable to require the applicant to submit sufficient information so that the Agency can determine whether or not the proposed facility will comply with all applicable statutes and rules. The information requirements in this rule are consistent with the Agency's existing rule, Minn. Rule MPCA 5, and with EPA's permitting regulations.

6 MCAR §4.4006, Signatures.

This rule specifies who must sign permit applications. Sections A. through C. specify persons who have substantial authority in the organization constituting the applicant. The purpose of these requirements is to ensure that the signer of the application has authority to bind the applicant. This is reasonable because it makes the management of the applicant

directly accountable and responsible for the statements made in the permit application.

Section D. provides that if the operator of the facility for which the application is submitted is different from the owner, both the owner and the operator must sign the application. However, the Director is authorized to make exceptions from this if the Director finds that it is impracticable under the circumstances to require both signatures. The requirement that both the owner and operator sign the application is reasonable because each of these entities has some degree of control over the facility or activity, and thus both should be responsible for the information that appears in the permit application. The provision for exception to this rule is reasonable because there may be circumstances when one of those two parties has all the necessary information for the permit such that the requirement for the other party to sign the application is a mere technicality and obtaining the second signature is impracticable. Under these circumstances, it is reasonable to require only one signature.

6 MCAR §4.4007, Certification.

EPA's rules relating to state program requirements, 40 C.F.R. §§123.25(a)(5) and 271.14(e) require states administering NPDES and RCRA programs to require applicants to certify the truth and accuracy of the information in the permit application, based on their inquiry of the person or persons who manage the system, or

those persons directly responsible for gathering the information. It is reasonable to include this requirement to enable the Agency to retain its authority to administer the NPDES program and to obtain authority to administer the hazardous waste facility permit program. It is also reasonable to include this requirement for applicants for all Agency permits covered by the rule because it will encourage applicants to inquire into the truth and accuracy of the information they intend to submit.

6 MCAR §4.4008, Retention of Records.

EPA's rules relating to state program requirements, 40 C.F.R. §§123.25(a)(4) and 271.14(d), require states administering NPDES and RCRA programs to require applicants to retain records relating to the permit application for three years. It is reasonable to include this requirement to enable the Agency to retain its authority to administer the NPDES program and to obtain authority to administer the hazardous waste facility permit program. It is reasonable to apply this requirement to applicants for all Agency permits covered by the rule because questions may arise as to the information used in making the application, and retention of the information would assist in the resolution of those questions.

This rule provides that the time period is automatically extended if there is a pending enforcement action against the facility and that the Director may also request that the time period be extended. This is reasonable because historical information may be important in an enforcement action or may be

needed under the circumstances in a given case.

6 MCAR §4.4009, Review of Permit Application.

This rule provides for review of the permit application by the Director and for suspension of processing of the appication until complete information is received. This provision is reasonable because the Director cannot make sound decisions as to whether the proposed facility will meet applicable statutes and rules unless full and complete information is received.

6 MCAR §4.4010, Preliminary Determination and Draft Permit.

This rule requires the Director to make a preliminary determination as to whether the permit application should be granted or denied and to draft a permit in the form in which the Director would recommend that it be issued. The rule also provides for preparation of a fact sheet and a public notice and for distribution of the public notice. The reasonableness of the individual sections of the rule are discussed below.

Section A., Preliminary determination: It is reasonable for the Director to make a preliminary determination on the permit application because this preliminary determination serves as a focal point in soliciting comments from the applicant and the public. The preliminary determination also serves as the Director's recommendation to the Agency.

Section B., Draft permit: This section creates no new requirements. The Agency staff has always prepared a draft

permit. It is reasonable to require the preparation of a draft permit because it puts the applicant and the public on notice of the specific requirements which the Director recommends that the Agency impose on the applicant.

Section C., Fact sheet: This rule requires the preparation of a fact sheet for certain NPDES and hazardous waste facility permits and for each draft permit which the Director finds is the subject of widespread public interest or involves issues of major importance to the Agency or to the public. The preparation of a fact sheet has always been a requirement of the NPDES permit program under existing Minn. Rule WPC 36. This requirement is also required to be included in the Agency's NPDES and hazardous waste facility permit programs by 40 C.F.R. §§123.25(a)(27) and 271.14(w). The purpose of a fact sheet is to explain the basis for the Director's preliminary determination and the terms and conditions of the draft permit. This is reasonable because it aids the applicant and the public to understand the Director's recommendation.

Section D., Public notice of permit application and preliminary determination: This section provides for the preparation of a public notice of the permit application and the preliminary determination. The public notice must state that any person may submit comments on the draft permit or on the preliminary determination during the public comment period, which shall be 30 days unless a different public comment period is

established by another Agency rule. This type of public notice has been used in many of the Agency's permit programs (see Minn. Rules WPC 36 and APC 3). Public notice requirements are also required to be included in the Agency's NPDES and hazardous waste facility permit programs by 40 C.F.R. §§123.25(a)(28) and 271.14(x). It is reasonable to issue public notice of permit applications and the preliminary determinations thereon which solicit public comments because it gives persons outside the Agency an opportunity to raise legitimate issues which the Agency should consider in issuing the permit.

Section E., Distribution of public notice: This section lists the ways that the Director must make the public notice available to members of the public. These or similar types of requirements have been followed in the past in issuing some Agency permits. These distribution requirements are also required to be included in the Agency NPDES and hazardous waste facility permit programs by 40 C.F.R. §123.25(a)(28) and 271.14(x). It is reasonable to distribute the public notice in the manner specified in this section because the requirements are designed to reach a wide range of interested persons.

6 MCAR §4.4011, Public Comments.

This rule specifies that during the public comment period any interested person, including the applicant, may submit written comments on the permit application or on the draft permit. It also allows a person to request that the Agency hold a public

informational meeting or a contested case hearing. It requires the persons making the comments to state their interest in the permit, the action they want the Agency to take and the reasons for the request. These requirements are reasonable because written comments will help the Agency to understand what is desired and why.

If a permit is only proposed to be modified, the rule limits comments to the modifications. This is reasonable because the remainder of the permit conditions were subject to full public notice and opportunity for comment and hearing at the time when the original permit was issued, and these conditions need not be reopened when no change is proposed.

The rule also permits the Director to extend the public comment period if necessary to facilitate public comment. This is reasonable because occasionally the applicant or a member of the public can show good cause why more time is needed for comment, and occasionally unforeseen circumstances arise which make extension of the comment period desirable.

6 MCAR §4.4012, Public Informational Meeting.

This rule specifies what must be done when the Agency receives a request to hold a public informational meeting.

The reasonableness of this rule is best understood in light of the Agency's experience. In the past, the Agency has put permits on public notice and have received requests for a "public hearing." Further discussion with the person requesting the

hearing has revealed that in some cases the person does not want to participate in a contested case hearing, but only wants a forum for public discussion to gain a better understanding of the activity proposed to be permitted. The "public informational meeting" serves this purpose.

The rule provides that the Agency shall hold a public informational meeting if such a meeting would help clarify and resolve issues regarding the Director's preliminary determination or the terms of the draft permit. This language is intended to be limiting because in the past the Agency has received requests for "public hearings" concerning issues which the Agency has no power to affect, such as local zoning disputes. It is reasonable to include this limiting language because holding Agency meetings on issues over which the Agency has no jurisdiction serves no purpose, expends Agency resources needlessly, and is ultimately frustrating to all concerned. The one exception to this rule is that if pursuant to 6 MCAR §4.4218 A. a public informational meeting is requested with respect to a hazardous waste facility, such a meeting must be held. This is due to the requirements of federal law, which are further discussed at page 132.

This rule provides for the holding of the public informational meeting in the geographical area of the facility or activity to be permitted, if the person requesting the action so desires. This is reasonable because holding the meeting in the affected area will promote public participation.

The rule also provides for the issuance of a notice of the meeting. This is reasonable because the people need to know the time, date, place and subject matter of the meeting in order to attend.

The rule provides for consolidation of two or more matters if that is desirable and does not adversely affect anyone. This is reasonable because it provides for the economical use of Agency resources.

6 MCAR §4.4013, Contested Case Hearing.

The purpose of this rule is to set forth criteria for granting a request for a contested case hearing, to specify the contents of the notice of hearing, and to cross reference the statutes and other rules under which the hearing will be held.

The criteria for granting a contested case hearing are: 1) that the person requesting the hearing has raised a material issue of fact or the application of facts to law, 2) that the Agency has jurisdiction to make determinations on the issue, and 3) that there is a reasonable basis underlying the issue raised. These criteria are intended to ensure that contested case hearings, which are expensive and time-consuming, are only held when there is a genuine issue to be decided involving facts such that the taking of testimony and evidence will be helpful in making a decision. Also, the issue must be within the power of the Agency to decide or else all parties' time and effort will be spent for no purpose. This is reasonable in the interest of the efficient

use of Agency and other resources and is also in the interest of fairness to the applicant and the public.

The rule provides that if the Agency denies a request for a contested case hearing and if a public informational meeting would help clarify or resolve issues regarding the terms of the draft permit, such a meeting shall be held. This is reasonable because a public informational meeting is a more suitable forum for the concerns of a person who requests a contested case hearing without raising a material issue.

The rule specifies the contents of the public notice and cross references the statutes and other rules under which the hearing will be held. These sections are reasonably designed to clarify to the public what procedures will be followed once a contested case hearing is ordered.

6 MCAR §4.4014, Final Determination.

This rule sets forth the basis upon which the Agency will make a final determination on a permit. During the public comment period on this rule the Director will propose modifications to the language of this proposed rule. Specifically, the Director will propose the following amendment to the proposed language of Sections A., B.1, and B.2.:

> A. Agency action. Except as provided in B., the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state ~~and federal~~

pollution control statutes administered by the agency, ~~and~~ agency rules, and conditions of the permit and that all applicable requirements of Minnesota Statutues, chapter 116D and the rules promulgated thereunder have been fulfilled.

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

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

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

The following discussion addresses the reasonableness of the rule as modified.

Section A. of this rule provides that, except as provided in B., the Agency shall issue, reissue, revoke and reissue, or modify a permit if the Agency determines that the proposed permittee will comply or will undertake a schedule of compliance to achieve compliance with all applicable state pollution control statutes administered by the agency, agency rules, and conditions of the permit and that all applicable requirements of Minn. Stat. §116D and the rules promulgated thereunder have been fulfilled. Section B. sets forth findings of the Agency which constitute

justification for the Agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke the permit without reissuance. These findings are:

1. That with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state pollution control statutes administered by the agency, agency rules, and conditions of the permit;
2. That there exists at the facility to be permitted unresolved noncompliance with applicable state pollution control statutes, agency rules or permit conditions and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;
3. That the permittee has failed to disclose fully all facts relevant to the facility or activity to be permitted, or that the permittee has submitted false or misleading information to the Agency or to the Director;
4. That the permitted facility or activity endangers human health or the environment and that the endangerment cannot be removed by a modification of the conditions of the permit;
5. That all applicable requirements of Minn. Stat. §116D and the rules promulgated thereunder have not been fulfilled.

It is reasonable to set forth the standards under which the Agency will take final action on permit applications. It is

reasonable to issue a permit only if the permittee will either meet or will undertake a schedule of compliance to meet all applicable pollution control statutes and rules, including Minn. Stat. §116D and the rules promulgated thereunder, and with the conditions of the permit because the purpose of the entire permitting program is to enforce pollution control statutes and rules and to protect the environment. It is reasonable to deny a permit application if there is an unresolved noncompliance situation at the facility to be permitted because granting the application would allow the noncompliance to continue. It is also reasonable to deny a permit application if the applicant has failed to disclose all relevant facts or if the permittee has submitted false or misleading information, because the denial will act as a sanction for behavior which is not forthright and honest.

Section C. cross references the Agency rules which the Agency must follow if a contested case hearing has been held. This is reasonable because it informs the public as to where the proper procedures are set forth.

6 MCAR §4.4015, Terms and Conditions of Permits.

This rule provides for the term of Agency permits (Section A.), the special conditions to be included in Agency permits (Section B.), and the general conditions to be included in Agency permits (Section C.). The reasonableness of these sections is discussed below.

Section A., Term of permit: This section

establishes that the maximum term of an Agency permit will be five years. Existing rules relating to NPDES permits, hazardous waste facility permits, and air emission facilities are already required to have a maximum term of five years. (Minn. Rule WPC 36(m); 6 MCAR §4.9006 G.1.f.; Minn. Rule APC 3(a)(3)(dd).) Therefore for these permits, this rule creates no new requirements. It is reasonable to extend this requirement to other permits covered by the rule because the Agency's experience has shown that state and federal pollution control statues and rules as well as state and federal policy for implementing the laws can change significantly over a relatively short period of time. These developments change the responsibilities of the permittees. In addition, other conditions within the control of the permittee can change over time. Including an expiration date in permits which is no greater than five years after the date of issuance is desirable so that the permitted activity can be reevaluated and public input may be solicited. This rule forces both the permittee and the Agency to make sure that the permit and the operations of the permitte are up to date with state and federal laws.

Section B., Special conditions: This section provides for a case-by-case determination as to what permit conditions are needed to ensure that the permittee will conduct the permitted activity in a manner which is in compliance with all applicable pollution control statutes and rules. It reflects the current practices and existing rules of the Agency with respect to

permit issuance. It allows for the inclusion in the permit of any needed schedule of compliance, monitoring and testing and reporting requirements, retention of records, and a requirement that all required reports be signed by the permittee or a duly authorized representative. It is reasonable to tailor permit conditions for the special circumstances and individual operations of the permittee to ensure that the permittee will comply with all applicable statutes and rules. It is also reasonable to require monitoring and testing and reporting so that the Agency can assess the compliance status of the permitted activity.

Section C., General conditions: This section requires certain conditions to be included in the permit, either expressly or by reference. Many of them have been imposed in Agency permits in the past. Others are paraphrased from an existing Agency rule, as follows:

6 MCAR §4.4015	Existing Rule
C.1.	Minn. Rule APC 3(g)(1)(aa)
C.2.	Minn. Rule APC 3(g)(1)(bb)
C.3.	Minn. Rule WPC 36(1)(6)(bb) Minn. Rule APC 3(g)(1)(cc) Minn. Rule APC 19(h)(4)
C.5.	Minn. Rule APC 3(g)(1)(dd) 6 MCAR §4.9006 G.1.a.

6 MCAR §4.4015	Existing Rule
C.8.	Minn. Rule APC 3(g)(3)(aa) Minn. Rule APC 19(h)(8)
C.9.	Minn. Rule WPC 36(1)(6)(dd) 6 MCAR §4.9006 G.1.b. Minn. Rule APC 3(g)(1)(ee) and (ff) Minn. Rule APC 19(h)(7)

General conditions C.1., C.2., C.3., C.4., C.7., C.9., and C.15. are statements of existing law. It is reasonable to include these provisions in the rules in order to notify the permittee of these principles. Conditions C.5., C.6., C.8., C.10. - 14. place affirmative duties on the permittee to conduct the permitted activity in conformance with the permit, to provide relevant information on request, to report violations of permit conditions, to give notice of alterations or additions to the facility or activity which could result in noncompliance, and to seek approval before transferring the permit. It is reasonable to impose these conditons upon permittees because they aid the Agency, which has limited staff and cannot inspect and monitor all the permitted facilities and activities in the state, in enforcing pollution control laws.

6 MCAR §4.4016, Continuation of Expired Permit.

This rule allows a permittee to continue to conduct the permitted activity beyond the permit's expiration date if the permittee has filed a timely application for reissuance, the permittee is in compliance with the expired permit, and the

Agency, through no fault of the permittee, has not yet taken final action on permit reissuance. This rule is reasonable because it prevents the permittee from being out of compliance with the requirement to hold a permit where the permittee has done all that can reasonably be expected but the Agency, either because of the holding of a public informational meeting or contested case hearing or because of other administrative delays has not acted on the application for reissuance of the permit.

6 MCAR §4.4017, Justification to Commence Modification of Permit or Revocation and Reissuance of Permit.

This rule sets forth eight conditions which justify the commencement of proceedings to modify a permit or to revoke and reissue a permit. These conditions relate to: changes in the permitted facility or activity which have the potential to affect the environment; receipt of new information; changes in pollution control statutes or rules due to either federal, state or court action; events beyond the control of the permittee; a finding by the Director that a change is needed in order to remove a danger to the human health or the environment; or receipt of a request to transfer the permit. It is reasonable to include these provisions in the rules because they put permittees on notice as to what sorts of events will trigger the modification or revocation and reissuance of an Agency permit.

6 MCAR §4.4018, Justification to Commence Revocation Without Reissuance of Permit.

This rule lists four justifications for revocations without

reissuance of a permit. These justifications involve failure of the permittee to comply with pollution control laws, failure of the permittee to submit complete and truthful information, termination of the permitted activity, or finding that the activity endangers human health or the environment and that the danger cannot be cured by modifying the permit. It is reasonable to include these provisions in the rule because the situations listed are serious in nature. The fact that 6 MCAR §4.4014 C. gives the permittee the right to a contested case hearing prior to revocation of the permit renders this rule reasonable from the standpoint of due process.

6 MCAR §4.4019, Procedure for Modification; Revocation and Reissuance; and Revocation Without Reissuance of Permits.

Section A. of this rule provides that the procedure for modification, or revocation and reissuance of permits shall be the same procedure as is used in the initial issuance of permits, with certain exceptions to that rule specified in Sections B and C. This is reasonable because the permit issuance procedure provides for comment by the applicant and by the public on the terms and conditions under which the permittee will be allowed to operate.

Section B. provides that, upon obtaining the consent of the permittee, the Agency may modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR §§4.4010 - 4.4019 if the Agency finds that no other change in the permit is necessary and if the Agency has

received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. During the public comment period on the rule the Agency intends to propose the following amendment to the first sentence of the rule that would require submission of a binding written agreement only for solid and hazardous waste facilities:

> Upon obtaining the consent of the permittee, the agency may modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR §4.4010-4.4019 if the agency finds that no other change in the permit is necessary. ~~and if~~ If the permit is a permit described in 6 MCAR §4.4002 A. or B., the agency must also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee.

The rule also provides that within 60 days of receipt of a complete written application for modification as to ownership and control, the Director must place the matter on the Agency agenda for consideration by the Agency. The rule provides that the Agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. This rule as amended is reasonable because if the proposed permit modification involves no change in the permitted facility or activity, there should be no change in the impact of the permitted facility or activity on the environment and thus no need to follow public notice procedures. However, where the permitted facility or

activity involves solid or hazardous waste, the Agency is interested in ensuring that the buyer and seller have come to an agreement as to the allocation of liabilities and responsibilities with respect to the facilities, since closure of a solid or hazardous waste facility will not necessarily end a pollution problem at the facility. Therefore it is reasonable to require the permittee and the transferee to demonstrate by documentation that they have allocated between themselves any responsibilities and liabilities. It should be noted that this rule does not require the submission of a written agreement if the permittee and the transferee elect to follow the standard permit procedure for the permit modification.

Section C. lists four minor modifications which need not go through the entire public notice procedure. These minor modifications include typographical errors, minor changes in interim compliance dates, changes in the permit which do not involve any increase in the emission or discharge of pollutants into the environment and which do not reduce the Agency's ability to monitor the permittee's compliance with pollution control statutes and rules, and minor modifications provided in other applicable Agency rules. It is reasonable to minimize the Agency's effort in making changes to permits which have no impact, real or potential, upon the environment.

Section D. of the rule provides that the Director must notify

the permittee of any proposal to revoke a permit without reissuance. The permittee, upon request, has the right to a contested case hearing. This section of the rule is reasonable because it gives the permittee the opportunity to prove in an evidentiary hearing that the proposed revocation is not justified.

6 MCAR §4.4020, Mailing List.

This rule establishes a mailing list to be kept by the Agency for persons who desire to receive copies of some or all public notices issued by the Director pursuant to 6 MCAR §4.4010 D. It provides a mechanism for the Director to keep the list up to date. This practice has been followed informally by the Agency in the past. It is reasonable to include this provision in the rule to notify the public of their opportunity to receive notices issued by the Agency relating to proposed Agency permits.

6 MCAR §4.4021, General Permits.

This rule establishes a procedure by which the Agency may, for certain categories of pemittees, issue a single permit to several permittees whose operations, emissions, activities, discharges, or facilities are the same or substantiall similar. Such a permit is known as a "general permit." At the outset of this discussion it should be noted that the issuance of a single general permit to several permittees will be an administrative convenience to the Agency and not a relaxation of requirements for permittees. These permittees will still be required to submit permit applications and perform all of the obligations of other

permittees.

The general permit concept is derived from a similar EPA procedure which is a part of the NPDES program and which is applicable to certain categories of discharges that have little or no impact on the environment. These categories, because they are numerous, would require significant administrative resources to permit individually. This expenditure of administrative resources is not seen as having a corresponding benefit to the environment. Therefore, EPA has developed a procedure whereby a single permit covers several permittees. The Agency has determined that Minnesota has categories of permittees in many of its permitting programs which could appropriately be regulated by a general permit.

Sections A. - F. of the rule are discussed below.

Section A. of the rule provides that this type of permit can be issued for all agency permits listed in 6 MCAR §4.4002 except for agency permits required for the treatment, storage, and disposal of hazardous waste. This is reasonable because the Agency has been informed that if it provided for issuance of general permits to hazardous waste facilities, EPA would not delegate its RCRA permitting program to the Agency on the grounds that the Agency's rule is less stringent than EPA's rules.

Section B. of the rule provides that if the Agency finds that it is appropriate to issue a single permit to a category of permittees whose operations, emissions, activities, discharges or

facilities are the same or substantially similar, it shall proceed under Sections C. through F. This rule is reasonable because it describes the nature of a general permit and directs the public to the additional rules under which the Agency must proceed in order to issue a general permit.

Section C. states that the Agency shall not issue a general permit unless it makes four findings:

1. That there are several permit applicants or potential permit applicants who have the same or substantially similar operations, emissions, activities, discharges, or facilities;
2. That the permit applicants discharge, emit, process, handle, or dispose of the same types of waste;
3. That the operations, emissions, activities, discharges, or facilities are subject to the same or substantially similar standards, limitations, and operating requirements; and
4. That the operations, emissions, activities, discharges, or facilites are subject to the same or substantially similar monitoring requirements.

It is reasonable to require the Agency to make these finding ecause otherwise a single permit would not appropriately regulate all of the facilities to be covered by the permit.

Section D. makes it clear that the procedures to be followed to issue a general permit are the same as for other permits.

However, the Agency is required to publish notice of intent to issue a general permit in the State Register. This is reasonable because the different facilites and activities to be regulated by a general permit are likely to be located in different areas of state, and for this reason there may be statewide interest in the general permit. Notice in the State Register will provide statewide notice of the intent to issue the general permit.

Section E. provides that a general permit issued by the Agency must state specifically the geographic area covered by the permit. This is reasonable because it informs the public of the exact nature of the permit.

Section F. provides that if a permit applicant eligible to be covered by a general permit requests an individual permit, the Agency shall process the application as an application for an individual permit. This is reasonable because the general permit procedure is intended only as an administrative convenience, and if the permittee would prefer to have an individual permit, the Agency has no objection to processing the application in that manner.

Section F. also provides that if the Agency finds that the operations, emissions, activities, discharges, or facilities of a permit applicant or a permittee covered by a general permit would be more appropriately controlled by an individual permit, the Agency shall issue an individual permit. The rule also lists factors to be considered in this determination. These factors

relate to the potential for significant environmenal effects; the compliance of the permittee with the general permit and with applicable statutes and rules, and alterations to the facility permitted under the general permit. This is reasonable because it is foreseeable that some facilities which would otherwise be eligible to be covered by a general permit do in fact require special attention and individualized permit conditions.

B. Reasonableness of 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits.

It is reasonable to adopt rules which, in combination with 6 MCAR §§4.4001 - 4.4021, replace existing Minn. Rule WPC 36 relating to NPDES permits because the standard permitting procedure rules alone do not cover the requirements that are specific to NPDES permits. In addition, the federal government requires states administering the NPDES program to impose certain requirements upon permit applicants and permittees which are not contained in the existing rule.

In many respects, the requirements of 6 MCAR §§4.4101 - 4.4111 are identical to the requirements of EPA set forth in 40 C.F.R. Parts 122 and 124. As previously discussed at page 15, the preamble to EPA's publication of the Consolidated Permit Regulations explains the basis of many of the requirements. This preamble begins at 45 Fed. Reg. 33291 (May 19, 1980). To the extent that the discussion therein supports the reasonableness of 6 MCAR §§4.4101 - 4.4111, it is hereby incorporated herein by

reference.

The following discussion addresses the reasonableness of the individual provisions of the rules.

6 MCAR §4.4101, Scope and Construction of Rules.

This rule lists the rules which govern the application procedures, issuance and conditions of a NPDES permit. It is reasonable to include this provision to make it clear that this rule must be read in conjunction with other Agency rules for complete coverage of the subject matter.

6 MCAR §4.4102, Satisfaction of Requirement for Two Permits.

This rule provides that if a person who discharges a pollutant into the waters of the state is required by Minnesota statutes and rules to obtain both a NPDES and a state disposal system permit, the issuance of a NPDES permit under these rules shall satisfy the requirement to obtain both permits. This rule is reasonable because it embodies current Agency practice and because it makes permitting simpler for permittees who are technically under the obligation to obtain two permits for the same activity.

6 MCAR §4.4103, Definitions.

Section A. of this rule incorporates by reference definitions contained in Minn. Stat. §115.01 (1982) and in 6 MCAR §4.4001. Cross referencing existing statutory definitions is reasonable because it notifies the public of the existence of key definitions which have been established by the legislature. Adopting the

definitions of 6 MCAR §4.4001 by reference is reasonable because it promotes consistency within the Agency's permitting programs.

Sections B. through EE. of the rule contain 30 additional definitions. Of these, twenty are either taken directly from or are paraphrased from the EPA regulations. 40 C.F.R. §122.2 defines "average monthly discharge limitation," "average weekly discharge limitation," "best management practices," "continuous discharge," "daily discharge," "direct discharge," "discharge of of a pollutant," "effluent limitation," "effluent limitation guideline," "indirect discharger," "maximum daily discharge," "new discharger," "new source," "primary industry category," "process wastewater," "publicly owned treatment works," and "toxic pollutant." 40 C.F.R. §122.41(m) defines "bypass." "Source," "facilities and equipment" and "commencement of construction" are defined in 40 C.F.R. §122.29(a)(2), (a)(5) and (b)(3), respectively. It is reasonable to adopt the federal definitions of these terms because the Agency is implementing a federal program and is required to be consistent with federal rules.

The term "municipality" is also defined in 40 C.F.R. §122.2. The Agency has departed from that definition somewhat. It has excluded Indian tribes from the definition. This is reasonable because the U. S. Supreme Court has held that states lack jurisdiction to issue NPDES permits to Indians on Indian lands. Bryan v. Itasca County, Minnesota, 96 S.Ct. 2102 (1976). The language in the definition is taken from Minn. Stat. §116.16,

subd. 2(2) (1982). This is reasonable because this language is consistent with the federal rule but is more specific to Minnesota.

It is reasonable to define the terms "Clean Water Act," "best available technology," "National Pollutant Discharge Elimination System" and "technology based effluent limitations," which are terms which arise from federal law, because they are referenced elsewhere in the rules. It is reasonable to define "non-contact cooling water" and "vessel" because they are used in the portion of the rule relating to the requirement to apply for a permit. It is reasonable include definitions of "pollutant" and "point source" because of their critical nature under 6 MCAR §4.4104, which contains the requirement to obtain a permit. Section A. of that rule provides:

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

(Emphasis supplied.) These terms are defined in Minn. Stat. §115.01, subd. 13 and 15 (1982).

6 MCAR §4.4104, Requirement to Obtain a Permit.

This rule establishes the general requirement to obtain a NPDES permit (Section A.), the exclusions from that rule (Section B.), and establishes that certain facilities are permitted by rule if they meet certain requirements (Section C.) It also provides for the termination of eligibility to be permitted by rule (Section D.). The reasonableness of these sections is

discussed below.

Section A., which is quoted above, establishes the requirement to obtain a permit. It is reasonable because persons discharging a pollutant from a point source are required by federal law (see Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §1311(a) and 1342) to obtain a permit and because the permitting process is a reasonable way to control water pollution, which is a major task which the Minnesota legislature has assigned to the Agency.

Section B. establishes nine categories of discharges which do not require a NPDES permit. It is reasonable to exclude the first seven discharges from the requirement to obtain a permit because they are specifically excluded under 40 C.F.R. §122.3 from the requirement to obtain a permit. It is reasonable to exclude the last two discharges from the requirement to obtain a permit because they are excluded under 40 C.F.R. §122.2 from the requirement to obtain a permit by virtue of the fact that they are excluded from the definition of "pollutant."

6 MCAR §4.4105, Application Deadline.

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

deadline currently exists in Minn. Rule WPC 36(e). It also parallels EPA's regulation 40 C.F.R. §122.21(c). This requirement is reasonable because the Agency needs to receive the permit application in advance so that it will have enough time to process it.

6 MCAR §4.4106, NPDES Permit Application.

This rule sets forth the information required to be submitted by the applicant. This information is necessary for two purposes. One of these purposes is to allow the Director to determine what types of limitations and conditions are needed to be contained in the permit to ensure compliance with all applicable statutes and rules. The other purpose is to inform the Director of the nature and processes employed at the source so that the Director can properly establish those effluent limitations and standards which need to be calculated using EPA's effluent limitation guidelines. It is reasonable to require the applicant to submit sufficient information so that the Agency can make a determination as to whether or not the proposed facility will comply with applicable statutes and rules and to enable the Agency to issue the permit in the form that will ensure such compliance. The information requirements in this rule are consistent with the Agency's existing Minn. Rule WPC 36 and with 40 C.F.R. §122.21.

6 MCAR §4.4107, Effluent Analysis by Existing Manufacturing, Commercial, Mining and Silvicultural Dischargers.

This rule requires that any existing manufacturing,

commercial, mining and silvicultural discharger must analyze a sample of its effluent. It also specifies the methods of sampling and analysis and the parameters to be analyzed.

This rule is taken from 40 C.F.R. §122.21(g). Requirements at least as stringent as those contained in 40 C.F.R. §122.21(g) are required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(4). It is reasonable to include these requirements in the rules in order to maintain the delegation which the Agency has to implement the NPDES program in Minnesota.

The basis of the requirements of 40 C.F.R. §122.21(g) is discussed in detail by EPA in the preamble to the publication of the Consolidated Permit Rules, which appears at 45 Fed. Reg. 33516, 33526 - 33543 (May 19, 1980). This discussion is hereby incorporated herein by reference in support of the reasonableness of 6 MCAR §4.4107.

6 MCAR §4.4108, Preliminary Determination, Draft Permit, and Public Comments.

The purpose of this rule is to establish that for NPDES permits, there are certain exceptions to the requirements of 6 MCAR §4.4010 and 4.4011 relating to public notice of draft permits and preliminary determinations and the use of fact sheets concerning draft permits and public comments. These exceptions are provided in Sections B. and C. of the rule. The exceptions provided in this rule reflect current requirements of Minn. Rule WPC 36.

Section B. provides that the Director must prepare a fact

sheet for each draft permit for a facility that the Director finds to be major based on a review of the potential impacts of the facility on the environment. This requirement is included in order to comply with 40 C.F.R. §123.25(a)(27), which requires that state programs must provide for preparation of fact sheets for major facilities. Therefore this requirement is reasonable.

Section C. provides that the Director shall respond to all significant public comments received during the public comment period. The response may be made either orally or in writing. This requirement is included in order to comply with 40 C.F.R. §123.25(a)(31), which requires state programs to provide for responses to public comments. Therefore this requirement is reasonable.

6 MCAR §4.4109, Establishment of Special Conditions for National Discharge Elimination System Permits.

Section A. of this rule provides that NPDES permits must contain conditions necessary for the permittee to achieve compliance with federal and state laws. These conditions are to be established initially by the Director in the draft permit but are subject to final issuance by the Agency. It is reasonable to include these conditions as a way of enforcing federal and state water pollution control laws.

The reasonableness of the types of special conditions to be included in a permit is discussed below.

Section B., Effluent limitations, standards and prohibitions: This section provides that the Director is to

establish appropriate effluent limitations, standards and prohibitions for the permitted facility. The inclusion of effluent standards and limitations is currently required in existing Minn. Rule WPC 36(1)(1).

Inclusion of effluent limitations, standards and prohibitions is also required by 40 C.F.R. §123.25(a)(15) to be included in the state NPDES program.

The rule contains provisions relating to (1) the expression of effluent limitations, standards and prohibitions, (2) considerations in establishing effluent limitations, standards and prohibitions, (3) calculation of effluent limitations, standards and prohibitions (Section B.3.), and (4) a protection period (Section B.4.).

It is reasonable to specify the manner in which effluent limitations will be expressed in order to promote consistency among permits. The provisions of Section B.1. of the rule are consistent with 40 C.F.R. §122.45.

It is reasonable to list the federal and state statutes and rules which the Director will consider in making a case-by-case determination as to the appropriate effluent limitations, standards and prohibitions to be included in the permit because such a list notifies the applicant and the public as to the bases upon which permit conditions will be established.

It is reasonable to specify the manner in which the effluent

limitations, standards and prohibitions will be calculated in order to promote consistency and fairness. These calculation requirements are consistent with 40 C.F.R. §122.45.

Section B.4. establishes a period during which dischargers who have complied with new source performance standards will not be subject to more stringent technology based standards. This protection period is contained in EPA's regulation 40 C.F.R. §122.29(d). It is reasonable because a permittee who has complied with standards which require the implementation of the latest technology has made a significant capital investment and should not be required to replace this equipment for a reasonable period of time. However, it should be noted that the protection period is limited to technology based standards; it does not apply where, pursuant to 6 MCAR §§4.8014 and 4.8015 C.9., a discharger is required to meet effluent limitations which are necessary to maintain the water quality of the receiving water at the standards of quality and purity established by 6 MCAR §4.8015. Therefore this rule will not allow the violation of water quality standards.

Section C., Best management practices: This section allows the Director to include permit conditions requiring the implementation of best management practices by the permittee if a numerical standard cannot be established or if such practices are necessary to achieve compliance with other numerical standards in the permit. This rule is consistent with 40 C.F.R. §122.44(k). This rule is reasonable because it allows flexibility in

establishing appropriate permit conditions providing for compliance.

Section D., Reporting violations: This section requires the Director to list the pollutants which are of concern with respect to the permitted facility and requires the permittee to report all violations of the maximum daily discharges of these pollutants. This is reasonable because it provides prompt notice to the Director of a problem occurring at the permitted facility which may have an adverse impact on water quality, allowing the Director to quickly require that corrective actions be taken.

Section E., Monitoring requirements: This section requires the Director to include in the permit monitoring requirements that are specific to the permitted facility. This requirement is already in existing Minn. Rule WPC 36(n) and is consistent with 40 C.F.R. §122.44(i). It is reasonable because it aids in the enforcement of federal and state water pollution control laws.

Section F., Pretreatment requirements for publicly owned treatment works: This section requires that if the permittee is required by 40 C.F.R. §403.8 to develop a pretreatment program, the Director shall incorporate the provisions of that program in the permit and submit all information required by 40 C.F.R. §403.12. This requirement is consistent with 40 C.F.R. §122.44(j)(2) and is required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(15). The pretreatment program requirements were established by EPA as part of an effort to limit the discharge of

pollutants which have been introduced into municipal wastewater by industry and which were not being adequately treated. Since a required pretreatment program will have an impact upon the wastewater that is received, treated and discharged by the publicly owned treatment system, it is reasonable to include those provisions in the NPDES permit to ensure that they are followed.

Section G., Conditions imposed in construction grants: This section requires that if the applicant is using construction grant funds to construct or operate its facility, the Director shall incorporate into the permit any conditions of the grant which relate to compliance with effluent limitations, standards or prohibitions or water quality standards. This requirement is reasonable because it reinforces the existing obligation of the applicant to use federal and state funds in a manner that is consistent with the purpose for which they were granted and which will further the goals of abating water pollution.

Section H., Conditions related to navigation: This section requires that the permit must include any conditions to assure that navigation and anchorage will not be substantially impaired. 40 C.F.R. §122.4(e) prohibits the issuance of any NPDES permit which would result in a substantial impairment of navigation and anchorage. Therefore it is reasonable to require the inclusion of permit conditions which will allow the permit to be issued.

Section I., Conditions in reissued permits: This section provides that reissued permits may not be less stringent than the original permit unless certain circumstances are present. This requirement is consistent with 40 C.F.R. §122.44(l) and is required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(15). The circumstances which are listed involve changes in the facility or changes in federal statutes or regulations or state statutes or rules. This rule is reasonable because it is not desirable to allow the degradation of effluents or of water quality unless good reasons exist to do so and federal and state laws allow it.

6 MCAR §4.4110, General Conditions of National Pollutant Discharge Elimination System Permits.

This rule provides that each NPDES permit shall contain the conditions set forth in 6 MCAR §4.4015 and the conditions listed in sections A.1. - A.12. In addition, specific types of facilities are required to meet the general conditions listed in Sections B. (manufacturing, commercial, mining and silvicultural dischargers) and C. (publicly owned treatment works).

These rules are consistent with EPA regulations. The following shows the sections of the EPA regulations which impose the conditions in this rule upon NPDES permittees.

6 MCAR §4.4110	40 C.F.R.
A.1.	122.41(a)(1)
A.2.	122.41(a)(2)
A.3.	122.41(c)

6 MCAR §4.4110	40 C.F.R.
A.4.	122.41(l)(4)(i)
A.5.	122.41(l)(4(ii)
A.6.	122.41(l)(4)(iii)
A.7.	122.41(j)(5)
A.8.	122.41(k)(2)
A.9.	122.41(m)(3)(ii)
A.10.	122.41(m)(2)
A.11.	122.41(m)(4)
A.12	122.41(n)
B.	122.42(a)
C.	122.42(b)

These conditions are required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(12) and (13).

It is reasonable to require that these conditions be included in NPDES permits because they are, in addition, to being required by federal regulations, aids to the Agency in assuring proper operation of the permitted facility and continued effluent quality.

6 MCAR §4.4111, Final Determination.

The provisions of this rule are supplementary to the final determination standards of 6 MCAR §4.4014 and reflect the prohibitions upon issuing NPDES permits which are contained in 40 C.F.R. §122.4. These prohibitions are required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(1). Because the Agency is administering a federal program, it is reasonable to

prohibit the issuance of NPDES permits which could not be issued if EPA were administering the program in Minnesota.

C. Reasonableness of 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

It is reasonable to adopt rules which, along with 6 MCAR §§4.4001 - 4.4021, replace existing 6 MCAR §§4.9006 and 4.9007 because the standard permitting procedure rules alone do not cover the requirements that are specific to the hazardous waste facility permitting program. In addition, the federal government requires that states who wish to receive delegation to administer the federal hazardous waste facility permitting program must impose certain requirements upon applicants and permittees which are not contained in the existing rules.

In many respects, the requirements of 6 MCAR §§4.4201 - 4.4224 are identical to those of EPA regulations 40 C.F.R. Parts 270 and 124. EPA's publication of the Consolidated Permit Regulations was accompanied by a preamble which explains the basis of many of the requirements. This preamble begins at 45 Fed. Reg. 33290 (May 19, 1980). To the extent that the discussion therein supports the reasonableness of 6 MCAR §§4.4201 - 4.4224, it is hereby incorporated herein by reference.

The following discussion addresses the reasonableness of the individual provisions of the rules.

6 MCAR §4.4201, Scope.

This rule lists the rules which govern the application procedures, issuance and the conditions of a hazardous waste

facility permit. It is reasonable to include this provision to make it clear that this rule must be read in conjunction with other Agency rules for complete coverage of the subject matter.

6 MCAR §4.4202, Definitions.

This rule incorporates by reference definitions contained in 6 MCAR §§4.4001, 4.9100 and 4.9380 B. Cross referencing definitions applicable to the Agency's overall permitting procedure and to rules which apply specifically to hazardous waste facilities is reasonable because it promotes consistency among the Agency's permitting programs.

6 MCAR §4.4203, Permit Requirements.

This rule establishes which activities are included (Section A.) and excluded (Section B.) from the requirement to obtain a hazardous waste facility permit and establishes that certain facilities are permitted by rule if they meet certain requirements (Section C.). It also provides for the termination of eligibility of certain owners and operators to be permitted by rule (Section D). The reasonableness of these sections is discussed below.

Section A., Permit Required: This section establishes the requirement to obtain a permit. The Agency is charged with the duty to regulate the management of waste, including the treatment, storage, and disposal of hazardous waste. The Agency has used the system of issuing permits to regulate waste management facilities for many years, first through the solid waste program and then through the hazardous waste program.

Based on this experience the Agency has chosen to continue the permitting program for hazardous waste facilities. Therefore it is reasonable to require facilities, which by definition treat, store, or dispose of hazardous waste to obtain a hazardous waste facility permit. It is reasonable for the Agency to require a permit for other activities such as establishing, constructing, operating, closing, or expanding a hazardous waste facility since they could affect the facility's ability to comply with standards and permit conditions. If a person was allowed to establish and construct a facility prior to obtaining a permit under the argument that actual treatment, storage, or disposal of hazardous waste had not yet occurred, the Agency could be in the position of having to choose between issuing a permit to a facility which might not meet the location and design standards of the rules or denying a permit to a fully constructed facility causing a substantial economic loss. If a facility which has an Agency permit to treat, store, or dispose of hazardous waste were allowed to be expanded or modified without having to obtain a permit prior to expansion or modification, the Agency would have no assurance that the expanded or modified facility would be able to comply with appropriate standards and permit conditions. Therefore it is reasonable to require persons conducting activities other than actual treatment, storage, or disposal of hazardous waste to obtain an Agency permit for these activities.

Section B., Exclusions: Certain activities which

have been excluded under the facility standards of 6 MCAR §§4.9280 - 4.9422 or have been exempted from the permit requirement under the provisions of 6 MCAR §§4.9100 - 4.9560, are also excluded in this rule from the requirement to obtain a permit. These activities are very limited in scope and generally are subject to specific facility standards under 6 MCAR §§4.9100 - 4.9560. Generally these activities, if performed in compliance with the specified standards, present a low potential for adverse effects on human health and the environment and the issuance of a permit would not alter or reduce this potential.

Section B.1. allows generators to store hazardous waste on-site for up to 90 days without a permit so that they can accumulate a reasonable quantity of hazardous waste prior to shipment to an off-site facility or placement in an on-site facility. It is reasonable to allow generators some time to make arrangements for managing their wastes without requiring them to obtain a facility permit since it generally is not possible for generators to transport wastes to a facility immediately after generation. As a practical matter, almost all generators must store their wastes on-site for some period of time. Without this exemption almost all generators would be required to obtain a facility permit. Considering the large number of generators, the requirement that generators store their wastes in compliance with specific storage standards, and the system for regulating generators through the disclosure program, the issuance of

facility permits to all generators would be minimally beneficial. Also considering the large number of generator and the limited staff available, requiring such permits would create for the Agency an additional administrative burden which could delay the processing of permit applications for facilities with higher potentials for adverse effects on human health and the environment.

Section B.2. allows farmers to dispose of their own pesticide wastes in accordance with manufacturer's instructions without obtaining a facility permit. Considering that the pesticides themselves are spread on land without an Agency permit it is reasonable to allow proper disposal of pesticide wastes without a permit. Also considering the number of farmers and the low potential for adverse effects on human health and the environment and the requirement that the waste be properly managed, the issuance of permits to farmers for this activity would be minimally beneficial. As previously discussed under the generator exemption, requiring permits for such activities would create an additional administrative burden for the Agency.

Section B.3. exempts totally enclosed treatment facilities from the permit requirement. By definition, such facilities are constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example of such a facility is a pipe in which waste acid is neutralized. It would be minimally

beneficial to issue a permit to such a facility since the potential for adverse effects on the environment and human health is already very limited.

Section B.4. allows transporters to store manifested shipments of hazardous waste for up to ten days without a permit so that shipments can be consolidated or transferred to another transporter (interlined). It is reasonable to allow transporters some time to accomplish these routine activities, since the containers are required to meet applicable Department of Transportation (DOT) standards, are stored for a short period of time, and storage probably does not occur all of the time, thus reducing the potential for adverse effects. If transporters were required to obtain facility permits for short term storage, more small shipments of waste would be transported at high cost, reducing efficiency by having trucks with only partial loads on the road and thus increasing the chances of spills on the road. It would also discourage transporters from picking up small shipments and consolidating them into larger shipments, thus forcing more generators to store hazardous waste on site for longer periods of time and thereby increasing the number of small storage facilities. Considering these drawbacks and the lack of significant benefits from requiring such permits it is reasonable to have this exemption.

Section B.5. allows activities associated with immediate spill cleanup to occur without obtaining a permit. Due to the

necessity to cleanup spills rapidly to minimize damage to the environment and human health hazards it is not reasonable to delay such activities by requiring a permit to be obtained. Also, since spills are unexpected and unpredictable in nature, a permit could not be obtained prior to the spill occurring. However, once immediate activities have been completed and the crisis is over, a permit is required for treatment, storage, or disposal of the cleanup materials. This is reasonable since time would be available to either obtain a permit or to transport the wastes to a facility with interim status or a permitted facility. Also in no case would wastes be allowed to be improperly managed.

Section B.6. allows the addition of absorbents to wastes (or wastes to absorbents) in containers without need for a permit. This process must be done at the time the waste is first placed into the containers and must comply with certain requirements of the proposed hazardous waste technical rules. Some of these requirements pertain only to ignitable, reactive, and incompatible wastes. The others deal with the condition of the containers and the compatibility of the wastes with the containers. Several generators of waste may decide to place absorbent materials into containers with hazardous wastes to make the wastes acceptable for disposal or transportation. This practice should not be discouraged by requiring a permit. It is reasonable to provide this exemption because this type of activity poses little, if any, additional hazard than does the mere act of placing hazardous

wastes into containers, which requires no permit.

The beneficial use, reuse, recycle, or reclamation of hazardous waste is subject to reduced technical standards and, under Section B.7. and B.8., reduced permitting requirements based on the type of waste and the type of process utilized by the facility. 6 MCAR §4.9129 sets forth the various technical and permit requirements for these facilities. These reduced requirements serve to encourage beneficial use, reuse, recycle and reclamation of hazardous waste while still providing assurance of proper management of the wastes. Also, since these wastes tend to have some monetary value, there is an inherent incentive to beneficially use, reuse, recycle, or reclaim the waste. This is generally not true of most waste facilities. Therefore, it is reasonable to allow reduced permitting requirements for these types of facilities.

Section B.9. exempts management of wastes as provided in 6 MCAR §§4.9128 C.12., 4.9130 A., 4.9134 E.3. and 5., 4.9209, or 4.9210 B. from the requirement to obtain a permit. The management activities covered by this section are discussed below.

6 MCAR §4.9128 C.12. allows the storage of hazardous waste in product equipment where it is generated until such time it leaves the unit, without a facility permit. An example of this is the storing of petroleum products in tanks which generates tank bottoms that are hazardous wastes. These tank bottoms would not

be subject to the permit requirment until they are removed from the tank or the tank is no longer utilized for product storage. This is reasonable since the intent is storage of product, not waste. Also due to the monetary value of the product, there is an incentive to store it properly. Such storage could be subject to regulation under the liquid storage rules of existing Minn. Rule WPC 4. Regulation under that program would be adequate to address concerns regarding proper storage and spill prevention and containment. Therefore double regulation in this case would provide minimal benefits and is not necessary.

6 MCAR §4.9130 A. exempts hazardous waste residues in "empty containers" from regulation under the hazardous waste program, therefore no hazardous waste permit requirements would apply to activities associated with "empty containers." It generally is not feasible or practical to remove 100 percent of a material from a container using routine removal methods since some material will adhere to the surface of the container thus requiring special procedures such as triple rinsing to remove all of the material. Therefore some practical provision was necessary for defining and regulating "empty containers." Based on this provision it is reasonable not to require permits for activities associated with "empty containers."

6 MCAR §4.9134 E.3. exempts facilities which store polychlorinated biphenyl (PCB) wastes from having to obtain a

hazardous waste facility permit for this storage provided certain storage requirements are met. The Agency also regulates PCB's under 6 MCAR §4.8038. This rule contains provisions regarding proper storage of PCB wastes. This program has been adequately regulating such storage for several years. Many of the PCB storage facilities covered by 6 MCAR §4.9134 E. are also subject to 6 MCAR §4.8038; therefore it is reasonable at this time not to require such facilities to apply for and receive another approval from the Agency for such storage. Those facilities not subject to 6 MCAR §4.8038 handle small volume PCB units which do not pose a substantial threat to human health or the environment if stored properly. Accordingly, it is sufficient to specify the storage requirements but not to require a hazardous waste facility permit. Similarly, the burning of mineral oil dielectric fluid containing less than 500 ppm PCB in high efficiency boilers is regulated in federal regulations, 40 C.F.R. §761.60. No permit for this activity is required under federal hazardous waste regulations. This activity will be regulated by the Agency under the air emission facility permit requirements. Therefore it is reasonable to exempt such burning from permit requirements in the hazardous waste facility permit program.

6 MCAR §4.9209 allows a generator to store his waste on site without a permit during the period of time in which the Director is making a determination as to whether or not the waste is a

hazardous waste. Since the determination has not yet been made, it would not be reasonable to require a person to go through the time, effort and expense of obtaining a permit which may not be needed once the determination is finally made. Therefore during such time the Director is making a determination, no permit should be required.

6 MCAR §4.9210 allows small quantity generators to store their wastes on site without a permit provided they comply with certain storage requirements and the wastes are properly managed. Considering the amount of waste involved (only small quantities as defined in 6 MCAR §4.9210) and the requirements to be met, there is a low potential for adverse effects due to these storage areas and therefore it is reasonable to exempt them from the permit requirement.

Section C., Permits by Rule, and Section D., Termination of Eligibility for Permit by Rule: Section C. establishes that four categories of facilities are deemed to have obtained a permit without making application if the owner or operator has met certain conditions. Section D. allows the Agency to terminate the eligibility of an owner or operator of an elementary neutralization unit, a pretreatment unit, a wastewater treatment unit or a combustion waste facility to be permitted by rule if the owner or operator has violated any requirement of 6 MCAR §§4.9480 - 4.9481, if the owner or operator is conducting other activities which require an individual hazardous waste

facility permit, or if the Agency finds that an individual permit is necessary under the circumstances to protect human health or the environment. The reasonableness of the provisions of Sections C. and D. are discussed below.

Under Sections C.1. and C.2., ocean disposal barges and vessels which have and are in compliance with a federal permit under 40 C.F.R. Part 220, and publicly owned treatment works which have and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permit and both of which are in compliance with the identification number, manifest, recordkeeping and reporting requirements of 6 MCAR §4.9280 - 4.9322, are deemed to have a hazardous waste facility permit, without applying for one. These facilities are already regulated and permitted through another federal or state program and the only purely hazardous waste related provisions are those that are not site-specific and do not need to be particularized in an individual permit. Therefore, it is reasonable to make the missing hazardous waste provisions applicable through a general regulatory statement. This method avoids requiring duplicate permit processing and duplicate paperwork while achieving the same level of environmental protection. Enforecment action can be taken if noncompliance occurs even though an individual hazardous waste permit has not been issued.

Under Sections C.3. and 4., elemental neutralzation units,

pretreatment units, wastewater treatment units and combustion waste facilities which meet the conditions established in this rule are deemed to have a hazardous waste facilty permit without applying for one. These types of facilities either are regulated through other Agency programs (pretreatment and wastewater treatment units and combustion waste facilities) or are very simple well understood processes which handle only corrosive wastes (elementary neutralization units). The provisions relating to hazardous wastes are not site-specific and can be addressed through a set of facility standards. 6 MCAR §§4.9480 - 4.9481 contains specific standards for these types of facilities and exempts them from the final and interim status facility standards of 6 MCAR §§4.9280 - 4.9322. In addition to being regulated under other Agency programs, these facilities are indirectly regulated by the hazardous waste disclosure program since the incoming waste and resulting treated wastes must be included in the disclosure which is submitted to the Agency or Agency approved county for review and approval. Also, the wastes must be evaluated to determine whether or not they are hazardous wastes. These facilities are not currently regulated by the federal hazardous waste program.

Since elementary neutralization units, pretreatment units, wastewater treatment units and combustion waste facilities are not necessarily covered by an individual permit for the activity involving hazardous waste, as are ocean disposal barges and

vessels and publicly owned treatment works, provisions for terminating eligibility to be permitted by rule are included for the first group of facilities. Just as permittees with individual permits are allowed the opportunity for a public informational meeting or contested case hearing regarding termination of a permit, so too are persons whose activities are permitted by rule.

There are four findings which constitute justification for terminating eligibility. It is reasonable to terminate eligibility for a facility which does not meet the conditions set forth in C.3. or C.4. of this rule of which has violated the requirements of 6 MCAR §§4.9480 - 4.9481, since compliance with those conditions and requirements serves as the basis for eligibility to be permitted by rule. It is also reasonable to terminate eligibility for a facility which is required to obtain a hazardous waste facility permit for some other activity, since facility prmits are to cover all hazardous waste activities occurring at that location. Also, conducting other hazardous waste activities at the facility could affect the facility which is permitted by rule, thus making it necessary to address operation of the entire facility in an individual permit. It is reasonable to terminate the eligibility of an owner or oprator to be permitted by rule if circumstances exist which make it necessary to require an individual permit to protect human health or the environment because protection of human health and the environment is a primary responsibility of the Agency.

6 MCAR §4.4204, Hazardous Waste Facility Permit Application.

This rule describes the application requirements for existing and new hazardous waste facilities. The topics covered include the form and timing of application and the updating of permit applications.

Section A. provides for the submission of an application in two parts, Part A and Part B. The two part application process is used so that, based on the information provided in the Part A, applicants can be readily identified and placed in the permit processing system, interim status determinations can be made for existing facilities, and priorities set for permitting of facilities. If a one-part application procedure were used the type and quantity of information required would make if much more difficult and time-consuming for an owner or operator of a new or existing facility to initiate a permit application and for an existing facility owner to quality for interim status. Therefore, it is reasonable to use a two-part permit application process.

Owners and operators of existing hazardous waste facilities are required by Section B.1. to submit a Part A application within 90 days of the effective date of this rule. Since the Part A is not a lengthy document and since many of the larger facilities will have already submitted their Part A to the Agency, the 90 day deadline for Part A submission is reasonable. It is reasonable that if the applicant has already submitted a complete and

accurate Part A to the EPA which accurately reflects the requirements of the state's hazardous waste rules there is no need to submit a Part A to the Director. If the Part A information submitted to EPA is not complete with respect to all portions of the facility and all wastes stored, treated or disposed of subject to regulation under 6 MCAR §§4.9100 - 4.9560, it is reasonable to require the owner or operator to submit a revised Part A within 90 days of the effective date of this rule.

Part B applications can be submitted any time after submission of the Part A, except upon request of the Director the Part B must be submitted no later than six months from the date of the request. Based on the type and quantity of information required for the Part B application it is believed that six months is an adequate time period for gathering the data and necessary information to complete and submit the Part B application. Therefore, it is reasonable to adopt a six month deadline for submission of Part B.

Section B.2. requires that a person who proposes to construct a new hazardous waste facility must submit Parts A and B of the application at least 180 days before the planned date for beginning of construction. This is a reasonable requirement to allow time for review of the application, for conferring with the applicant regarding conditions and time schedules to be included in the permit, public noticing, consideration of comments, hearing requests and the possibility of a public informational meeting

being held. The 180 day period is considered a minimum processing time for a permit. However, if problems with the application are encountered or there is a request for a contested case hearing the processing time could be signficantly longer than 180 days. Therefore, it is reasonable to require that the application be submitted at least 180 days before construction is to begin, and it is to the applicant's advantage to submit the application allowing as much time as possible before the expected date of commencement of construction.

Section B.3. provides that timing for the application for reissuance of existing permits is governed by 6 MCAR §4.4004 except as follows: If the Director receives a request for extension of the time for filing the written aplication showing good cause for the extension, the Director shall grant the extension so long as the final date for filing the application does not extend beyond the expiration date of the permit. It is recognized that in certain cases problems arise in completing permit applications, such as time delays in obtaining certain types of information needed for inclusion in the application. In these cases, it is reasonable to allow this time extension for submission of the application for reissuance provided the applicant shows good cause. The provision in 6 MCAR §4.4016 for continuation of expired permits states in apart that the permittee may continue to conduct the permitted activity after the permit expires if the Agency has not taken final action on the

application due to no fault of the permittee. It is therefore reasonable to provide for this extension of the time for filing of the application for reissuance since the permittee can still be considered to be operating under a permit during this period rather than operating with an expired permit in violation of state rules.

Section C. requires the owner or operator to submit a revised Part A application if he has not yet submitted the Part B under the following circumstances:

a) if the submission of an amended application is necessary to comply with 6 MCAR §4.4216 E., or

b) if the Agency amends 6 MCAR §§4.9128 - 4.9137 to list or designate as hazardous a waste which was not listed or designated as hazardous at the time of submission of the original Part A.

It is reasonable to require up-to-date information regarding changes in the designation of hazardous wastes and changes in the facility as required by the interim status standards in 6 MCAR §4.4216 E. because the Director needs accurate information in order to draft an appropriate permit and to enforce the interim status standards.

6 MCAR §4.4205, Certification of Permit Applications and Report.

This rule requires that the applicant must, in addition to making the certification as to the truth and accuracy of the information in the permit application as required by 6 MCAR

§4.4007, certify that he or she is aware that there are significant penalties for submitting false information. EPA's rules relating to state program requirements, 40 C.F.R. §271.14(e) requires states to require applicants to make this certification. It is reasonable to include this requirement to enable the Agency to obtain authorization to implement the hazardous waste facility permit program.

6 MCAR §4.4206, Contents of Part A of Application.

This rule establishes what information is to be contained in a Part A of a hazardous waste facility application. Submission of a Part A application provides the mechanism for existing facilities to obtain interim status as provided in 6 MCAR §4.4216. The Part A application is designed to provide the Director with sufficient information to prioritize all existing facilities. Based on this prioritization, the Director will request Part B of the permit application from a specific number of these facilities. Also the Part A is intended to provide facility information upon which the Director can process the permit application.

It is reasonable to include in Section A. a cross reference to 6 MCAR §4.4005 so that the applicant will be alerted to the information requirements in the other rule. The information requirements of 6 MCAR §4.4005 are basic identification information which is needed for all facility permits.

Section B., which requires the identification of all wells, springs, and surface water bodies is reasonable due to the potential impact a hazardous waste facility could have on water supplies, aquatic life, and wildlife. Spills of hazardous waste, as well as contaminated runoff and subsurface migration of hazardous waste or waste constituents could all adversely impact wells, springs, and surface water bodies. Requiring the facility's exact location, including latitude and longitude, is reasonable since it is essential to know where the facility is located. Often, especially in open non-urban areas, it is difficult to specify an exact location by a street address or description of the surrounding area, whereas latitude and longitude information can be used to identify on a map the exact facility location. Also, because 6 MCAR §4.9303 requires for land disposal facilities that a notice be placed in the deed identifying where hazardous wastes have been disposed, this information is needed so staff can be sure of exact locations. Information on hazardous waste types and quantities as well as processes utilized and design capacity must be known in order for Agency staff to properly assess the facility's potential for adverse effects on human health and the environment and to prioritize facilities. This information is very basic to the permitting process and therefore should be provided. Also, the information should be readily available to the owner or operator

and thus requiring it be submitted does not place an unreasonable burden on the owner or operator.

It is necessary to require an indication as to whether the facility is new or exsiting so that a determination can be made whether to grant interim status to the facility or to request that a Part B application be submitted. Interim status is only available to existing facilities. Therefore the Agency must be informed as to whether it is interim status the facility is seeking and whether the facility is eligible for interim status. However, for new facilities, both Part A and Part B of a permit application must be submitted as required by 6 MCAR §4.4204 and a permit must be issued prior to construction and operation.

For existing facilities additional information is required by Sections H. and I. Drawings and pictures provide the Director with information of the facility's physical setting. Also, pictures help Agency staff to visualize facilities and provide some indication as to whether the facility is in compliance with the interim status standards of 6 MCAR §§4.9380 - 9.9422. Although the information is not extensive enough to determine compliance with interim status standards, it at least gives a preliminary indication upon which staff can base a follow-up inspection. This is reasonable since one of the conditions which must be met in order to qualify for interim status is compliance with the interim status standards of 6 MCAR §§4.9380 - 4.9422.

Section J. requires that a statement be included which specifies what permits the applicant has applied for or received pertaining to the facility which is the subject of the application. This requirement is taken from 40 C.F.R. §270.13 and is required to be a part of the state's hazardous waste facility permitting program under 40 C.F.R. §271.14(g). Accordingly, this provision has been included in this rule. Since an applicant should know whether application has been made or permits received for the facility, it is reasonable and not burdensome to require submission of such information with the application. Such information could be useful to Agency staff when drafting the facility's hazardous waste permit in order to ensure that it is consistent with other permits.

6 MCAR §4.4207, General Information Requirements for Part B of Application.

This rule establishes what general information is to be contained in a Part B permit application for a hazardous waste facility. The Part B application is designed to provide the Agency with sufficient information to make a determination to either issue or deny a hazardous waste facility permit. Since this determination will affect whether a facility is allowed to operate or be required to close, it is reasonable to require extensive and detailed information regarding the facility's location, design, construction, operation, and proposed closure. Also since this information will serve as a basis for the

conditions in the permit, it is reasonable to require such extensive and detailed facility information. The information requirements are based on the final facility standards of 6 MCAR §§4.9280 - 4.9322. Since compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to allow the Agency to determine whether the facility is in compliance with these standards. If the facility is not in compliance but is in the process of achieving compliance, a compliance schedule can be established in the permit as provided in 6 MCAR §4.4015. However, if a facility is not able to comply with these standards this must be known by the Agency so that the appropriate determination can be made in accordance with 6 MCAR §4.4014 regarding permit issuance or denal.

As discussed under 6 MCAR §4.4206, the information required in a Part A is necessary and reasonable in order for the Agency to initiate processing permit applications. Therefore, it is reasonable to require a general description of the facility unless an accurate and complete Part A has been submitted.

Sections B. and C. require the submission of waste analyses and a waste analysis plan. It is reasonable to require this information since it is necessary for the facility owner or operator to know what hazardous wastes are being received in order to properly manage the wastes. Since the facility's permit must indicate what wastes can be handled at the facility as well as the

conditions for managing the wastes, it is reasonable for the Agency to require waste analysis information. Also this information is necessary for determining compliance with 6 MCAR §4.9284 and for reviewing the plan for adequacy prior to incorporation into the permit.

Section D. requires the submission of the security procedures and equipment which are required at the facility by 6 MCAR §4.9281 D. Facilities must comply with these requirements unless the Agency specifies otherwise in the permit. Therefore, it is reasonable to require the facility to submit either information showing facility compliance or information showing that the security requirements are not necessary. Based on this information, the appropriate security requirements will be included in the permit.

Section E. requires the submission of a copy of the inspection schedules which are required under 6 MCAR §§4.9281 and 4.9315 - 4.9321. Based on these schedules, inspections will be conducted at the facility thus providing assurance that spills and conditions which could cause sudden hazardous waste release occurrences do not go undetected for long periods of time. Since these schedules establish the frequency and extent of these inspections thus affecting the adequacy of the inspections, it is reasonable to require that the schedules be submitted for Agency review and inclusion in the permit.

Section F. requires a showing of compliance with 6 MCAR

§4.9286 and 4.9287 or a justification for waivers from the requirements of those rules. The requirements of 6 MCAR §§4.9286 and 4.9287 concern preparedness and prevention. Since some of the requirements might not be applicable to all facilities due to a specific situation or condition at a facility, it is reasonable to allow the facility to request a waiver from requirements which are not applicable. Based on the waiver request and accompanying justification, the Agency can either grant or deny the request and include in the permit the appropriate requirements.

Section G. requires submission of a copy of the contingency plan required by 6 MCAR §4.9288 which establishes methods for handling emergencies and unplanned releases of hazardous waste at the facility. Since this plan will determine the facility's response to such situations, it is reasonable to require the plan be submitted for Agency review and inclusion in the permit. If the plan is inadequate or contains improper management procedures, Agency staff will be able to work with the applicant to amend the plan so that it is adequate and can be included in the permit.

Section H. requires submission of a description of procedures, structures and equipment used at the facility to prevent adverse effects on human health and the environment. This section specifically addresses waste unloading procedures, management of run-off from waste handling areas, prevention of water supply contamination, equipment or power failures, and personnel exposure to wastes. This section is reasonable because

hazardous waste facilities have the potential for adversely affecting human health and the environment, which can be avoided or mitigated if appropriate procedures, structures and equipment are used at the facility. It is reasonable to require the submission of this information so that the Agency may include the use of those preventative measures at the facility.

Section I. requires submission of a description of precautions to prevent accidental ignition or reaction of ignitable, reacitve or incompatible wastes. Since ignitable, reactive, and incompatible wastes have a great potential for causing explosions, fires, and unplanned releases of hazardous wastes, it is reasonable to request information on what special precautions the facility will take regarding the handling of these types of wastes. This information can then be reviewed for adequacy and included in the permit to assure proper handling of these types of wastes.

Section J. requires the submission of a description of traffic control at the facility. Since traffic management at the facility can affect the facility's potential for accidents and unplanned releases of hazardous wastes, it is reasonable to require this information. This is particularly important for large facilities which receive many shipments of hazardous wastes. Requiring information on road conditions and capacities is reasonable for the reason that this information is necessary for determining whether the roads are adequate for the types of

vehicles expected to be used the facility. If the roads are not adequate, improvements may need to be made or limits may be placed in the permit on the types of vehicles which can use the facility.

Section K. requires a showing of compliance with 6 MCAR §4.9282, which requires facilities to provide personnel training and establish minimum program requirements. It is reasonable to request this information so that the Agency can determine whether the facility is in compliance with this standard. Also, since facility operation is dependent on facility personnel and the extent they have been trained, it is reasonable to require this information.

Section L. requires a showing of compliance with rules relating to closure and post-closure plans. The provisions of 6 MCAR §§4.9298 - 4.9301 and 4.9315 - 4.9321 contain closure and post-closure requirements including the requirement to establish closure and post-closure plans. Requiring the submission of these plans is reasonable, so that compliance can be determined and so the plans can be incorporated into the permit. Since proper closure and post-closure activities are necessary to prevent adverse effects on human health and the environment, it is reasonable to require facilities to provide assurance that the facility can and will be properly closed and, if necessary, provided with proper post-closure care. Also, since the closure and post-closure plans provide the basis for cost estimates as required by 6 MCAR §§4.9305 and 5.9307, it is vital that the plans

be accurate and detailed and that the Agency has reviewed and approved them in conjunction with issuing a permit. The amount of funds available to conduct closure and post-closure activities as well as the activities themselves are dependent on these plans; therefore it is essential that the Agency be afforded the opportunity to review, amend, and approve these plans.

Seciton M. requires showing of compliance with 6 MCAR §4.9303, which requires existing disposal facilities to place a notice in the deed indicating the property has been used for disposal of hazardous waste. It is reasonable to require documentation showing this has been done so the Agency can determine whether the facility is in compliance with this requirement. It is reasonable to require that notice be placed in the deed prior to issuance or denial of a permit, since even if a permit is not issued, the future development of the property could be affected by the past disposal of hazardous waste, and prospective buyers of the property should be made aware of this.

Sections N., O., and P. require submission of the closure, post-closure, and corrective action cost estimates and financial assurance mechanisms, which are required by 6MCAR §§4.9304 - 4.9310. These estimates are based on the closure, post-closure, and corrective action plans required in 6 MCAR §§4.9298, 4.9300, and 4.9297. Closure, post-closure, and corrective action activities can be very expensive but are essential in preventing adverse effects on human health and the environment. The value of

the financial mechanism is dependent on the cost estimates. Based on those requirements, it is reasonable to require facilities to submit cost estimates and copies of the financial assurance mechanisms showing compliance with 6 MCAR §§4.9304 - 4.9310.

Section Q. requires a showing of compliance with 6 MCAR §4.9312 relating to liability coverage. In order to show compliance with this requirement it is reasonable to require applicants to submit a copy of the insurance policy or other documentation showing compliance. Also, since there are provisions for allowing variances to the insurance requirement, it is reasonable to allow applicants to submit a request for variance and supporting information for consideration during the permitting process. The permit can then include the appropriate liability requirements.

Sections R., S., and T. require the submission of a topographic map, floodplain information, and other locational information. It is reasonable to require a topographic map showing the facility and surrounding area to be submitted, since this information is necessary for determining the facility's potential for adverse effects on the surrounding area. Contours are necessary for determining surface water flow at the facility.

Requiring general information such as map date, scale, and direction arrows is reasonable so that the map can be accurately interpreted. It is reasonable to require information on floodplains, wetlands, shorelands, wells, wind speed and

direction, zoning and uses of surrounding area, boundaries of parks and wildlife refuges and barriers for drainage or flood control, so that compliance with location standards and the potential for adverse effects on water supplies, aquatic life, wildlife and the surrounding area can be ascertained. Locational information such as boundaries, township, range and section numbers, buildings, structures, and operational units is required so that the exact location and facility layout can be determined. Based on this information the Agency can also determine what units of government would have jurisdiction over the facility so that a public notice can be sent to them as required in 6 MCAR §4.4217. Information on fences, gates and access control is required to help the Agency determine facility compliance with the security requirements of 6 MCAR §4.9281 D. Based on this information, appropriate conditions can be included in the permit

6 MCAR §4.9285 contains location standards for hazardous waste facilities. It is reasonable to require locational information to determine whether the facility is in compliance with these standards. Since 6 MCAR §4.9285 A. establishes special facility conditions for facilities located in floodplains it is reasonable to require facilities to submit a determination with supporting information, as to whether the facility is located in a floodplain. For facilities located in the floodplain, the applicant can either provide protection to prevent washout or establish procedures for removing the hazardous wastes from the

facility before flood waters can reach the facility. Therefore it is reasonable to require information showing which option the facility has chosen to follow and information showing compliance with the appropriate standard.

Section T. requires the submission of any additional information which the Director needs to determine whether the facility will meet all applicable federal and state statutes and rules. Since the intent of the Part B permit application is to provide sufficient information for the Agency to make a determination to issue or deny a hazardous waste facility permit and 6 MCAR §4.4014 sets forth the findings which must be made in order to make a final determination, it is reasonable to require additional information which is relevant to the facility and needed to make that determination.

6 MCAR §4.4208, Part B Information Requirements for Facilities That Store Containers of Hazardous Waste.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which store hazardous waste in containers. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9315. These standards are specific for facilities which store hazardous waste in containers. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether

the facility is able to comply and whether a permit should be issued.

Section A. of the rule requires a showing of compliance with 6 MCAR §4.9315 F., which requires container storage ageas to have a containment system which satisfies certain conditions. It is reasonable to require the applicant to submit a description of the containment system which addresses the conditions in 6 MCAR §4.9315 F. to allow the Agency to determine whether the facility is in compliance with that rule. Also since the permit is to contain conditions regarding the containment system, it is reasonable to require detailed information regarding the storage system. Since the containment system serves to contain spills and other releases of hazardous waste and to prevent contamination of ground water, it is reasonable to have Agency staff review the system for adequacy.

Sections B. and C. require submission of information on the type of containers to be used, information on the waste types to be stored in each type of container, and an operations manual. Since 6 MCAR §4.9315 contains requirements regarding the condition of containers, the compatibility of wastes with containers and the management of containers, it is reasonable to require information on container and waste types and an operations manual. Also since these factors affect the facility's ability to properly store hazardous waste, it is reasonable that Agency staff review this information to be sure than hazardous waste is being stored

properly prior to permit issuance. The waste and container information and operations manual can then be included as permit conditions.

Section D. relates to waste not containing free liquids. The storage of wastes not containing free liquids poses a lower potential for contamination due to spills and other releases of hazardous waste than wastes which do contain free liquids. This is due to the dry nature of the waste and the waste's tendency to remain stationary when spilled. 6 MCAR §4.9315 F.4. provides special considerations for these types of facilities based on the lower potential and dry nature of the waste. If the facility can satisfy the requirements of 6 MCAR §4.9315 F.4., the containment system described in 6 MCAR §4.9215 F.1. is not required. Due to this special case, it is reasonable to require these facilities to submit information showing compliance with the special conditions of 6 MCAR §4.9315 F.4. so that the permit can reflect the applicable standards regarding the containment system.

Sections E. and F. relate to ignitable, reactive, and incompatible wastes which possess a great potential for causing fires, explosions, and unplanned releases of hazardous waste. Accordingly, 6 MCAR §54.9315 G. and H. contain special requirements for managing these types of wastes. Therefore, it is reasonable to require information on how the facility will comply with these requirements to assure proper handling of these special types of wastes. Also this information can be used to establish

appropriate permit conditions for the facility.

6 MCAR §4.4209, Part B Information Requirements for Storage or Treatment Tanks.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which treat or store hazardous waste in tanks. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9316. These standards are specific for facilities which treat or store hazardous waste in tanks. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit is to be issued.

Section A. requires a showing of compliance with 6 MCAR §4.9316 B., C., G., and H., which contain requirements for the design and operation of facilities which treat or store hazardous waste in tanks. It is reasonable to require information on tank design and construction for review in order for the Agency to determine whether the tanks meet the standards and are adequate for storing or treating the hazardous waste managed at the facility. Also this information is necessary for the Agency to establish in the permit a minimum shell thickness as required in 6 MCAR §4.9316 B.1.

Underground tanks present special concerns due to the general

inability to inspect them for leaks, spills, and other conditions which could cause release of hazardous waste and the tank's high potential for contamination of soil and ground water due to its placement below surface grade. Accordingly there are special provisions in 6 MCAR §4.9316 B.3. for underground tanks. Based on these special concerns and provisions, it is reasonable to require specific information regarding underground tanks and their compliance with these special conditions.

6 MCAR §4.9316 C. contains general operating requirements, including provisions for preventing overfilling. To assure operation of the facility and compliance with these requirements, it is reasonable to require information on piping and waste feed systems. Also for facilities which handle ignitable, reactive or incompatible wastes, due to the waste's high potential for explosions, fires, and unplanned releases of hazardous waste, and the special requirements in 6 MCAR §4.9316 G. and H., it is reasonable to require information on special operating procedures for these types of wastes.

Section B. of the rule requires a showing of compliance with 6 MCAR §4.9316 E., which requires tank areas to have a containment system which satisfies certain conditions. It is reasonable to require the applicant to submit a description of the containment system which addresses the conditions in 6 MCAR §4.9316 E. to show facility compliance. Since the containment system serves to contain spills and other releases of hazardous waste and to

protect ground water from contamination, it is reasonable to have Agency staff review the system for adequacy. Also since the permit is to contain conditions regarding the containment system, it is reasonbable to require detailed information on which to base these conditions.

6 MCAR §4.4210, Part B Information Requirements for Surface Impoundments.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which store, treat, or dispose of hazardous waste in surface impoundments. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9317. These standards are specific for facilities which store, treat, or dispose of hazardous waste in surface impoundments. Since facility compliance is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit is to be issued.

The standards in 6 MCAR §4.9317 apply to surface impoundments which treat, store, or dispose of hazardous waste and which are designed and operated to prevent discharge into the land, ground water, and surface water. Considering that most existing surface impoundments were not designed nor intended to meet the no discharge criterion, very few, if any, existing surface impoundments will qualify for a permit under this rule.

Therefore most facilities seeking a permit under this rule will be new facilities or at least redesigned existing impoundments. For existing surface impoundments which cannot comply with the liner requirements of 6 MCAR §4.9317 C.1. there are provisions in 6 MCAR §4.9317 G.3. for closing such facilities. The Agency may choose to issue a permit addressing closure and post-closure requirements for such facilities. Considering the high potential surface impoundments have for contaminating soil, ground water, and surface water and the difficulty in showing compliance with the no discharge standard, it is reasonable to require detailed and complete design information. Since most of the facilities will be new ones for which plans and specifications have not yet been prepared, it is reasonable to require the plans and specifications be detailed enough that a contractor could build the facility. This form will help the Agency in its review of the information and in making its determinations regarding facility compliance and permit issuance. Also these plans and specifications will be necessary for an independent registered engineer to certify the surface impoundment in accordance with 6 MCAR §§4.9317 E.3. - 4. and 4.4223 B.3.a. and for the Agency to respond to that certification in accordance with 6 MCAR §4.4223 B.3.b.

Section A. of the rule requires a listing of hazardous wastes to be placed in a surface impoundment. This is necessary to evaluate if the requirements of 6 MCAR §§4.4317 C.1. and H. - I. are met. 6 MCAR §4.9317 C.1. requires that the liner system be

compatible with the wastes managed at the surface impoundment. 6 MCAR §4.9317 H. - I. require that ignitable, reactive, and incompatible wastes be managed to eliminate the danger associated with these characteristics. It is reasonable to include a listing of hazardous wastes to be managed in a surface impoundment because such a list is necessary in order to determine those hazardous constituents for which concentration limits must be established under 6 MCAR §4.9297 F.

Section B. of the rule requires a showing of compliance with 6 MCAR §4.4317 B., which contains requirements for information on the location of the surface impoundment. Because the location of a surface impoundment will influence the fate of any contamination which may escape from it, it is reasonable that the permittee submit information to demonstrate that the location is suitable.

Section C. of the rule requires the submission of plans and an engineering report. This requirement is reasonable because these items are necessary in order to verify that the surface impoundment is designed, constructed, operated, and maintained in accordance with 6 MCAR §4.9317 C. These plans and the engineering report must include analyses of the liner and leak detection, collection, and removal systems; methods to prevent overtopping; and the structural integrity of the dikes.

Section D. of the rule requires the submission of an inspection plan which describes how the surface impoundment and its components will be inspected to meet the requirements of 6

MCAR §4.9317 E.1. - 2. This requirement is necessary because this plan must be reviewed as to adequacy by the Agency staff. An inspection plan is also needed so that it can be at the surface impoundment as a reference.

Section E. of the rule requires the submission of a certification by a registered professional engineer that the dikes of the surface impoundment are structurally competent in accordance with 6 MCAR §4.9317 E.3. Section F. of the rule requires that a certification must also be submitted that the uppermost liner meets design specifications as required under 6 MCAR §4.9317 E.4. It is reasonable to require these certifications because the Agency needs this information to evaluate compliance with the hazardous waste rules.

Section G. of the rule requires a description of the procedure to be used for removing the surface impoundment from service as required under 6 MCAR §4.9317 F.2. and F.3. Because removing a surface impoundment from service occurs in order to protect human health and the environment, it is important that the procedures are established in advance. These procedures need to be submitted so that the Agency can review them in order to assure that the facility is able to comply with the hazardous waste rules.

Section H. of the rule requires the submittal of a description of how hazardous waste residues and contaminated materials will be removed from the surface impoundment at closure

as required under 6 MCAR §4.9317 G.1.a. For any wastes not to be removed from the surface impoundment upon closure, the owner or operator must submit detailed plans and an engineering report describing how 6 MCAR §4.9317 G.1.b. and G.2. will be complied with. Because removal of wastes and waste residues will occur at most surface impoundments at closure, it is necessary to plan their removal. The plan will also be instrumental in determining what will be the closure costs for the surface impoundment. The Agency must review the proposed removal of waste and waste residues to determine if the plan complies with 6 MCAR §4.9317 G. Therefore it is reasonable to require submission of the plan.

Sections I. and J. of the rule require a showing of compliance with 6 MCAR §4.9317 H. and I. relating to ignitable, reactive, and incompatible wastes. Because these wastes possess a great potential to cause explosions, fire, and unplanned releases of hazardous waste, special provisions for managing these wastes exist. It is reasonable to require this information so that the Agency can determine whether the surface impoundment is in compliance with hazardous waste rules.

6 MCAR §4.4211, Part B Information Requirements for Waste Piles.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which store or treat hazardous waste in waste piles. The information requirements of this rule are based on the final

facility standards of 6 MCAR §4.9318. These standards are specific for facilities which store or treat hazardous waste in waste piles. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficieint information to enable the Agency to determine whether the facility is able to comply and whether a permit should be issued.

Section A. of the rule requires a listing of hazardous wastes to be placed in a waste pile. This is necessary to evaluate if the requirements of 6 MCAR §4.9318 C.1. - 2. and 6 MCAR §4.9318 H. - I. are met. 6 MCAR §4.9318 C.1. - 2. require that the liner and leachate collection system be compatible with the wastes managed at the waste pile. 6 MCAR §4.9318 H. - I. require that ignitable, reactive, and incompatible wastes be managed to eliminate the dangers associated with these characteristics. A listing of hazardous wastes to be managed in a waste pile is also necessary in order to determine those hazardous constituents for which concentration limits must be established under 6 MCAR §4.9297 F.

Section B. of the rule requires that if a permittee seeks an exemption from 6 MCAR §4.9297 for a waste pile as provided by 6 MCAR §4.9318 A. the permittee must provide an explanation of how the requirements of 6 MCAR §4.9318 A.1. - 4. will be complied with. This is reasonable as these exemptions are to major parts of the rules, such as ground water monitoring, and the permittee should clearly explain why an exemption will not result in harm to

the environment.

Section C. of the rule requires a showing of compliance with 6 MCAR §4.9318 B., which contains requirements for information on the location of a waste pile. Because the location of a waste pile will influence the fate of any contamination which may escape from it, it is reasonable that the permittee submit information to demonstrate that the location is suitable.

Section D. of the rule requires the submission of plans and an engineering report. These are necessary in order to verify that the waste pile is designed, constructed, operated, and maintained in accordance with 6 MCAR §4.9318 C. These plans and the engineering report must include analyses of the liner, leachate collection and removal system, and if applicable, the leak detection, collection and removal system. Management of run-on, run-off, wind dispersal of particulate matter, and leachate must also be addressed. It is reasonable to require this information so that the Agency can determine compliance with 6 MCAR §4.9318 C.

Section E. of the rule requires that if an exemption from 6 MCAR §4.9297 K.5. is sought that plans and an engineering report which describe how the requirements of 6 MCAR §4.9318 D.1. are met must be submitted. This is reasonable as the Agency must have sufficient information to determine if an exemption to 6 MCAR §4.9297 K.5. is warranted.

Section F. of the rule requires that if an exemption from

6 MCAR §4.9297 is sought that plans and an engineering report which describe how the requirements of 6 MCAR §4.9318 E. are met must be submitted. This is reasonable so that the Agency can determine whether an exemption from 6 MCAR §4.9297, Ground water monitoring, is warranted.

Section G. of the rule requires the submission of an inspection plan which describes how the waste pile and its components will be inspected to meet the requirements of 6 MCAR §4.9318 F. If an exemption is sought to 6 MCAR §4.9297 the inspection plan must describe how the inspection requirements of 6 MCAR §4.9318 E.1.b. will be complied with. It is necessary to submit this plan in order that its adequacy can be reviewed by the Agency. An inspection plan is also needed so that it can be at the waste pile as a reference.

Section H. of the rule requires that if treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals must be submitted. This information is necessary in order for the Agency to evaluate the effectiveness of the treatment and is therefore reasonable.

Sections I. and J. of the rule require a showing of compliance with 6 MCAR §4.9318 H. and I. relating to ignitable, reactive, and incompatible wastes. Since these wastes possess a great potential to cause explosions, fire, and unplanned releases of hazardous waste, special provisions for managing these wastes exist. It is reasonable to require this information so that the

Agency can determine whether the waste pile is in compliance with these provisions.

6 MCAR §4.4212, Part B Information Requirements for Land Treatment.

This rule establishes what additional information is to be contained in Part B permit applications for hazardous waste facilities which propose to use land treatment to treat or dispose of hazardous waste. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9419. These standards are specific for facilities which treat or dispose of hazardous waste in land treatment units. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit should be issued.

Section A. of the rule requires a description of plans to conduct a treatment demonstration as required under 6 MCAR §4.9319 C. The description must include: the wastes to be tested, sources of data, and specific laboratory or field tests. Because of the many variables involved in making a demonstration it is reasonable to require details on a demonstration so that the Agency can determine whether it is adequate.

Section B. of the rule requires a description of a land treatment program as required under 6 MCAR §4.9319 B. This information must be submitted with the plans for the treatment demonstration,

and updated following the treatment demonstration. It is reasonable to require this information as it will be used by the Agency to specify the elements of the treatment program such as the waste types, design and operating practices, unsaturated zone monitoring, and the extent of the treatment zone as required in 6 MCAR §4.9319 B.

Section C. of the rule requires a description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of 6 MCAR §4.9319 D. It is necessary and reasonable that this information be submitted because the Agency under 6 MCAR §4.9319 D. must specify in the permit how the unit shall be designed, constructed, operated, and maintained. The Agency can only do this if the permittee first makes a proposal and the Agency then evaluates it.

Section D. of the rule requires that if food chain crops might be grown in or on the treatment zone of the land treatment unit, a description of how the demonstrations required under 6 MCAR §4.9319 E. will be conducted must be submitted. Because Agency approval of the growth of food chain crops is based on whether the permittee can comply with the conditions of 6 MCAR §4.9319 E. it is necessary that proof of compliance be furnished.

Section E. of the rule requires that if food chain crops are to be grown after closure, a description of how the requirements of 6 MCAR §4.9319 E. will be complied with must be submitted. Because Agency approval of the growth of food chain crops is based on

whether the permittee can comply with the conditions of 6 MCAR §4.9319 E. it is necessary that proof of compliance be furnished.

Section F. of the rule requires a description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under 6 MCAR §4.9319 H.1.h. and H.3.b. It is reasonable to require this information in order for the Agency to determine whether the land treatment unit is properly closed.

Sections G. and H. of the rule require a showing of compliance with 6 MCAR §4.9319 I. and J. relating to ignitable, reactive, and incompatible wastes. Since these wastes possess a great potential to cause explosions, fire, and unplanned releases of hazardous waste, special provisions for managing these wastes exist. It is reasonable to require this information so that the Agency can determine whether the land treatment unit is in compliance with these provisions.

6 MCAR § 4.4213, Part B Information Requirements for Landfills.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which dispose of hazardous waste in landfills. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9420. These standards are specific for facilities which dispose of hazardous waste in landfills. Since facility compliance with these standards is one

of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit should be issued.

Section A. of the rule requires a listing of hazardous wastes to be placed in a landfill or landfill cell. This is necessary to evaluate if the requirements of 6 MCAR §4.9320 C. and 6 MCAR §4.9230 H. and I. are met. 6 MCAR §4.9320 C. requires that the liner, leachate collection system, and leak detection, collection, and removal system be compatible with the wastes managed at the landfill. 6 MCAR §4.9320 H. and I. require that ignitable, reactive, and incompatible wastes be maintained to elminate the dangers associated with these characteristics. A list of hazardous wastes to be managed at a landfill is also necessary in order to determine those hazardous constituents for which concentration limits must be established under 6 MCAR §4.9297 F.

Section B. of the rule requires a showing of compliance with 6 MCAR §4.9320 B., which contains requirements for information on the location of a landfill. Because the location of a landfill will influence the rate of any contamination which may escape from it, it is reasonable that the permittee submit information to demonstrate that the location is suitable.

Section C. of the rule requires the submission of plans and an engineering report. These are necessary in order to verify that the landfill is designed, constructed, operated, and maintained in

accordance with 6 MCAR §4.9320 C. These plans and the engineering report must include analyses of the liner, leachate collection and removal system, and leak detection, collection, and removal system. Management of run-on, run-off, and leachate must also be addressed. It is reasonable to require this information so that the Agency can determine compliance with 6 MCAR §4.9320 C.

Section D. of the rules requires the submission of an inspection plan which describes how the landfill and its components will be inspected to meet the requirements of 6 MCAR §4.9320 E. It is necessary to submit this plan in order that its adequacy can be reviewed by the Agency. An inspection plan is also needed so that it can be at the landfill as a reference.

Section E. of the rules requires the submission of detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with 6 MCAR §4.9320 G.1. and a description of how each landfill will be maintained and monitored after closure in accordance with 6 MCAR §4.9320 G.2. Because 6 MCAR §4.9320 G.1. and 2. include some general performance standards it is reasonable to require the submission of information which demonstrates how the permittee will comply with these provisions.

Sections F. and G. of the rule require a showing of compliance with 6 MCAR §4.9320 H. and I. relating to ignitable, reactive, and incompatible wastes. Since these wastes possess a great

potential to cause explosions, fire, and unplanned releases of hazardous waste, special provisions for managing these wastes exist. It is reasonable to require this information so that the Agency can determine whether the landfill is in compliance with these provisions.

Section H. of the rule requires that if a liquid waste or waste containing free liquids is to be landfilled, an explanation of how the requirements of 6 MCAR §4.9320 J. will be complied with. Because 6 MCAR §4.9320 J. greatly restricts the landfilling of liquid waste or waste containing free liquids it is necessary to provide sufficient information for the Agency to determine if these provisions are complied with.

Section I. of the rule requires that if containers of hazardous waste are to be landfilled, an explanation of how the requirements of 6 MCAR §4.9320 K. and L., as applicable, will be complied with. 6 MCAR §4.9320 K. and L. must be complied with in order to ensure that settling in the completed landfill is minimized. Therefore, it is reasonable to require submittal of sufficient information so that the Agency can determine if 6 MCAR §4.9320 K. and L. are complied with.

6 MCAR §4.4214, Part B Information and Special Procedural Requirements for Thermal Treatment Facilities.

This rule establishes what additional information is to be contained in Part B permit application for hazardous waste facilities which thermally treat hazardous waste. The information

requirements of this rule are based on the final facility standards of 6 MCAR §4.9321. These standards are specific for facilities which thermally treat hazardous waste. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit is to be issued. In addition, this rule provides additional procedural requirements for processing of applications for permits for facilities of this type.

The rule provides that the applicant must fulfill the requirements of Sections A., B. or C. The Director must then complete the requirements of D.

The reasonableness of these sections is discussed below.

Section A., Ignitable, corrosive, or reactive waste exemption: This section provides that if the applicant is seeking the exemption provided by 6 MCAR §4.9321 A.2. or A.3. relating to ignitable, corrosive, or reactive wastes, the applicant shall submit the information listed in Sections A.1. - 4. The exemption referenced applies to facilities which thermally treat hazardous waste, provided that the only hazardous wastes treated at the facility are hazardous solely because of ignitability, corrosivity, or reactivity and that the wastes do not contain any of the constituents listed in 6 MCAR §4.9137 or only contain insignificant concentrations of these constituents.

The information required by the rule is designed to allow the Agency to determine whether the applicant qualifies for the exemption claimed. It is reasonable to allow the Director to determine whether the claim is valid or whether the applicant must instead proceed under Sections B. or C.

Section B., Trial burn: This section provides that the applicant shall submit the results of a trial burn conducted pursuant to 6 MCAR §4.4221. This is the option the Agency anticipates most applicants will pursue. The trial burn requirements of 6 MCAR §4.4221 are based on the standards of 6 MCAR §4.9321 and are discussed in greater detail under the section addressing the reasonableness of 6 MCAR §4.4221. It is reasonable to require trial burns for thermal treatment facilities since this is the most accurate method of determining whether a facility is able to comply and under what conditions compliance is achieved with the performance standards of 6 MCAR §4.9321. During the trial burn, operating conditions which produce facility compliance with the performance standards are established. These operating conditions are then included in the facility's permit, if a permit is issued. Generally, compliance with these permit operating conditions is considered sufficient to ensure compliance with the performance standards. However, when necessary, the Agency can require compliance testing to verify actual facility compliance. Considering the importance of establishing proper operating

conditions in the permit, it is reasonable to require an actual trial burn which demonstrates facility compliance with the performance standards under specific operating conditions.

Section C., Comparison of wastes treated in previous trial burns: This section provides an alternative to performing a trial burn when it is not feasible or not practical. Foreseeable situations of this type involve proposed facilities which are not yet in existence and proposals to burn wastes where the same or similar wastes have been treated in previous trial burns at facilities which are substantially similar to the facility for which the permit application is made.

The purpose of the information requirements is to cause the applicant to analyze the waste to be treated and to submit sufficient information about the wastes, the facility, and the previous trial burn so that the Director can make comparisons from which judgments can be made as to whether the proposed faiclity can be operated in compliance with the applicable performance standards. Another purpose is to allow the Director to establish appropriate operational conditions in the facility permit.

It is reasonable to provide this alternative to the applicant because, for proposed facilities, this is a good way to predict compliance with standards prior to the construction of the facility. It is reasonable to allow the construction of a thermal treatment faicility, which requires the investment of a large amount

of capital, only after reasonable predictions are made that the facility will comply with the applicable performance standards so that the facility will be allowed to operate. For existing facilities, it may not be justified in terms of cost to require a trial burn for wastes which, in the past, have successfully been treated at a similar facility. The comparison procedure provides a reasonable means for the Agency to predict compliance with performance standards without requiring the expenditure of unnecessary funds by the applicant.

Section C. contains extensive information requirements. Section C.1. requires detailed information concerning the waste analysis performed. This is reasonable because it is necessary for the Director to know the nature of the wastes to be treated in order to make a comparison to the wastes treated in the previous trial burn and in order to specify in the permit those constituents which must be destroyed.

Sections C.2. and 3. require detailed information on the thermal treatment units, including air pollution control equipment, if required. This is reasonable since this information serves as a basis for determining whether the units to be compared are simlilar. The criteria used for determining similarity include these thermal treatment unit parameters: type, linear dimensions, capacity of prime mover, auxiliary fuel feed system, combustion zone temperature, residence time, ratio of air to waste

feed rates, air pollution control devices, and ratio of waste to fuel feed rates. All of the criteria for similarity must be met in order for the units to be deemed similar. Therefore , it is reasonable to require detailed information regarding the criteria parameters. Additional thermal treatment unit information such as nozzle and burner design is required since these factors affect the unit's ability to comply with the destruction and removal efficiency standards.

Section C.4. requires a description and comparison of the wastes to be burned with the wastes burned in the previous trial burn. It is reasonable to require the applicant to make this comparison to aid the Director in making a determination as to whether the wastes being compared are similar.

Section C.5. requires a description and comparison of the design and operating conditions of the proposed thermal treatment unit with the design and operating conditions of the unit used in the previous trial burn. It is reasonable to require the applicant to make this comparison to aid the Director in making a determination as to whether the thermal treatment units being compared are similar.

Section C.6. requires a description of the operating procedures proposed by the applicant to meet the applicable performance standards. The establishment of operating conditions

in the permit is essential. Once established, the permittee's compliance with those operating conditions will constitute compliance with the performance standards. As a result, it is essential that the permit operating conditions be accurate and detailed. Therefore, it is reasonable to require information on the proposed operating conditions.

Section C.7. requires submission of information on estimated emissions of particulates and sulfur dioxide. This information is needed to determine whether the facility will comply with federal and Agency rules relating to air quality. This information is also necessary to determine whether the permit should contain additional conditions relating to the protection of air quality. Therefore it is reasonable to include this information requirement.

Section C.8. requires the submission of any additional information which the Director determines is relevant to the decision on permit issuance. Since the intent of the Part B permit application is to provide sufficient information to enable the Agency to make a determination regarding permit issuance in accordance with 6 MCAR §4.4014, it is reasonable to require any other additional information which is necessary to making that determination.

Section D., Review of part B application for thermal treatment facilities: Section D. provides procedures for the review of applications for thermal treatment facilities.

If the applicant has proceeded pursuant to Sections A. or B., the Director reviews the application for completeness pursuant to 6 MCAR §4.4009. This is reasonable because it is consistent with the Agency's normal procedure for processing permits.

If the applicant has proceeded pursuant to C., the Director reviews the application and finds it complete (and thus eligible to be processed) only if the applicant has met all the information requirements of C. and has demonstrated that the wastes compared are substantially similar, that the thermal treatment units are substantially similar, and that the data from the other trial burn is adequate such that the Director is able to specify adequate operating conditions. This is reasonable because if the Director can make these findings it is reasonable to predict that the proposed facility will be able to comply with applicable performance standards.

6 MCAR §4.4215, Additional Part B Information Requirements for Surface Impoundments, Waste Piles, Land Treatment Units, and Landfills.

This rule establishes additonal Part B information requirements for surface impoundments, waste piles, landfills, and land treatment units. These information requirements are derived from the ground water protection requirements of 6 MCAR §4.9297. It is reasonable to require that sufficient information be submitted so that Agnecy staff can evaluate a facility's

compliance with the standards of 6 MCAR §4.9297 and draft appropriate permit conditions.

The reasonableness of Sections A. and B. is discussed below.

Section A., Ground Water Protection: This section presents the Part B information requirements to allow the Agency to establish the appropriate ground water monitoring and response programs for a regulated unit. The following will be specified in the permit: ground water monitoring well types, depths and locations; a detection monitoring program that specifies monitoring parameters and frequencies; ground water protection standards for hazardous waste constituents; a compliance monitoring program that specifies monitoring parameters and frequencies; a corrective action program that establishes appropriate responses to ground water contamination and a monitoring program to assess the effectiveness of the response activities. Each of the requirements contained in A.1. - 8. contribute necessary information to establish the ground water protection program in the permit.

Section A.1. requires submittal of any ground water monitoring results obtained during interim status. This information is necessary to determine any past impacts on the ground water from the unit or to assist in establishing background ground water quality. This information may be used to establish

ground water protection standards for the monitored parameters. It is reasonable to require its submittal because the Agency needs all available information on existing ground water quality to establish appropriate permit standards.

Section A.2. requires submittal of information pertaining to the identification of the uppermost aquifers (and hydraulically connected aquifers) and the flow rates and directions of ground water at the site. This information will be used to locate monitoring wells along the waste management area and to establish proper depths of monitoring wells. This information is also necessary in the development of a corrective action program to be used in the event of ground water contamination. Since both the applicant and the Agency need such information, it is reasonable to require its submittal.

Section A.3. requires submittal of specific additional information on the topographic map required by 6 MCAR §4.4207 R. This information includes the location of the waste management area, property boundary, proposed "point of compliance," proposed monitoring well locations, and, if possible, any information required by A.2. The boundaries of the waste management area are to be used to establish the point of compliance under 6 MCAR §4.9297 H. The point of compliance is where the ground water protection standards are to be met. It is therefore reasonable

and necessary to be able to locate this compliance boundary for the purposes of drafting the permit. Identification of the property boundary is necessary because, in the event of ground water contamination, the property boundary must be monitored to show that contamination is not leaving the permittee's property. If it does, the Agency will assume that corrective action was not satisfactory, and the permit will specify that the permittee will stop accepting waste at the unit. It is therefore reasonable to require that information regarding the property line be submitted.

The proposed "point of compliance" is required so that the Agency knows that the permit applicant designed his monitoring program using the correct point of compliance. Again, since this "point" is where standards are to be monitored for and met, it is reasonable that this information be provided to the Agency.

Identification of the proposed ground water monitoring well locations is required so that the Agency can review the appropriateness of the proposed monitoring program. This information is to be included in the permit. Therefore it is reasonable to require its submittal.

Section A.4. requires submission of information on any existing contamination plumes. For the same reasons set forth in the discussion concerning Section A.1., this is a reasonable

requirement.

Section A.5. requires submission of detailed plans and an engineering report on the proposed ground water monitoring program. Section A.6. requires submission of information necessary to establish a detection monitoring program under 6 MCAR §4.9297. Section A.7. requires submittal of information necessary to establish a compliance monitoring program under 6 MCAR §4.9297 L. It is reasonable to require the submission of this information because these programs are required to be specified in the permit to assess ground water impacts of a facility.

Section B., Corrective action program: This section establishes the information requirements necessary for a corrective action program under 6 MCAR §4.9297 M. and requires submission of an engineering feasibility plan for a corrective action program. This is required because a permit applicant must be able to show that corrective action can reasonably be expected to bring a unit back to compliance with the ground water protection standard after the standard has been exceeded. It is therefore reasonable to require the submission of this information.

Section B.1. requires submission of information on existing ground water contamination. It is necessary to have this

information while establishing protection standards and to determine needs for cleaning up existing contamination. It is therefore reasonable to require its submission.

Section B.2. requires submission of the concentration limits that are to be set in the permit. While this information is necessary even without the requirement of the corrective action program, it is also to be used to determine when corrective action must be implemented and when it has been successful in achieving compliance. It is therefore reasonable to require this information for the corrective action program.

Section B.3. requires submission of detailed plans and an engineering report that describe the proposed corrective actions. This information is needed so that it can be reviewed to determine if it can reasonably be expected to comply with the requirements of 6 MCAR §4.9297 M. The element of the corrective action program is to be included in the permit. Thus, it is reasonable to require that this information be submitted in the Part B application.

Section B.4. requires submission of information regarding a ground water monitoring program to assess corrective action effectiveness. This is a requirement of 6 MCAR §4.9297 M. This monitoring program is to be reviewed by the Agency and included in the permit. Therefore it is reasonable to require its submission.

Section B.5. requires submission of a time estimate for corrective action completion. This will be used to determine if corrective action can be completed before off-site ground water contamination has occurred. It will be used to determine costs for corrective action. It also will be used to implement provisions of 6 MCAR §4.9297 which require cessation of waste acceptance if corrective action is not completed within a reasonable period of time. Because these uses relate directly to items required to be in the permit, this is a reasonable information requirement.

Seciton B.6 requires submission of a cost estimate for corrective action. This estimate will be used to determine the appropriate level of financial assurance for corrective action required under 6 MCAR §4.9310. Since the Agency must review the cost estimate (prepared pursuant to 6 MCAR §4.9309) and include the financial assurance requirements in the permit, it is reasonable to require submission of this cost estimate.

6 MCAR § 4.4216 Interim Status.

Section A. of this rule provides that during the period after submission of a Part A application and prior to a final determination by the Agency on the permit application, the owner or operator of an existing hazardous waste facility shall be

considered to be in compliance with the requirement to obtain a permit if EPA has granted the owner or operator interim status or if the Director finds that the owner or operator has submitted a complete Part A permit application and is in compliance with the facility standards.

Interim status is a concept which arises from EPA's regulations, 40 C.F.R. §§270.70 - 270.73. It provides a means for existing facility owners to continue operations during processing of their permit application providing they meet the required standards. Since the application and processing of hazardous waste facility permits will be time consuming, it is reasonable to allow interim status for existing facilities so they can maintain continuity of operation during the time their permit applications are being processed.

Section B. provides an exception to the rule concerning qualification for interim status. It provides that any person who was required, prior to the effective date of this rule, to apply for and obtain interim status from EPA but who failed to do so is not eligible to obtain interim status from the Agency. The reason for the inclusion of this language in the rule is EPA's concern that persons who were required to obtain interim status under EPA's rules might escape punishment for this violation by submitting a Part A application to the Director. This provision

is reasonable because the purpose of interim status is to protect persons who have operated existing hazardous waste facilities in compliance with the law, not to condone the unlawful conduct of those who have ignored the previously effective federal requirements.

Section C. of the rule provides that if the Director determines that an owner or operator of an existing facility does not qualify for interim status, the Director shall give notice in writing of that fact and the fact that the owner or operator is subject to Agency remedies for a violation of its rules. It is reasonable to inform persons of their failure to qualify for interim status so that they will be encouraged to take the necessary action to come into compliance with Agency rules.

Section D. of the rule specifies certain prohibitions applicable to facility owners having interim status. No activity is allowed under interim status that is not specified in the Part A application or which would constitute a reconstruction of the facility. It is reasonable not to permit activities for which no permit application has been received.

Section E. of the rule specifies four types of changes which are allowed during interim status. The first allows treatment, storage, or disposal of a hazardous waste not previously specified in the original Part A application if the owner or operator submits a revised Part A application prior to the commencement of

the activity. Although the waste may be new, the facility is still required to comply with the interim status standards of 6 MCAR §§4.9380 - 4.9422. Since the generation of new hazardous wastes is not prohibited it is reasonable to allow existing facilities to manage new hazardous wastes, provided that the Agency is notified.

The second, third and fourth types of changes are allowed only if the owner or operator has submitted a revised Part A application and the Director approves the change. Section E.2. allows an increase in the design capacity or a change in process if there is a lack of available treatment, storage or disposal capacity at another permitted hazardous waste facility. This is reasonable becauses it encourages treatment, storage and disposal of hazardous waste at facilities which meet applicable standards. Section E.3. allows the addition of new processes for the treatment, storage, or disposal of hazardous waste if the addition is necessary to prevent a threat to human health or the environment as a result of an emergency situation or the addition is necessary for the owner to comply with federal, state or local requirements, including the state hazardous waste facility standards. This is reasonable because it protects human health and the environment and encourages compliance with federal and state law. Section E.4. allows for change of ownership during interim status if the new owner demonstrates compliance with

applicable rules. This is reasonable since there is no justification not to transfer ownership or operational control if the new owner or operator can comply with federal and state law.

Section F. provides that during the interim status period the owner or operator must comply with the interim status standards of 6 MCAR §§4.9380 - 4.9422. It is reasonable to cross reference these rules because the reference alerts the regulated parties to the requirements of those rules.

Section G. provides that interim status terminates automatically when the Agency has taken final action on the permit application. Interim status means that the owner or operator is deemed to be in compliance with the requirement to obtain a permit; it is reasonable to terminate interim status when final action is taken on the permit application since interim status is no longer necessary. The Director can terminate interim status if the applicant fails to furnish a complete part B of the permit application within the required time or the owner or operator is in violation of the interim status standards. Since interim status is based on being in compliance with facility standards, it is reasonable to terminate interim status if the owner or operator is in violation of any of the facility standard requirements.

6 MCAR §4.4217, Preliminary Determination, Draft Permit and Public Comments.

This rule provides that the provisions of 6 MCAR §§4.4010 and 4.4011 apply to hazardous waste facility permits except as

specifically provided in Sections A. - E. The reasonableness of each of these sections is discussed below.

Section A., Fact sheets: This section requires the preparation of fact sheets which are required for all major hazardous waste facilities as determined by the Director. The definition of "major" is based upon the magnitude of the potential impacts on the environment by the facility. It is reasonable to require fact sheets to be prepared for major facilities due to their complexity, their potential for environmental impacts, and the likelihood of widespread public interest for this type of facility. In addition, EPA's regulation relating to state program requirements, 40 C.F.R. §271.14(w) provides that in order for a state to obtain authorization to administer the federal hazardous waste facility permit progam, the state must require the preparation of fact sheets for major facilities.

Section B., Comment period: This section extends the normal comment period provided by 6 MCAR §4.4010 from 30 to 45 days. The 45 day public notice period of permit applications and preliminary determination is reasonable since it is required by EPA's regulation 40 C.F.R. §271.14(x) for a state to obtain authorization to administer the hazardous waste facility permit program. This rule is reasonable because the 45 day notice period provides a reasonable time frame for an interested party to become aware of the proposed action, conduct necessary reviews, and

prepare and submit written comments to the Agency.

Section C., Public notice of permit application and preliminary determination: This section broadens the requirements of 6 MCAR §4.4010 to include the requirement that the public notice be mailed to local, state and federal governmental units who have jurisdiction and/or authority over the construction, operation, and siting of the facility. This provision is reasonable because these other units of government having jurisdiction over the facility location are likely to have an interest in the permit application.

Section D., Distribution of public notice: This section requires the Director to publish the notice in a local newspaper and arrange for the notice to be broadcast over at least one local radio station. It is reasonable to publish the notice in the newspaper since it is both a customary and often essential means for communicating with the public. In order to achieve additional public exposure and to meet EPA's requirements for state programs (40 C.F.R. §271.14(x)) it is reasonable to include the feature of radio broadcasting of the public notice information.

Section E., Response to public comments: Prior to final action being taken on a permit application, the Director or Agency is required by this section to respond to comments received during the public notice comment period, public informational

meetings or contested case hearings. There is a need for the commentors to know what the Director's or Agency's position is on the issues that are raised. It is, therefore, reasonable that the Director or Agency provide them with a response to their comments. It is also reasonable that these documents be available to the public for review, since they are classified as public records under Minn. Stat. §116.075 (1982).

6 MCAR §4.4218, Public Informational Meetings and Contested Case Hearings

The general rules relating to public informational meetings and contested case hearings are set forth at 6 MCAR §§4.4011, 4.4012 and 4.4013. The purpose of this rule is to add additional requirements with respect to hazardous waste facility permits. The reasonableness of sections A. - D. is discussed below.

Section A., Requests: This section makes it clear that a request for a public informational meeting or contested case hearing is to be made in the same manner as for other permits but that the Agency must hold a public informational meeting if requested or if the Agency has denied a request for a contested case hearing. EPA's regulation 40 C.F.R. §271.14(z) requires states desiring to obtain authorization to adminster the hazardous waste facility permit program to include public hearing requirements equivalent to those of EPA. 40 C.F.R. §124.12(a) imposes the requirement to hold a public meeting whenever a hearing request is received. Therefore it is reasonable to

include the requirement so that the Agency may obtain authorization to administer the hazardous waste facility permit program.

Section B., Preparation of public notice: This section cross references the requirement of 6 MCAR §§4.4012 and 4.4013 to prepare a public notice. It is reasonable to include this cross reference to aid the public in determining the procedures that will be followed with respect to public informational meetings and contested case hearings.

Section C., Mailing of public notice: This section contains requirements which are additional to those of 6 MCAR §§4.4012 and 4.4013 relating to the mailing of public notice. It requires distribution to local, state and federal units of government having authority and/or jurisdiction over the area where the facility is located or proposed to be located. It is reasonable to include in the distribution of the public notice to these units of government because they are likely to have an interest in the subject matter of the public informational meeting or contested case hearing.

Section D., Distribution of public notice: This section contains requirements which are additional to those of 6 MCAR §§4.4012 and 4.4013 relating to distribution of public notice. It requires the Director to publish the notice in a local newspaper and arrange for it to be broadcast over a local radio

station. This is reasonable because these are customary and necessary methods for communicating with the public, and provide a means to achieve a broad circulation of the public notice.

6 MCAR §4.4219, Final Determination.

This rule establishes the standards upon which the Agency must base its decision to issue or deny a hazardous waste facility permit.

Section A. provides the general rule that the decision is required to be made in accordance with 6 MCAR §4.4014. This is reasonable because this is the standard procedure used for other Agency permits.

Section B. provides an exception to the general rule with respect to any draft permit concerning a thermal treatment facility prepared pursuant to 6 MCAR §4.4221. In that case the Agency need not find that the facility will comply or will undertake a schedule of compliance to achieve compliance with all applicable Minnesota and federal pollution control statutes and rules. Rather, the Agency must issue a permit authorizing construction of the proposed facility, requiring the permittee to conduct trial burns and requiring submission of the results of the trial burns, if the Agency finds that the facility is likely to qualify for a permit authorizing the operation of the facility under appropriate operating conditions as required by 6 MCAR §4.9321 F. and as necessary to comply with 6 MCAR §4.9321 D. The

rule specifically provides that the permit is then subject to modification to authorize operation and establish operating conditions. However, the rule also specifically provides that issuance of the construction permit does not bind the Agency to authorize operation in the future in the event that the Agency finds that the owner or operator will not be able to operate the facility in accordance with all applicable Minnesota and federal statutes and rules.

The provisions of Section B. are reasonable because they relate to facilities which are unable to perform trial burns for the wastes to be treated and unable to show that comparable trial burns have been done previously. This causes the Director to be unable to make the findings set forth in 6 MCAR §4.4214 D.2. and thus unable to make a prediction that the wastes to be treated will be able to be burned in compliance with Minnesota and federal statues and rules. This rule allows the proposer of a new facility to proceed at his or her own risk to build a facility which the Director finds is likely to qualify for operation authorization, based on the facts available at that time. This is reasonable because it allows the construction of facilities which would otherwise be unable to be built because of the uncertainties involved. While the proposer takes on a certain risk, the Director's required finding that the facility is likely to qualify for operation authorization takes some of the edge off that risk.

Conversely, the Agency should not be bound to issue a permit authorizing operation to a facility which has been issued a permit to construct but which fails to meet the facility standards set forth in 6 MCAR §4.9321 or any other appropriate statutes and rules, once constructed, since otherwise this would require the Agency to issue a permit in violation of Minnesota and federal statutes and rules and would possibly allow a facility to endanger human health and the environment.

Section C. also provides an exception to the general rule with respect to any draft permit concerning a land treatment facility prepared pursuant to 6 MCAR §4.4222. The procedure presented in C. allows the Agency to issue demonstration permits so that permittees can demonstrate that their facilities can meet the performance standards in 6 MCAR §§4.9297 and 4.9319. The demonstration permit may be just for the demonstration or it may be part of a two-phase permit which allows final facility operation after a successful demonstration (contingent on permit modification, if necessary). This section is necessary because, without it, the Agency would, in some cases, not have sufficient information on which to base decisions regarding final permit issuance. The demonstration allows the gathering of this needed information in a controlled manner. This approach is reasonable because it allows that information gathering while ensuring environmental protection.

6 MCAR §4.4220, Emergency Permits.

This rule specifies the standards and procedures for issuance of a temporary emergency permit to allow treatment, storage or disposal of a hazardous waste which the owner or operator of a facility is not otherwise permitted to treat, store or dispose of. These permits are subject to the approval of the Agency.

Section A. authorizes issuance of an emergency permit if the Director finds that there is an imminent and substantial danger to human health or the environment. Since the Agency Board meets on a regular basis only once a month, it is reasonable to provide for issuance of temporary permits by the Director for emergency situations which require immediate action.

Section B. provides that the permit should be issued in writing but that it may be given orally if circumstances warrant. If the permit is given orally, a written emergency permit must be issued within five days after the date of the oral approval. This provision is reasonable because, in the event of a dangerous situation requiring immediate attention, the delay which might result from the need to issue a written permit should be avoided in order to prevent harm to human health or the environment.

Section C. provides that the term of an emergency permit is no longer than 90 days. Due to the short term nature of an emergency situation, the 90 day duration for an emergency permit

is believed to be a reasonable time period for resolving the emergency situation and handling of the waste material.

Section D. provides that the emergency permit must specify the type of waste to be received and the manner and location of its treatment, storage or disposal. This is a reasonable, basic requirement, before approval is given for treating, storing or disposing of any hazardous material.

Under Section E. the Director can terminate the emergency permit if at any time during the 90 day period he or she determines that the action is necessary to protect human health or the environment. This is an important and reasonable provision in the event that unforeseen events associated with treating, storing, or disposing of the waste occur or noncompliance with permit conditions is causing endangerment of human health or the environment.

Section F. requires the permit to incorporate, to the extent possible under the circumstances, all applicable requirements of the hazardous waste facility permit rule and the rules on facility standards. This is reasonable because it is designed to put the permittee on notice of the substantive rules which must be met. The fact that the permit is issued during an emergency should not excuse the permittee from complying with the applicable standards designed to protect the environment.

Section G. requires the Director to notify the public of the

issuance of an emergency permit. It is reasonable to notify the public of the permit action at the time of permit issuance since in most cases there would not be sufficient time to give notice prior to the permit issuance due to the urgency of the situation.

Section H. requires the Director to present the emergency permit to the Agency Board for approval at its next scheduled meeting. Due to the urgency of an emergency approval, it is reasonable to allow the initial emergency approval so long as the Board can consider the action at its first opportunity.

6 MCAR § 4.4221, Hazardous Waste Thermal Treatment Facility Permits.

Under 6 MCAR §4.4214 B., the results of trial burns are required to be submitted as a part of an application for a thermal treatment unit. This rule establishes a mechanism for submission and processing of trial burn plans, procedures for conducting trial burns, and requirements for the submission of trial burn results. The technical requirements of this rule are based on the thermal treatment facility standards of 6 MCAR §4.9321. The purpose of a trial burn is to demonstrate thermal treatment operating conditions such that a hazardous waste can be thermally treated within the performance standards of 6 MCAR §4.9321 and to demonstrate that a new thermal treatment facility can operate similarly as provided in 6 MCAR §4.4214 C. Trial burns are essential in order for the Agency to determine facility compliance with the thermal treatment performance standards and to establish

permit operating conditions.

The reasonableness of sections A. - K. of the rule are discussed below.

Section A., Phase one requirements: This section provides that the Agency will specify in a thermal treatment permit operating conditions and allowable waste feeds during phase one of facility operation. Phase one is the time period that follows facility construction and lasts until the trial burn begins. During this period the facility is to be brought up to normal operating conditions and any "bugs" are worked out. This period is to last to a maximum of 720 hours of operating time (unless the Director approves an extension of up to 720 hours). Allowing such a "shakedown" time period is necessary to ensure that the facility is performing satisfactorily during the trial burn. It is reasonable to allow this time period. It is also reasonable that the Agency specify acceptable wastes to be burned and the operating conditions so that environmental protection can be ensured during phase one.

Section B., Phase two requirements: This section provides that the Director shall establish permit conditions during phase two, the trial burn. This is reasonable because effects of a trial burn on the environment must be reviewed and minimized by the establishment of such permit conditions as are necessary.

Section C., Trial burn plan: This section requires submission of a trial burn plan to the Director. This is reasonable because the person proposing to conduct the trial burn should in the first instance make the plans as to how the trial burn can best be conducted to determine the conditions under which the facility can be operated in compliance with thermal treatment performance standards.

This section also establishes what information is to be contained in a trial burn plan. Waste analysis information is required regarding each waste or mixture of wastes to be burned. Requiring information on heat value and waste form is reasonable since these are basic parameters which affect the thermal treatment unit's ability to meet performance standards. For example, a liquid waste with a high heat value generally will burn more readily and completely than a solid waste with a low heat value.

Since most of the standards of 6 MCAR §4.9321 are based on the thermal treatment of hazardous wastes which contain organic hazardous constituents, it is reasonable to require substantial information regarding all organic hazardous constituents in the wastes and waste mixtures. This includes information on the types and quantities of organic hazardous constituents since these factors will affect the Director's designation of trial principal organic hazardous constituents for which destruction and removal

efficiencies must be calculated during the trial burn.

A detailed engineering description of the thermal treatment unit, including air pollution control equipment, is required. This is reasonable since this information serves as a basis for determining whether the thermal treatment unit is capable of attaining the proposed operating conditions. Also these factors are basic to the unit and affect the thermal treatment unit's ability to meet the destruction and removal efficiency standard. Therefore, this information must be reviewed prior to the Director designating trial principal organic hazardous constituents, and to the Agency making its findings regarding trial burn approval.

A detailed description of sampling and monitoring procedures is required. This is reasonable since comprehensive sampling and monitoring during a trial burn is essential to determining compliance with the performance standard. Since the intent of the trial burn is to determine such compliance it is necessary and reasonable for the Agency to require the applicant to submit this information for review and approval. All of the factors listed could affect the compliance determination. For example, sample analysis procedures used to analyze for principal organic hazardous constituents must be accurate and complete to ensure that these constituents are thermally degraded and not simply transferred to the ash or scrubber liquid during treatment.

A detailed test schedule is required. Trial burns should be

kept as short as possible, but each test burn should be of sufficient duration to collect data for a thorough evaluation. If large quantities of waste are allowed to be treated during a trial burn, the applicant might disregard the exploratory concept of the trial burn and consider the trial burn to be an opportunity to dispose of wastes which could not otherwise be treated. Therefore, duration and quantity of waste should be specified in the trial burn plan and subject to Agency review and approval. Other provisions such as safety measures could also be required in the trial burn plan to ensure the protection of staff and maintenance of facility integrity during the trial burn.

A detailed test protocol is required. This protocol specifies the intended operating conditions for each test burn in the trial burn plan. Based on this and other information in the trial burn plan the Agency can check that the specified conditions are achievable and consistent. For example, based on the heating value of the waste, the waste feed rate, and the percent excess air, the achievable combustion zone temperature can be determined and compared to the temperature given in the test protocol. Since the operating conditions affect the thermal treatment unit's ability to meet the destruction and removal efficiency standard, it is reasonable to require a detailed test protocol be submitted for Agency review and approval.

Information regarding the emission control equipment is

required. Since the emission control equipment directly affects the thermal treatment unit's ability to meet the destruction and removal efficiency standard and other performance standards it is reasonable to require this information be submitted as part of the trial burn plan.

Procedures for rapidly stopping waste feed, shutting down the thermal treatment unit, and controlling emissions in the event of an equipment malfunction are required. If an equipment malfunction occurred during a trial burn there is the possibility that hazardous wastes or hazardous waste constituents would be emitted directly to the atmosphere without adequate treatment thus endangering human health or the environment. Considering the consequences of such an occurrence it is essential that provisions for responding to this occurrence be in place to prevent or minimize any adverse effects. Therefore, it is reasonable to require such procedures be included in the trial burn plan.

Since the intent of the trial burn plan and request for approval is to provide sufficient information to enable the Agency to make a determination regarding the trial burn, it is reasonable to require any other additional information which is necessary to making that determination.

Section D., Review of trial burn plan: This section establishes procedures for processing trial burn plans and requests for approval. The Director reviews the trial burn plan

for completeness and based on this review will either continue processing the request or suspend further processing and notify the owner or operator of any deficiency or incompleteness. This method of reviewing trial burn requests is consistent with the method used to review permit applications in accordance with 6 MCAR §4.4009. This is reasonable since an incomplete trial burn plan would not contain sufficient information for the Agency to make the findings necessary to approve the trial burn plan and request. However, to enable the owner or operator to provide a complete trial burn plan it is reasonable to require the Director to notify the owner or operator of the deficiency or incompleteness.

Once the trial burn plan is complete, the Director continues processing the trial burn request. This involves designating trial principal organic hazardous constituents for which destruction and removal efficiencies must be calculated during the trial burn. This is reasonable since the intent of the trial burn is to demonstrate the thermal treatment unit's ability to comply with the performance standards of 6 MCAR §4.9321. Those performance standards include a destruction and removal efficiency standard for principal organic hazardous constituents.

In designating the trial principal organic hazardous constituents the Director must consider the organic hazardous constituents and their concentration in the proposed waste feed

and the difficulty of thermally treating the constituents. For listed wastes the Director must also consider the basis for the listing as indicated in 6 MCAR §4.9136. Based on the waste analysis data and the basis for listing given in 6 MCAR §4.9136, the Director can determine which organic hazardous constituents are present in the waste feed. The Director can then designate trial principal organic hazardous constituents based on the degree of difficulty of thermal treatment and the concentration of the organic hazardous constituents in the waste. Generally, organic constituents which are difficult to thermally treat and are present in the highest concentrations will be designated as trial principal organic hazardous constituents. This approach is reasonable since the difficulty of thermal treatment and the concentration of organic hazardous constituents in the waste feed will affect the thermal treatment unit's ability to demonstrate compliance with the performance standards of 6 MCAR §4.9321. Since facility compliance is based on the results of the trial burn, it is essential that the appropriate constituents be designated as trial principal organic hazardous constituents for which destruction and removal efficiencies are calculated during the trial burn. Accordingly, these constituents should be designated by the Director and subject to Agency approval.

Section E., Approval of trial burn plan: Once the Director has finished reviewing the trial burn plan, it is subject

to Agency action regarding approval. If the Agency makes the necessary findings, the plan shall be approved. This method of Agency review and approval is comparable to that for facility permits as provided in 6 MCAR §4.4014. The requirements that the Agency find the trial burn is likely to determine whether the facility can meet the performance standards and will aid the Director in determining operating conditions are reasonable since obtaining that information is the intent of a trial burn. If the trial burn is not likely to provide the information necessary to demonstrate compliance or to establish operating conditions, there is good cause not to approve the trial burn since the risks would outweigh the benefits. Also, if this information can be obtained through other means, which are acceptable to the Agency, such as comparing similar wastes and trial burn data from previous trial burns, it is preferable to utilize those other means due to the risk associated with trial burns. However, the Agency does recognize that in many cases, particularly during the initial stages of implementing the hazardous waste permitting program, trial burns will be the only acceptable means for obtaining the necessary information. As the Agency gains experience and information in this area, it is anticipated that the need for trial burns will decrease.

The requirement that the Agency find that the trial burn itself will not present an imminent hazard to human health or the

environment is reasonable to assure protection of human health and the environment. Since it is the Agency's responsibility and duty to protect human health and the environment this requirement is necessary and reasonable.

Section F., Conduct of trial burn: This section also establishes procedures for conducting the trial burn and generating the necessary information from the trial burn. Since the trial burn plan will have been reviewed and approved by the Agency and is designed to regulate the trial burn, it is reasonable to require that the trial burn be conducted in accordance with the approved trial burn plan. Also, since the intent of the trial burn is to generate information on facility compliance with the performance standard and appropriate operating conditions, it is reasonable to require the owner or operator to generate that information.

Quantitative analyses as well as a mass balance and computation of destruction and removal efficiency of each trial principal organic hazardous constituent are required. This information is reviewed and evaluated to assure that these values are within the regulatory performance standards set forth in 6 MCAR §4.9321. Since one of the main performance standards is the destruction and removal efficiency standard for principal organic hazardous constituents, it is reasonable to require this information in order to determine whether the facility is able to

comply with this standard. It is essential to analyze all the waste streams for principal organic hazardous constituents and do a mass balance to ensure that these constituents are thermally degraded and not simply transferred to the ash or scrubber liquid during the trial burn.

For test burns with emissions of hydrogen chloride exceeding 1.8 kilograms per hour, a computation of hydrogen chloride removal efficiency is required. This is reasonable since there is a performance standard in 6 MCAR §4.9321 D.2. regarding hydogen chloride removal. This information is needed in order for the Agency to determine whether the facility is able to comply with this standard.

6 MCAR §4.9321 D.3. contains a standard for particulate emissions. To ensure compliance with this standard, a computation of particulate emissions is required.

Other information on fugitive emission control, temperatures, combustion gas velocity, and carbon monoxide monitoring is required. This is used to determine acceptable operating standards as required in 6 MCAR § 4.9321 F., and, therefore, is reasonable.

Considering that the intent of a trial burn is to demonstrate facility compliance, it is reasonable to require any other information necessary to make such a determination.

Section G., Submission of certification, results and data: This section requires the owner or operator to submit

the trial burn results, underlying data, and a certification that the trial burn was conducted in accordance with the trial burn plan. Considering that the owner or operator is required to generate this information so that the Agency can make a determination regarding compliance, it is reasonable to require that the information be submitted to the Director. Also, considering that the trial burn must be conducted in accordance with the approved trial burn plan, it is reasonable to require the owner or operator to certify that this has occurred. Since facility compliance is determined based on the trial burn results it is reasonable to require a certification so the Agency is assured that the results are from a trial burn which was conducted in accordance with the approved trial burn plan. The time limit of ninety days is to ensure that the information is submitted in a timely manner. Based on past Agency experience with stack testing and analyses, ninety days is considered to be a reasonable and adequate amount of time to compile and submit the trial burn results.

Section H., Authorized signature: All submissions required by this rule, including the trial burn plan and request for approval, as well as information relating to trial burn results, must be properly signed in accordance with 6 MCAR §4.4006 C. and must contain the certification required in 6 MCAR §4.4205. This is comparable to the requirements for a permit

application. Considering that these submissions may be included in a permit application, and will provide a basis for determining facility compliance with facility standards, it is reasonable to have certification and signature requirements comparable to those for permit applications. Since determinations affecting future operation of the facility will be made based on these submissions, it is reasonable to require that they be signed and certified by a person having responsibility for the overall operation of the facility and authority to implement a compliance program if necessary.

Section I., Phase three requirements: This section provides that the Director will specify conditions in the facility permit for facility operation during phase three of the permit. Phase three is the time period after the trial burn and before the results of the trial burn are reviewed by the Agency. This section is reasonable because the facility is allowed to continue operating in a manner controlled by permit conditions to ensure that the environment is protected.

Section J., Phase four requirements: This section provides that the Director will specify conditions in the facility permit for facility operation during phase four. Phase four is normal facility operation after trial burn results have shown that the wastes to be burned can be burned according to applicable standards. It is reasonable to establish final permit

conditions which are suitable to ensure that the facility operates in accordance with the requirements of 6 MCAR §4.9321.

Section K., Requirements for existing hazardous waste facilities: This section contains provisions for existing thermal treatment facilities to submit trial burn plans for Agency approval and to coordinate the submission of trial burn results and a Part B application. Since existing facilities with interim status could perform trial burns by collecting data during normal operations, this section allows them to seek Agency approval if they wish. Such Agency review and approval is desirable from the standpoint that the facility operator would have some assurance that the data collected is sufficient to comply with the permit application information requirements. Since collection and analysis of such data can be expensive it is to the operator's benefit to be assured that the information needed in the permit application can be obtained from the data he has or will be collecting.

Existing facilities may choose to pursue the trial burn plan approval option prior to the Director requesting the submission of a Part B application. Since obtaining Agency approval for the trial burn could take some time and the trial burn results are a major portion of the information required in the application, it is reasonable to provide a means for coordinating the submission of the trial burn results and the Part B application.

6 MCAR §4.4222, Land Treatment Demonstration Permits.

This rule provides the mechanisms for preparing and issuing permits for land treatment units. These permits can include requirements for treatment demonstrations or may in fact only cover such demonstrations. This rule covers submittal requirement for treatment demonstrations and provisions for permit modification in light of demonstration results. Also, Section A. allows laboratory demonstrations to be undertaken without formal permitting. The reasonableness of Sections A. - F. is discussed below.

Section A., Letters of approval: This section provides procedures for the request for and issuance of letters of approval for controlled laboratory demonstrations of hazardous waste land treatment. This section was included so that these typically small-scale, non-threatening laboratory experiments could proceed without the need for a full-blown hazardous waste facility permit. Basically these experiments will be studies to see if land treatment might be a feasible treatment/disposal method for a particular waste. They then would be followed up by a treatment demonstration which would determine necessary field conditions for a final permit. The provisions of this section are reasonable because they allow research into waste treatability to proceed without burdensome permitting procedures in cases where no significant hazards are posed to human health or the environment.

Section B., Permit requirements: This section

requires that a person wishing to perform a treatment demonstration (other than as provided for in A.) apply for a treatment demonstration permit. The permit may be just for the demonstration or it may be a two-phase permit covering the demonstration as well as final operation of the unit. The section also presents criteria for issuing short-term (demonstration only) and two-phase permits. A short-term permit can be issued only when the Part B application provides sufficient information upon which to base demonstration conditions and sufficient evidence exists upon which to base demonstration requirements. A two-phase permit can only be issued when similar information and evidence exists for full-scale facility operation and the evidence indicates that the waste material can be successfully land treated. It is reasonable to allow both short-term and two-phase permits to be issued so that information that can only be obtained from field tests becomes available prior to final unit operation. It is reasonable to set criteria for when such permits can be issued so that the necessary information requirements are clear to both the permit applicant and the Agency. Further, making a condition of a two-phase permit issuance the requirement that evidence of waste treatability be provided is reasonable so that the public is assured that final operation can only be permitted by the Agency (in a two-phase permit) when there is an excellent chance that it will succeed and ground water will not be contaminated.

Section C., Permit applications: This section requires that a person applying for a short-term or two-phase land treatment permit must submit a complete Part B permit application unless the Director exempts him or her from some of the data requirements. In some cases, some data requirements will be unnecessary, especially for demonstrations. For example, traffic flow patterns are certainly not needed if the unit is adjacent to a production facility and wastes are transported to the unit by pipeline. It is reasonable to give the Director the authority to allow incomplete Part B permit applications where the missing information is not necessary to establish appropriate permit conditions.

Section D., Two-phase permits: This section presents the conditions which must be included in each phase of a two-phase permit. These conditions must be sufficient to ensure that the unit is operated in accordance with 6 MCAR §4.9319. It is reasonable to require that such conditions be specified in the permit because the permit's purpose is to specify facility-specific conditions needed to comply with the applicable rules. The permit is used to enforce the rules.

This section also specifies that the first phase of the permit is effective upon permit issuance. It is reasonable to allow the demonstration to proceed once the permit is in effect because all conditions necessary for the demonstration are set in the permit. The second phase only begins when the permit reflects

the conditions necessary to comply with 6 MCAR §4.9319 and no permit modifications are necessary. The reasonableness of this approach is addressed in the discussion on Section F.

Section E., Submission of certification, determinations, and data: This section requires that a person with a two-phase permit make a certification to the Agency upon completion of hte demonstration. The certification is to indicate that the demonstration was completed in accordance with the permit conditions. Requiring such a certification is reasonable because the Agency needs to be kept apprised of changes in activities at a facility so that the permit can be enforced.

This section also requires that within 90 days after the demonstration the permittee shall submit data collected during the demonstration and a determination as to whether compliance with 6 MCAR §4.9319 C. and E. was achieved. The Agency must receive these items so that appropriate permit modifications are made for phase two of the permit. If the permittee determines that the demonstration did not succeed, the Agency must be aware of this to ensure that the site is properly closed and no further waste applied. Therefore, it is reasonable that the permittee submit this type of information in a timely manner.

Section F., Permit modification: This section presents the requirements for permit modification before the second phase of a two-phase permit becomes effective. If no modifications are required it is reasonable that phase two is

effective when the Director notifies the permittee that he or she concurs with the permittee's determination of a successful demonstration. The Director must also notify commenters on the original permit and others who requested notification. Since no changes have occurred since original permit issuance it is reasonable, however, not to reopen the permit for additional comment. The same holds true for minor permit modifications resulting from the demonstration. Again, it is reasonable to allow phase two operation immediately becase the basic treatment program has not significantly changed since permit issuance.

If modifications to the permit under 6 MCAR §4.4224 are required, phase two of the permit cannot become effective until the modifications are made. This is reasonable because significant changes to the treatment program are being made, and they should be subject to the normal public participation requirements for permit modification.

6 MCAR §4.4223, Terms and Conditions of Hazardous Waste Facility Permits.

This rule provides for the term of a hazardous waste facility permit and for general conditions which, in addition to the general conditions required by 6 MCAR §4.4015 C., are to be included in those permits.

Section A. provides that the term of a hazardous waste facility permit shall be five years. This is consistent with all other Agency permits, as provided in 6 MCAR §4.4015 A. Due to the

high potential of harm to the environment from a hazardous waste facility, it is reasonable that these permits be reviewed and reissued on a five year basis.

Section B. provides that the general conditions set forth in 6 MCAR §4.4015 C. apply to hazardous waste facilities except for the general condition set forth in 6 MCAR §4.4015 C.11. It is reasonable to cross reference the general conditions applicable to these facilities under the standard permitting rule because it alerts regulated parties to these conditions. The exemption relating to 6 MCAR §4.4015 C.11. is necessary because the provisions of that rule differ from the requirements of EPA's regulation 40 C.F.R. §270.30(1)(6) with respect to the time for submission of a written report. EPA's regulation relating to state program requirements, 40 C.F.R. §271.14(i) requires the state's program to contain provisions substantially similar to 40 C.F.R. §270.30(1)(6). As a result, Section B. deletes the provisions of 6 MCAR §4.4015 C.11. as a permit condition for hazardous waste facilities and Section B.4. is put in its place. Section B.4. is consistent with EPA's regulation. It is reasonable to substitute Section B.4. so that the Agency can obtain authorization to administer the federal hazardous waste facility permit program.

The permit conditions required in Sections B.1., B.2., B.3. and B.5. are also required to be included in the state's program by 40 C.F.R. §270.30(1)(6). These sections are discussed below.

Section B.1. provides that the permittee need not comply with conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency permit. This is reasonable because the very purpose of an emergency permit is to temporarily allow a deviation from the normal requirements imposed upon a facility.

The permittee is required by Section B.2. to maintain records from all ground water monitoring wells for the active life of a facility and for disposal facilities for the post closure care period. Also, the permittee is required to maintain an operating record until closure of the facility. It is reasonable to require the creation of an on-going record of the ground water quality in the vicinity of the facility so that any possible impacts of the facility on the ground water quality during the life of the facility and post closure period can be detected. The operating record provides a summary of the volumes and types of waste accepted at the facility which is reasonable for use in Agency requlation of the facility and for use in determining compliance with facility operational standards.

In addition to the requirements of 6 MCAR §4.4203 A. concerning the need for a permit to be issued prior to certain activities taking place at a hazardous waste facility, Section B.3. requires that the permittee and engineer certify that the construction of the facility has been completed in compliance with the conditions of the permit. In addition the Director will

inspect the facility to verify compliance with the permit conditions. These are reasonable requirements designed to provide the Agency with assurance that the facility construction was completed in compliance with all permit conditions before approval for commencement of operations is given.

Section B.4. requires the permittee to orally notify the Director within 24 hours if he discovers a release or discharge of a hazardous waste or a fire or explosion at the facility which may endanger human health or the environment outside of the facility. The permittee is required to submit a written report describing the incident within 15 days after the incident occurs. The Agency's responsibility is to regulate the treatment, storage, and disposal of hazardous waste which includes any accidents or spills associated with a particular facility. It is therefore reasonable to require the permittee to provide details of any spills or discharges, fires, or explosions which may threaten human health or the environment outside the facility.

In addition to the reports required under 6 MCAR §4.4015 the permittee must submit the following reports in accordance with Section B.5.:

1) Manifest discrepancy report, to be submitted to the Director within 10 days after discovering an unresolved discrepancy in a manifest for a hazardous waste shipment.
2) Unmanifested waste report, to be submitted to the Director within 10 days of receipt of the waste if the

permittee is unable to reconcile delivery of a shipment of hazardous waste without the required manifest or shipping paper.

3) Annual report, to be submitted to the Director concerning the activities at the facility during the previous year.

4) Notification of receipt of waste for which no permit is held, to be submitted to the Director immediately upon receipt of a waste for which the permittee is not authorized to manage.

Since the Agency is responsible for the tracking of hazardous wastes and for the regulations of their storage, treatment and disposal, it is reasonable to require the permittee to submit these reports in order to keep the Director informed of the disposition and composition of unpermitted or unmanifested wastes that may be received at a facility. The annual report is a reasonable requirement since it provides a summary of activities at the facility for assessing the facility operation, identifying potential problem areas that may require permit modification, and determining overall compliance with facility standards.

6 MCAR §4.4224, Modification, Revocation and Reissuance of Permit.

This rule establishes additional provisions beyond those specified in 6 MCAR §§4.4018 and 4.4019 regarding the modification, and revocation and reissuance of hazardous waste facility permits. 6 MCAR §§4.4018 and 4.4019 set forth general

provisions for the modification, and revocation and reissuance of Agency permits. However, due to considerations which are only applicable to hazardous waste facility permits, administrative provisions are needed in addition to those provided in the general rule. To accommodate these considerations, this rule establishes additional reasons which constitute justification for the Director to commence proceedings to modify, or revoke and reissue a hazardous waste facility permit. These reasons are based on requirements set forth in 6 MCAR §§4.9280 - 4.9322, which are applicable to hazardous waste facilities.

Based on the approach used in 6 MCAR §§4.4018 and 4.4019 for permits in general, this rule distinguishes between modifications and minor modifications of permits. Generally, permits are modified in accordance with the procedures set forth in 6 MCAR §§4.4011 - 4.4013. However, for changes which are considered minor in nature, the Director may modify a permit without following these procedures. In determining which changes are considered minor modifications, the Agency considered the potential effect the permit change could have on human health and the environment, and the requirements in 6 MCAR §§4.9280 - 4.9322.

The reasonableness of Sections B. - D. is discussed below.

Section B., Additional justifications for modification of permits or revocation and reissuance of permits: This section provides 13 additional justifications for permit modification or revocation and reissuance.

Section B.1. involves discovery by the Director that modification of a closure plan is required by 6 MCAR §§4.9298 D. or 4.9300 C. 6 MCAR §4.9298 requires the owner or operator of a hazardous waste facility to have an Agency approved closure plan and 6 MCAR §4.9300 requires the owner or operator of a hazardous waste disposal facility to also have an Agency approved post-closure plan. These plans are incorporated into the facility permit. However, 6 MCAR §§4.9298 D. and 4.9300 C. contain provisions for amending these plans whenever changes or events occur which affect the plan, such as changes in closure or decontamination methods, or changes in the maximum extent of the operation which will be unclosed during the life of the facility. Accordingly, this rule contains the additional administrative provisions necessary to amend the plan contained in the facility permit. Considering that such changes might be necessary and that the permit must be specific and up-to-date in order to be an effective tool in regulating the facility, it is reasonable to have provisions for modifying the permit.

Section B.2. involves the filing by the permittee of a request for an extension of the time periods contained in 6 MCAR §4.9299. 6 MCAR §4.9299 contains provisions regarding closure activities, including time limits allowed for closure and provisions establishing a basis for approving time extensions. Provided the owner or operator makes the demonstrations required in 6 MCAR §4.9299, the Agency may approve a time extension.

However, the closure plan, which is part of the facility permit, specifies when the facility will be finally closed and a schedule for final closure. If a time extension is to be approved, the permit would require modification to reflect this change. Accordingly, this rule contains the additional administrative provisions necessary to amend the plan contained in the facility permit. Since closure activities for some facilities could require more time to complete than the rule allows, it is reasonable to modify the permit to allow time extensions.

Section B.3. involves the receipt by the Director of a notification of expected closure under 6 MCAR §4.9298. Since closure of a facility is a major action and needs to be closely regulated by the Agency, means for modifying a facility permit when closure is imminent must be available. In many cases permit modifications will not be necessary under these circumstances. However, it is reasonable to have the option for those cases where modifications are necessary.

Section B.4. involves a finding by the Director that modification of the post-closure period is necessary as provided by 6 MCAR §4.9301 A. 6 MCAR §4.9301 A. requires that post-closure care must continue for 30 years after the date closure is completed. That rule also contains provisions allowing the Agency to adjust the post-closure period by reducing or extending it and specifying the basis for adjusting this period. Accordingly, this rule contains the administrative provisions necessary to amend the

permit to reflect the adjustment in the post-closure period. An example of when this provision might be applicable is the case of a land treatment facility which has not rendered all the waste nonhazardous within the six-month closure period, but which has done so within five years of final closure. Since hazardous waste is no longer present at the facility, it is reasonable to reevaluate the time needed for post-closure care.

Section B.5. involves a finding by the Director that security requirements need to apply to a facility after closure. Since the facility's permit may not have included these requirements for after closure, a permit modification may be necessary to ensure that the facility will not harm human health or the environment. It is reasonable to allow the permit to be modified for these reasons.

Section B.6. involves a finding by the Director that the permittee has made the demonstration required by 6 MCAR §4.9301 C. such that a disturbance of the integrity of the containment system should be authorized. 6 MCAR §4.9301 C., which prohibits the owner or operator from disturbing the integrity of the final cover, liner, or other containment system component or the function of the monitoring system of a disposal facility, also contains a provision which allows Agency to authorize disturbance of the integrity of the containment system if the owner or operator demonstrates that disturbing the integrity is warranted. However, the post-closure plan specifies procedures

for ensuring the integrity of the containment system and the function of the monitoring system, and is contained in the permit. Therefore, if the disturbance is authorized by the Agency, the permit would need to be modified so that the post-closure plan can be changed to include information regarding the disturbance. Accordingly, this rule contains the additional administrative provisions necessary to amend the plan contained in the facility permit. Since it may be necessary to disturb the containment system to reduce a threat to human health or the environment or to use the property as proposed provided it will not increase the potential hazard to human health or the environment, it is, therefore, reasonable to have permit modification provisions to accommodate this need.

Sections B.7. and B.8. involve the adjustments to the levels of finacial responsibility required by 6 MCAR §4.9312. 6 MCAR §4.9312 establishes financial liability requirements for owners and operators of hazardous waste facilities. However, the liability amounts are the same for all facilities unless either the owner or operator can demonstrate to the Agency or the Agency determines that the level of financial responsibility is not consistent with the degree and duration of risks associated with the treatment, storage, or disposal of wastes at the facility. Due to the variability of facilities and their associated risks, it is reasonable to allow the level of financial responsibility to be adjusted according to the conditions and risks associated with

each facility. Since the permit specifies the level of financial responsibility, any changes in that level must be included in the permit. Therefore, the adjustment of the level of financial responsibility is a reasonable justification for modifying the facility permit. Accordingly, this rule contains the additional administrative provisions necessary to modify the permit to reflect adjustments in the level of financial responsibility.

Section B.9. involves a finding by the Director that a corrective action program specified in the permit has not brought the regulated unit into compliance with the ground water protection standard within a reasonable period of time. Since 6 MCAR §4.9297 requires that a corrective action program result in compliance within a reasonable amount of time, this situation obviously should result in some type of modification to the permit. 6 MCAR §4.9297 provides that such a unit cease accepting waste because an unanticipated release from the unit is occurring which apparently cannot be stopped by the corrective action program. It is reasonable that this constitutes grounds for permit modification or revocation and reissuance because changes to the permit are necessary either to modify the corrective action plan or to require that waste cease to be accepted at the unit.

Section B.10. involves including a detection monitoring program in a permit when the compliance period ends for a facility which has been performing compliance monitoring or corrective action. Since detection monitoring is less burdensome than

compliance monitoring, the permittee should have this option if the compliance period is over and corrective action is not necessary. The original permit may not have included a detection monitoring program; therefore it is reasonable to allow a permit modification to include such a program.

Section B.11. involves a delayed reaction to monitoring results of samples collected prior to permit issuance. If the facility is operating under a compliance monitoring program and the results indicate violation of the ground water protection standard, 6 MCAR §4.9297 requires that the facility begin corrective action. The permit modification would be to require implementation of the corrective action program. Since the permit should have originally been issued under the corrective action mode (but was not because the information was not available) it is reasonable to allow this modification.

Section B.12. involves including conditions applicable to units at a facility that were not previously included in the permit. This provision allows the Agency to correct oversights when requirements were not originally included in permits. It also allows inclusion of requirements or conditions contained in new rules. It is reasonable to allow these types of modifications to ensure that all facilities are subject to all applicable requirements and conditions of the rules.

Section B.13. involves the situation where a land treatment unit is not achieving complete treatment as required in its

permit. In this situation, modifications to the operation of the unit are clearly necessary. These modifications, unless minor, are subject to permit modification or revocation and reissuance. This is reasonable because the Agency must have the authority to require such modifications in the operation of land treatment units to ensure that the applicable standards and requirements are met.

Section C., Additional justification to commence revocation without reissuance of permit: This section provides that a permit can be revoked and not reissued if the annual facility operator's fee is not submitted within 180 days of the due date. This fee is required by another Agency rule. Since payment of annual fees is a condition of operating a facility, it is reasonable that failure to pay such fees within a reasonable time period is justification for permit revocation.

Section D., Minor modifications of permits: This section specifies 11 types of corrections or allowances which can be made to a permit without the need to follow all the procedures of 6 MCAR §§4.4010 - 4.4013. These are considered minor modifications due to the low potential such changes have for adversely effecting human health or the environment. These corrections and allowances are based on requirements set forth in 6 MCAR §§4.9280 - 4.9322, which are applicable to hazardous waste facilities.

Sections D.1. and D.2. involve changing the list of facility

emergency coordinators and the list of equipment in the permit's contingency plan. The contingency plan is required by 6 MCAR §4.9288. This contingency plan must specify persons qualified to act as emergency coordinators and a list of emergency equipment at the facility, as well as many other provisions as required by 6 MCAR §4.9288 D. During the term of the permit, it is quite likely that the list of emergency coordinators and the list of emergency equipment will need to be changed and updated often due to personnel changes and equipment purchases and replacement. Since these are only changes in names and pieces of equipment, but not changes in the requirements or the facility's compliance with the requirements, there should be no change in the facility's potential for adverse effects on human health or the environment. Accordingly, it is reasonable to allow these changes in the lists to occur through a minor modification of the permit.

Section D.3. involves changing the estimates of maximum inventory pursuant to 6 MCAR §4.9298 C.2. As previously mentioned, 6 MCAR § 4.9298 requires the owner or operator of a hazardous waste facility to have a closure plan which is included in the facility permit. This plan must identify steps for closing the facility and must specify an estimate of the maximum inventory of wastes in storage and treatment at any time during the life of the facility, an estimate of the expected year of closure, and a schedule for final closure. This rule allows changes to be made in the closure plan with regards to those three provisions through

a minor modification of the permit. Changes in the estimates of maximum inventory allowed under this rule would not change the facility's permitted capacity or the permit conditions for facility operations. If this change affected the cost for closure, the cost estimate and financial assurance mechanism would have to be adjusted in accordance with 6 MCAR §§ 4.9305 and 4.9306. Considering that this is just an estimate and that the upper limit is established under facility capacity in the permit, it is reasonable to allow changes in the estimate of maximum inventory be made through a minor modification of the permit. Also, if the Director considers the change to be more than minor in nature, he or she could choose to follow the general procedures for permit modification.

Section D.4. involves changing the expected year of closure pursuant to 6 MCAR §4.9298 C.4. Changes in the expected year of closure allowed under this rule would not change the facility's permit expiration date or the requirement to have a valid permit for operation and closure of the facility. If the new year for closure is within the term of the permit, the change would not be significant since by issuing the permit the Agency has already approved facility operation and closure until the permit expires. If the new year for closure is not within the term of the permit, the change could be made as a minor modification; however, the owner or operator would be required to apply for permit reissuance. During the reissuance process, the new year for

closure would be subject to Agency review and approval in accordance with the procedures for permit reissuance. In either case, allowing the change to occur through a minor modification does not significantly change what is allowed under the current permit. Therefore, it is reasonable to allow a change in expected year of closure to occur under this rule as a minor modification.

Section D.5. involves changing schedules for final closure pursuant to 6 MCAR §4.9298 C.4. Changes in the schedule for final closure allowed under this rule would not change the time allowed for closure or the steps required to complete closure. The schedule specifies the total time required for intervening closure activities. If there is a change in the time required for the intervening closure activities, but the resulting total time for closure is not greater than the 90 days allowed in 6 MCAR §4.9299, the change is not significant. Due to the short amount of time available (90 days or less) and the fact that the schedule is really only an estimate of the time it will require, it is reasonable to allow the change to occur through a minor modification rather than a full permit modification. If the change would cause the total time for closure to exceed the 90-day limit, a permit modification would be necessary to allow a time extension. In this case, the permit would be modified for both provisions through the permit modification procedures rather than a minor modification.

Section D.6. involves changing the ranges of the operating

requirements set in the permit to reflect to results of a trial burn provided that the change is minor. Minor changes would include those considered to be "fine-tuning" of the burning process. Significantly different operating conditions from those specified in the permit would not be able to be set through the minor modification process. These might include changes in waste feed rates or dramatic changes in operating conditions. It is, however, reasonable to allow minor changes without proceeding through the formal modification process.

Section D.7. involves changing trial burn operating requirements provided that the change is minor. During phase one operations, new information may become available so that a thermal treatment unit can be operated more efficiently during a trial burn. It is reasonable to allow such minor changes without a formal modification process because operations should improve and because the facility will not be operating significantly different than intended during the initial permitting process. If, however, significant changes were to take place, this minor modification process could not be used.

Section D.8. involves a time extension for determining operational readiness for a thermal treatment facility. During phase one operations the facility is operated to make it ready for phase two, the trial burn. If the permittee can show that good cause exists, the Director may grant a time extension for up to 720 hours. It is reasonable to do so under a minor modification

because unwarranted time delays (during which the facility would have to cease operation) would be possible if a formal modification were required. During the extension the permit conditions for phase one would remain in effect so that the environment would be protected as much as possible.

Section D.9. involves minor changes to the land treatment program to improve treatment. These changes might include lowering waste application rates and minor operating changes. If significant changes were made, such as changing application methods or increasing waste application rates, a major modification to the permit would be required. Allowing the minor changes without a formal permit modification is reasonable because these are changes made because of experience with the facility to improve treatment. This "fine-tuning" process is analogous to that in thermal treatment facilities.

Section D.10. involves minor changes to the land treatment permit conditions in response to field demonstrations or laboratory test results. This section is similar to D.9. and its reasonableness is based on the same considerations. Again, major changes are not permitted under the minor modification process.

Section D.11. involves a second land treatment demonstration when a first demonstration has not shown the conditions for complete waste treatment. The conditions for the second demonstration must be substantially the same as for the first. This provision also allows "fine-tuning" of the demonstration

itself. Major changes to it would require a major permit modification. This provision is reasonable because conditions are basically the same as when the permit was first issued. Obviously, the Director will not allow such a second demonstration unless he or she believes it will be successful; therefore this provision is reasonable from an environmental protection standpoint.

Section E., Consideration of facility siting:

Section E. limits consideration by the Agency of facility siting when making its final determination on a permit modification or permit revocation and reissuance. The suitability of the facility location shall not be considered unless new information indicates that a threat to human health or the environment exists which was unknown at the time of permit issuance. Facility siting is subject to consideration during the initial permit issuance procedures. However, once this issue has been decided by the issuance of the initial permit, if no new information is available, there is no reason to make this decision subject to change. Considering that facility location is not something which the owner or operator can change, other than to close the facility and establish a new facility at a new location, it is reasonable to limit consideration of this issue. However, if new information does exist, there could be reason for the Agency to reconsider the issue of facility location, and the rule does not preclude such consideration. Therefore, the rule is reasonable.

D. Reasonableness of 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits.

It is reasonable to adopt rules which, in combination with 6 MCAR §§4.4001 - 4.4021, replace existing Minn. Rule APC 3 because the standard permitting rules alone do not cover the requirements that are specific to air emission facilities and air pollution control equipment. The proposed rules do not impose new requirements; rather, they are a redraft of existing requirements in the same format as the NPDES and hazardous waste facility permit rules.

The following discussion addresses the reasonableness of those individual portions of the rule which are in any way changed by the redraft.

6 MCAR §4.4301, Scope.

This rule lists the rules which govern the issuance of air emission facility permits. It is reasonable to include this provision to make it clear that this rule must be read in conjunction with other Agency rules for complete coverage of the subject matter.

6 MCAR §4.4302, Definitions.

This rule incorporates by reference definitions contained in 6 MCAR §§4.4001 and 4.0001 - 4.0041. Cross referencing definitions applicable to air emission facility and air pollution control equipment permits is reasonable because it aids regulated parties and the public to understand the terms used in the rules.

6 MCAR §4.4303, Permit Requirement.

This rule establishes the requirement to obtain an air emission facility permit. This rule is a redraft and consolidation of existing Minn. Rule APC 3(a)(1), the first sentence of Minn. Rule APC 3 (b)(1) and Minn. Rule APC 3(e). It is consistent with Minn. Stat. §116.081 (1982) and creates no new requirements. However, as dicussed below, Section B. of the rule creates some new exemptions from the permit requirement. The reasonableness of these exemptions is discussed below.

Section B.1. exempts a total emission facility with potential emissions of a single criteria of less than 25 tons per year, except for 3 specific types of facilities. It is reasonable to exempt facilities having a relatively small amount of emissions because the Agency does not have the staff and other resources that would be needed to permit every air emission facility in Minnesota. The 25-ton cut-off point is reasonable because it represents a relatively small amount of potential emissions. It was selected because it is a cut-off point currently used in other Agency air programs (e.g., reporting requirements for the Agency's Emission Inventory), and therefore it promotes consistency among Agency air programs.

The three specific types of facilities not exempted by Section B.1. are:

1. a facility subject to Minn. Rule APC 9, Control of Odors in the Ambient Air;

2. a facility subject to federal new source performance standards; and
3. a total emission facility with potential lead emissions of at least 1,000 pounds per year.

It is reasonable not to exempt facilities with the potential to create odor problems because these types of facilities can create a nuisance situation. The Agency needs an administrative mechanism to enforce against these facilities the requirements of Minn. Rule APC 9.

It is reasonable not to exempt facilities subject to New Source Performance Standards (NSPS) promulgated by EPA because EPA has delegated to the Agency the authority to enforce NSPS in Minnesota. If the Agency were to exempt these facilities from its permitting requirements, the facility owner or operator would be required to obtain a permit from EPA. Therefore it is reasonable not to exempt these facilities so that the Agency can enforce NSPS and so that the owner or operator can obtain a facility permit at the state level.

It is reasonable not to exempt facilities with lead emissions due to the nature of the pollutant. Lead is a criteria pollutant, but due to its high toxicity the ambient air quality standards for lead are more than a factor of ten less than the standards for other criteria pollutants. Due to the fact that lead emissions pose health hazards at lower concentrations than the other criteria pollutants, it is reasonable to establish a permit

requirement at a lower annual emission rate. The 1,000 pounds per year cut-off is reasonable because it is comparable to the 0.6 ton value used in identifying a major modification in the Prevention of Significant Deterioration program and the New Source Review program administered by the Agency pursuant to the Clean Air Act.

Sections B.2. - B.9. of the rule exempt from the permit requirement several types of emission facilities. In each case, the exemption is based upon the type of facility and other factors which affect emissions, such as rated heat input, production capacity, or the size of the facility. This approach has been proposed to aid owners or operators of these types of facilities in determining whther or not a permit is required from the Agency. In most cases, the size, production capacity, etc. specified in the rule has been determined by calculating potential emissions and selecting a number which should result in potential emissions of less than 25 tons per year of a single criteria pollutant. It is reasonable to exempt these facilities from the requirement to obtain a permit because they have a relatively small amount of emissions.

6 MCAR §4.4304, Permit Application.

This rule sets forth the information required to be submitted by the applicant. It supplements the requirements of 6 MCAR §4.4005 by adding the information requirements of existing Minn. Rule APC 3(a)(2) and (b)(2).

The proposed rule also adds one additional informational

requirement not found in existing Minn. Rule APC 3. Section C. of the rule, in addition to requiring information on the type of control equipment used, requires information on the design specifications for that control equipment. This information request is reasonable because the Agency cannot assess the effectiveness of the control equipment to be installed, and thus the compliance of the facility with applicable air pollution control rules, without reviewing the performance specifications. In the past this information was obtained under Minn. Rule APC 3(a)(2)(ee) and (b)(2)(ee), which requires submission of "[a]ny other reasonable and pertinent information that may be required by the Director." However, since it is needed in almost all cases, it is reasonable to place the requirement in the rule specifically.

6 MCAR §4.4305, Special Conditions for Air Emission Facility Permits.

This rule provides that in addition to the conditions in 6 MCAR §4.4105 B. and if applicable to the circumstances, an air emission facility permit may contain four additional special conditions:

1. standards of performance for air pollutants from an emission facility;
2. operational requirements for situations where a standard of performance is not applicable or the operational requirements are necessary to achieve complance with a standard of performance;

3. testing and reporting requirements to ensure compliance with standards of performance; and
4. notification and reporting requiremnts for shutdowns and breakdowns.

These special conditions for air emission facility permits are reasonable because they inform the permittee of the standards or operational requirements which they must meet and they require submission of information needed by the Agency to determine whether the permittee is in compliance with state and federal rules and the conditions of the permit.

E. Reasonableness of Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §4.4311 - 4.4321.

The Agency proposes to amend Minn. Rule APC 19 to eliminate those portions of the rule which duplicate the procedures set forth in 6 MCAR §§4.4001 - 4.4021, Permits, and to change the format of the rule to conform to that of the other rules which are supplementary to 6 MCAR §§4.4001 - 4.4021. This is reasonable because this will make the Agency's permitting programs consistent with each other.

The reasonableness of the amendments to the rules is discussed below.

6 MCAR §4.4311, Scope.

This rule lists the rules which govern the issuance of indirect source permits. It is reasonable to include this provision to make it clear that this rule must be read in

conjunction with other Agency rules for complete coverage of the subject matter.

6 MCAR §4.4312, Definitions.

This rule incorporates by reference definitions contained in Minn. Stat. §116.06, 6 MCAR §§4.4001 and 4.0001 - 4.0041, and Minn. Rule APC 2. Cross referencing definitions applicable to indirect source permits permits is reasonable because it aids regulated parties and the public to understand the terms used in the rules. The amended rule also renumbers existing definitions.

6 MCAR §4.4313, Permit requirements.

The first paragraph of this rule appears as new language due to the fact that it is underlined. However, it merely represents a reorganization and renumbering of paragraph (b)(6) of existing Minn. Rule APC 19. This paragraph creates no new requirements.

Section D. of the rule contains style changes due to the reorganization and renumbering of the rule. However, this section creates no new requirements.

6 MCAR §4.4314, Exemptions.

Section A. of the rule is proposed to be amended to change the phrase "the effective date of this rule" to "February 18, 1975." This change is reasonable because it clarifies the date which separates "existing" sources from "new" sources. It does not change any requirement of the existing rule, because February 18, 1975, was the effective date of Minn. Rule APC 19.

The remaining changes to the rule relate to the renumbering of

the rule and create no new requirement.

6 MCAR §4.4315, Assessment.

The language in this rule which is proposed to be deleted contains procedural requirements which are covered either by portions of 6 MCAR §§4.4001 - 4.4021 or by other portions of this rule. These changes do not add or subtract requirements from the existing rule.

Sections B. and C. of this rule contain the assessment procedure, which was formerly contained in Appendix A of existing Minn. Rule APC 19. These sections do not create any new requirements.

6 MCAR §4.4316, Circumvention.

This rule contains the requirements formerly found in Minn. Rule APC 19(i). This rule creates no new requirements.

6 MCAR §4.4317, Contents of Permit Application.

This rule sets forth the information to be submitted by the applicant. It is reasonable to require the applicant to submit sufficient information so that the Agency can make a determination as to whether or not the applicant will comply with applicable rules and standards. This rule contains no new requirements but reflects the requirements of existing Minn. Rule APC 19.

6 MCAR §4.4318, Determination of Air Quality Impact of Indirect Source.

This rule incorporates the requirements formerly set forth in existing APC 19(f)(2). This rule creates no new requirments.

6 MCAR §4.4319, Final Determination.

The changes in this rule consist of deletions of sections which have been placed elsewhere in the rule or which contain procedures covered by 6 MCAR §§4.4001 - 4.4021. This rule neither creates nor deletes any requirements.

6 MCAR §3.4320, Permit Conditions.

This rule incorporates the requirements formerly set forth in section (f) of Minn. Rule APC 19, excluding (f)(2). It also includes portions of sections (h)(6) and (k) of existing Minn. Rule APC 19. This rule creates no new requirements.

6 MCAR §3.4321, Minor Modification.

This section specifies a type of permit modification which can, with the permittee's consent, be made to a permit without the need to follow all the procedures of 6 MCAR §4.4005 - 4.4014. During the public comment period on this rule the Director proposed the following modification to the language of this rule:

> Minor modification of permit. In addition to the corrections or allowances listed in 6 MCAR §4.4019 C., the director upon obtaining the consent of the permittee may modify an indirect source permit without following the procedure in 6 MCAR §§4.4005-4.4014 if the director determines that the modification would not result in an increase in carbon monoxide of greater than one part per million with respect to the eight hour carbon monoxide standard, and that the modification would not result in an increase in carbon monoxide of greater than three parts per million with respect to the one hour carbon monoxide standard, and that the modification would not result in ~~or~~ a violation of the carbon monoxide standard established in 6 MCAR §4.0001 ~~and that the modification would not subject the permittee to the requirement to~~

~~obtain a permit modification as set forth in 6 MCAR §4.4313.~~

This rule as amended allows for simplification of the permit modification procedure for changes to the permit which result in a very small contribution to ambient carbon monoxide and which will not result in a violation of ambient air quality standards for carbon monoxide.

The Director must make three findings before allowing for the simplification of permitting procedures. The Director must find:

1. That the modification would not result in an increase of carbon monoxide of greater than one part per million with respect to the eight hour carbon monoxide standard, and
2. That the modification would not result in an increase of carbon monoxide of greater than three parts per million with respect to the one-hour carbon monoxide standard, and
3. That the modification would not result in a violation of the carbon monoxide standard established in 6 MCAR §4.4001.

The adoption of a 1 ppm threshold increase with respect to the eight-hour eight hour averaging period is reasonable because this number is slightly greater than the smallest change in ambient carbon monoxide levels that can be detected with properly operated carbon monoxide monitoring equipment. (The Agency's experience has shown that changes as small as 0.5 ppm averaged over eight hours can be detected.) It is also reasonable because

it represents a small fraction (one-ninth) of the eight hour carbon monoxide standard of 9 ppm.

The adoption of the 3 ppm threshold increase with respect to the one-hour averaging period is reasonable because it is in approximately the same proportion to the 30 ppm one-hour standard (when 30 ppm is attained) as the 1 ppm threshold is to the 9 ppm standard (when 9 ppm is attained.)

It is reasonable not to allow a simplified procedure if the modification is likely to result in a violation of ambient air quality standards for carbon monoxide because it is the Agency's responsibility to protect against such violations. Therefore it is reasonable to require full permitting procedures for permit modifications of this type.

Based on the foregoing, the provisions of 6 MCAR §4.4321 are reasonable.

F. Reasonableness of Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3.

As previously discussed at page 13, the repeal of the existing Minn. Rules MPCA 5 and 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3 is needed because the new rules described and discussed herein are replacements to those rules. Since those existing rules are being replaced by new rules, it is reasonable to repeal them.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Laws 1983, ch. 188 (to be codified as Minn. Stat. §14.115) requires the Agency, when proposing amendments to an

existing rule which may affect small businesses, to consider the following methods for reducing the impact of the rule on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirments for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

The statute requires the Agency to incorporate into the proposed rules any of these methods that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking.

In drafting the proposed rules 6 MCAR §§4.4001 - 4.4021 the Agency did give consideration to small businesses. 6 MCAR §4.4015 C.6. of that rule ties the requirement to install and maintain back-up or auxiliary facilities to whether the back-up or auxiliary facilities are "technically and economically feasible." This will aid small businesses because they will not have to install back-up or auxiliary facilities which will be economically burdensome to them.

The Agency gave consideration to small business in drafting

the proposed 6 MCAR §§4.4201 - 4.4211, which will, if adopted, replace the Agency's existing Minn. Rule WPC 36 with respect to the issuance of NPDES permits. The revised rules provide an exemption from the requirement to perform a gas chromatograph/mass spectrophotometer analysis for facilities with a gross total annual income averaging less than $100,000 per year for a three year period (in second quarter 1980 dollars). These analyses can cost approximately $1500 per sample. Therefore this exemption will provide monetary relief for some small businesses.

The Agency gave consideration to small business in drafting the proposed 6 MCAR §§4.4201 - 4.4224, which will, if adopted, replace the Agency's existing hazardous waste permitting facility rules. The revised rules provide exclusions from the requirement to obtain a hazardous waste permit for conducting activities which are currently required to be permitted. These exclusions include storage of hazardous waste by generators and transporters for limited time periods, certain types of recycling or reuse of hazardous waste, various management methods for hazardous waste, and the management of hazardous waste by small quantity generators. To the extent that businesses that qualify for these exclusions are often also small businesses, these exclusions are consistent with section (e) of the statute. These rules also allow some facilities to obtain a permit by rule, which means that a facility is deemed to have met the requirement to apply for and

obtain a permit if certain requirements in the rule are met. These types of facilities currently would need to obtain a perit. Some of the facilities covered by a permit by rule may also be small businesses, and as such this provisions is consistent with sections (c) and (e) of the statute.

The exclusions and exemptions contained in the proposed hazardous waste facility permit rules are based upon the quantity of hazardous waste involved, the type of hazardous waste, hazardous waste management techniques, and the risk posed to human health and the environment by these facilities rather than the size of the business. However, the Agency feels that many small businesses will benefit from these exclusions and exemptions, especially small businesses which generate small quantities of hazardous waste or which store their hazardous waste for less than 90 days. Also, many small businesses which do not currently qualify for an exclusion or exemption could modify their hazardous waste management practices so that they would qualify.

The Agency regulates hazardous waste facilities in accordance with the statutory objective of Minn. Stat. ch. 116 to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. The hazardous waste facility permit rules, in combination with the hazardous waste technical rules, establish the regulatory program need to achieve that objective. The objective of the permitting

process is to ensure that a hazardous waste facility is designed and operated in compliance with the hazardous waste technical rules. Therefore, except for the limited exemptions provided for specific types of facilities and activities, applying less stringent requirements to small businesses managing hazardous waste, irrespective of waste quantity or the facility's potential for adverse effects on human health and the environment, would be contrary to the Agency's mandate. The Agency believes that the revised hazardous waste permit rules address the concerns of small business to the maximum extent possible without allowing conduct contrary to the statutory goal of protecting the environment.

The rules relating to air emission facility permits, 6 MCAR §§4.4301 - 4.4305, contain provisions which are favorable for small businesses. 6 MCAR §4.4303 provides that, with some exceptions, facilities with less than 25 tons of annual emissions of a single criteria pollutant need not obtain a permit. Although not all air emission facilities with annual emissions of less than 25 tons of a single criteria pollutant are necessarily owned or operated by small businesses, the Agency anticipates that this exemption will be beneficial to certain small businesses in Minnesota.

The rules relating to indirect source permits, 6 MCAR §4.4311 - 4.4321, contain provisions which are favorable for small businesses in that the requirement to obtain a permit is related

to the size of the facility or activity. Some small businesses, however, are required to be permitted because of the adverse impact which their facilities could have on ambient air quality if they were unregulated.

VI. CONCLUSION

Based on the foregoing, the proposed rules 6 MCAR §§4.4001 - 4.4021, 4.4101 - 4.4111, 4.4201 - 4.4224, 4.4301 - 4.4305, the amendments to Minn. Rule APC 19, and the repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3 are both needed and reasonable.

SANDRA S. GARDEBRING
Executive Director

Dated: December 15, 1983

STATE REGISTER

STATE OF MINNESOTA



VOLUME 8, NUMBER 25

December 19, 1983

Pages 1413-1500

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 8		
26	Monday Dec 12	Friday Dec 16	Monday Dec 26
27	Friday Dec 16	Friday Dec 23	Monday Jan 2
28	Friday Dec 23	Friday Dec 30	Monday Jan 9
29	Friday Dec 30	Monday Jan 9	Monday Jan 16

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

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

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

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

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

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Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
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PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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

Department of Commerce

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

Notice of Intent to Adopt Amendments to Proposed Rules

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

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

Persons interested in these rules and amendments shall have 30 days to submit comments on the proposed rules and amendments. The proposed rules and amendments may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Persons who wish to submit comments should submit such comments to Alberto Quintela, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

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

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 79.251, subd. 3 and 79.252, subd. 5. A Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

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

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

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

4 MCAR § 1.9504 Assigned risk rating plan.

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

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

Pollution Control Agency

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

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

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

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

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

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

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

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

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

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

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

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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

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

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

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

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

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

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

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

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1982) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250 not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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

Sandra S. Gardebring
Executive Director

Rules as Proposed (all new material)

6 MCAR § 4.4001 Definitions.

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

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

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

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

6 MCAR § 4.4002 Scope of rules.

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

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4003 Permit required.

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

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6 MCAR § 4.4004 Application deadlines.

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

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

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

6 MCAR § 4.4005 Written application.

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4006 Signatures.

A permit application must be signed as follows:

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

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

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

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

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

6 MCAR § 4.4007 Certification.

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

6 MCAR § 4.4008 Retention of records.

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

6 MCAR § 4.4009 Review of permit applications.

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

6 MCAR § 4.4010 Preliminary determination and draft permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4011 Public comments.

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

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

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

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

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

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

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

6 MCAR § 4.4012 Public informational meeting.

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

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

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

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

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

6 MCAR § 4.4013 Contested case hearing.

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

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4014 Final determination.

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

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

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

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

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

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

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

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

6 MCAR § 4.4015 Terms and conditions of permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4016 Continuation of expired permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. to correct typographical errors;

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

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

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

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

6 MCAR § 4.4020 Mailing list.

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

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

6 MCAR § 4.4021 General permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

Repealer. Pollution Control Agency rule MPCA 5 is repealed.

Rules as Proposed (all new material)

6 MCAR § 4.4101 Scope and construction of rules.

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

6 MCAR § 4.4102 Satisfaction of requirement for two permits.

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

6 MCAR § 4.4103 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4104 Permit requirement and exemptions.

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

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

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

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

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

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

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

6. persons causing return flows from irrigated agriculture;

7. persons discharging pollutants into privately owned treatment works;

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

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

6 MCAR § 4.4105 Application deadline for new permits.

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

6 MCAR § 4.4106 Contents of NPDES permit application.

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

1. the information required by 6 MCAR § 4.4005;

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

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

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

1. The information required by 6 MCAR § 4.4005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Acid compounds. The following acid compounds must be analyzed under C.2. and 3.:
1. 2-chlorophenol;
2. 2,4-dichlorophenol;
3. 2,4-dimethylphenol;
4. 4,6-dinitro-o-cresol;
5. 2,4-dinitrophenol;
6. 2-nitrophenol;
7. 4-nitrophenol;
8. p-chloro-m-cresol;
9. pentachlorophenol;
10. phenol; and
11. 2,4,6-trichlorophenol.

F. Base/neutral substances. The following base/neutral substances must be analyzed under C.2. and 3.:
1. acenaphthene;
2. acenaphthylene;
3. anthracene;
4. benzidine;
5. benzo(a)anthracene;
6. benzo(a)pyrene;
7. 3,4-benzofluoranthene;
8. benzo(ghi)perylene;
9. benzo(k)fluoroanthene;
10. bis(2-chloroethoxy)methane;
11. bis(2-chloroethyl)ether;

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 6 MCAR § 4.4107-1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. the volume of effluent discharged from each outfall;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. the specific cause of the upset;

b. that the upset was unintentional;

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

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

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

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

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

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

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

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

c. for antimony, one milligram per liter;

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

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

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

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

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

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

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

6 MCAR § 4.4111 Final determination.

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

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

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

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

Repealer. Pollution Control Agency Rule WPC 36 is repealed.

Rules as Proposed (all new material)

6 MCAR § 4.4201 Scope.

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

6 MCAR § 4.4202 Definitions.

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

6 MCAR § 4.4203 Permit requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. the wastes are generated on-site;

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4204 Hazardous waste facility permit application.

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4205 Certification of permit applications and reports.

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

6 MCAR § 4.4206 Contents of Part A of application.

Part A of the application must contain the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part B of the application must contain the following information:

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

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

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

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

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

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

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

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

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

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

3. prevent contamination of water supplies;

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

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

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

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

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

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

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

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

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

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

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

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

1. date the map was prepared;

2. map scale;

3. 100-year floodplain area;

4. surface waters, including intermittent streams;

5. wetlands;

6. shorelands;

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

8. wind rose, including windspeed and direction;

9. arrows indicating map directions;

10. legal boundaries of the hazardous waste facility site;

11. county, township, and municipal boundaries;

12. township, range, and section numbers;

13. boundaries of parks and wildlife refuges;

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

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

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

17. barriers for drainage or flood control; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. tank dimensions, capacity, and shell thickness;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. control of run-on;

3. control of run-off;

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

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

6. treatment and disposal of collected runoff and leachate.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. statistical methods for interpreting results.

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

1. the wastes to be land treated;

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

3. provisions for unsaturated zone monitoring, including:

a. sampling equipment, procedures, and frequency;

b. procedures for selecting sampling locations;

c. analytical procedures;

d. chain of custody control;

e. procedures for establishing background values;

f. statistical methods for interpreting results; and

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

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

5. the proposed dimensions of the treatment zone.

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

1. control of run-on;

2. collection and control of run-off;

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

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

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

6. control of wind dispersal; and

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

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

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

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

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

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

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

6 MCAR § 4.4213 Part B information requirements for landfills.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. the manufacturer's name and model number;

b. the type of thermal treatment unit;

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

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

e. the capacity of the prime mover;

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

g. nozzle and burner design;

h. construction materials; and

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

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

a. manufacturer's name and model numbers;

b. physical dimensions; and

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

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

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

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

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

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

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

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

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

b. waste feed rate;

c. combustion zone temperature;

d. indication of combustion gas velocity;

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

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

g. expected hydrochloric acid removal efficiency;

h. expected fugitive emissions and control procedures; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. a proposed groundwater monitoring system;

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

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4216 Interim status.

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

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

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

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

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

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

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

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

2. The owner or operator may increase the design capacity of the facility if, prior to the implementation of the increase,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4219 Final determination.

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

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

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

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

6 MCAR § 4.4220 Emergency permits.

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

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

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

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

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

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

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

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

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

3. a brief description of the wastes involved;

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

5. the duration of the emergency permit.

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

6 MCAR § 4.4221 Hazardous waste thermal treatment facility permits.

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

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

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

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

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

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

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

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

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

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

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

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

a. manufacturer's name and model number;

b. type of thermal treatment unit;

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

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

e. the capacity of the prime mover;

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

g. nozzle and burner design;

h. construction materials; and

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

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

a. manufacturer's name and model numbers;

b. physical dimensions; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MCAR § 4.4222 Land treatment demonstration permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. the name and quantity of materials involved;

e. the extent of injuries, if any;

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

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

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

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

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

c. In accordance with 6 MCAR § 4.9296 B., the permittee shall submit an annual report concerning the activities at the facility during the previous calendar year.

d. If the permittee receives hazardous waste which the permittee is not authorized by the permit to manage, the permittee shall immediately notify the director of the receipt of the waste in accordance with 6 MCAR § 4.9293 C.3.

6. The permittee may allow an authorized representative to sign reports submitted in accordance with the requirements of this permit if:

a. the authorization is made in writing by persons identified in 6 MCAR § 4.4006 except that for a corporation the written authorization must be made by a principal executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a person of equivalent responsibility; and

c. the written authorization is submitted to the director.

If authorization is no longer accurate, a new authorization must be submitted to the director prior to or together with any reports or permit applications to be signed by an authorized representative.

6 MCAR § 4.4224 Modification of permits; revocation and reissuance of permits.

A. Scope. In addition to the provisions of 6 MCAR §§ 4.4017, 4.4018, and 4.4019, the provisions of B., C., D., and E. are applicable to the modification, revocation, and reissuance of hazardous waste facility permits.

B. Additional justification for modification of permits or revocation and reissuance of permits. In addition to the justifications listed in 6 MCAR § 4.4017, the following constitute justification for the director to commence proceedings to modify a permit or to revoke and reissue a permit:

1. the director discovers that modification of a closure plan is required by 6 MCAR § 4.9298 D. or 4.9300 C.;

2. the permittee files a request for extension of the 90- or 180-day periods set forth in 6 MCAR § 4.9299;

3. the director receives notification of expected closure under 6 MCAR § 4.9298;

4. the director finds that modification of the 30-year post-closure period is necessary as provided in 6 MCAR § 4.9301 A.;

5. the director finds that continuation of security requirements is necessary as provided by 6 MCAR § 4.9301 B.;

6. the director finds that the permittee has made the demonstration required by 6 MCAR § 4.9301 C. such that a disturbance of the integrity of the containment system should be authorized;

7. the permittee files a request under 6 MCAR § 4.9312 C. for a variance from the required level of financial responsibility;

8. the director demonstrates under 6 MCAR § 4.9312 D. that an upward adjustment of the level of financial responsibility is required;

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9. the director finds that the corrective action program specified in the permit under 6 MCAR § 4.9297 M. has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time;

10. to include a detection monitoring program that meets the requirements of 6 MCAR § 4.9297 K., when the owner or operator has been conducting a compliance monitoring program under 6 MCAR § 4.9297 L. or a corrective action program under 6 MCAR § 4.9297 M., and the compliance period ends before the end of the post-closure care period for the unit;

11. a permit requires a compliance monitoring program under 6 MCAR § 4.9297 L., but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard;

12. to include conditions applicable to units at a facility that were not previously included in the facility's permit; or

13. a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

C. Additional justification to commence revocation without reissuance of permit. In addition to the justifications listed in 6 MCAR § 4.4018, a failure to submit an annual facility operator's fee within 180 days of the due date, as specified in the agency's hazardous waste fee rules, constitutes justification for the director to commence proceedings to revoke a permit without reissuance.

D. Minor modifications of permits. In addition to the corrections or allowances listed in 6 MCAR § 4.4019 B. and C., if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in 6 MCAR §§ 4.4010-4.4019:

1. to change the list of facility emergency coordinators in the permit's contingency plan;

2. to change the list of equipment in the permit's contingency plan;

3. to change estimates of maximum inventory under 6 MCAR § 4.9298 C.2.;

4. to change the expected year of closure under 6 MCAR § 4.9298 C.4.;

5. to change schedules for final closure under 6 MCAR § 4.9298 C.4.;

6. to change the ranges of the operating requirements set in the permit to reflect the results of the trial burn provided that the change is minor;

7. to change the operating requirements set in the permit for conducting a trial burn provided that the change is minor;

8. to grant one extension of the time period for determining operational readiness of a thermal treatment unit following completion of construction, for up to 720 hours operating time for treatment of hazardous wastes;

9. to change the treatment program requirements for land treatment units under 6 MCAR § 4.9319 B. to improve treatment of hazardous constituents, provided that the change is minor;

10. to change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with 6 MCAR § 4.4222 provided that the change is minor; and

11. to allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 6 MCAR § 4.9319 C. and E.3., provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.

E. Consideration of facility siting. In making its final determination on a permit modification or permit revocation and reissuance, the agency shall not consider the suitability of the facility location unless new information indicates that a threat to human health or the environment exists which was unknown at the time the permit was issued.

Repealer. Pollution Control Agency rules 6 MCAR §§ 4.9006 and 4.9007 are repealed.

Rules as Proposed (all new materials)

6 MCAR § 4.4301 Scope.

Rules 6 MCAR §§ 4.4301-4.4305 apply to the issuance of air emission facility permits and supplement the agency permit rules in 6 MCAR §§ 4.4001-4.4021.

6 MCAR § 4.4302 Definitions.

The definitions in 6 MCAR §§ 4.4001 and in 4.0001-4.0041 (APC 1 to 41) apply to the terms in 6 MCAR §§ 4.4301-4.4305.

6 MCAR § 4.4303 Permit requirement.

A. Permit required. Except as provided in B., no person may construct, modify, reconstruct, or operate an emission facility or control equipment without obtaining an air emission facility permit from the agency.

B. Exemptions. A person who constructs, modifies, reconstructs, or operates an emission facility that meets one or more of the following exclusions need not obtain an air emission facility permit from the agency:

1. a total emission facility with potential emissions of a single criteria pollutant of less than 25 tons per year, except:
   a. a facility subject to Minnesota Rule APC 9, Control of Odors in the Ambient Air;
   b. a facility subject to federal new source performance standards; and
   c. a total emission facility with potential lead emissions of at least 1,000 pounds per year;
2. a fuel burning facility with heat inputs less than the following:
   a. natural gas, 50 million BTU/hr.;
   b. distillate oil, 10 million BTU/hr.;
   c. wood alone, 5 million BTU/hr.;
   d. residual oil, 5 million BTU/hr.; and
   e. coal, coke, and other solid fuels, 1 million BTU/hr.;
3. a sand and gravel operation that produces less than 150,000 tons of product per year;
4. a pressurized storage tank for anhydrous ammonia, liquid petroleum gas (LPG), liquid natural gas (LNG), or natural gas;
5. a facility that uses less than 10,000 gallons of solvent borne coating per year;
6. a storage tank for petroleum liquid with a capacity of less than 40,000 gallons;
7. a dry bulk agricultural commodity facility with an annual commodity throughput of less than 45,000 tons;
8. an incinerator with a maximum refuse burning capacity of less than 1,000 pounds per hour, unless thermally treating hazardous waste; and
9. a concrete batching facility that produces less than 200,000 cubic yards of concrete per year.

6 MCAR § 4.4304 Permit application.

In addition to the information required by 6 MCAR § 4.4005, a person who requests an emission facility permit shall submit the following information to the director:

A. the characteristics of the exhaust gas stream, before and after the emission control equipment, including emission rates, concentrations, volumetric flow rates, and temperature;

B. the physical characteristics of particulate emissions;

C. the type and design specifications of the control equipment; and

D. the location and elevation of the emission point and the relation of the emission point to nearby structures, window openings, and other information necessary to appraise the possible effects of the exhaust gas stream.

6 MCAR § 4.4305 Special conditions for air emission facility permits.

In addition to the special conditions in 6 MCAR § 4.4015 B. and if applicable to the circumstances, an air emission facility permit may contain special conditions including but not limited to the following:

A. standards of performance for air polluntants from an emission facility;

B. operational requirements for situations where a standard of performance is not applicable or the operational requirements are necessary to achieve compliance with a standard of performance;

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C. testing and reporting requirements to ensure compliance with standards of performance; and

D. notification and reporting requirements for shutdowns and breakdowns.

Repealer. APC 3 of the Pollution Control Agency rules is repealed.

Rules as Proposed

6 MCAR § 4.4311 Scope.

Rules 6 MCAR §§ 4.4001-4.4021 and 4.4311-4.4321 govern application procedures for and the issuance and conditions of indirect source permits. Rules 6 MCAR §§ 4.3001-4.3011; 4.4001-4.4021 and 4.4311-4.4321 shall be construed to complement each other.

~~APC 19 Permits for Indirect Sources.~~

~~(a)~~ 6 MCAR § 4.4312 Definitions.

A. Statutes and other rules. The definitions in Minnesota Statutes, section 116.06; 6 MCAR § 4.4001; and APC 2 apply to terms in 6 MCAR §§ 4.4311-4.4321 unless the terms are defined in C.-H.

B. Scope. As used in 6 MCAR §§ 4.4311-4.4321, the following terms have the meanings given them.

~~(1)~~ C. Indirect source. "Indirect source"~~:~~ means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a state standard. ~~Such~~ Indirect sources include, but are not limited to:

~~(aa)~~ 1. highways and roads~~.~~;

~~(bb)~~ 2. parking facilities~~.~~;

~~(cc)~~ 3. retail, commercial, and industrial facilities~~.~~;

~~(dd)~~ 4. recreation, amusement, sports, and entertainment facilities~~.~~;

~~(ee)~~ 5. airports~~.~~;

~~(ff)~~ 6. office and government buildings~~.~~;

~~(gg)~~ 7. apartment and condominium buildings~~.~~; and

~~(hh)~~ 8. education facilities.

~~(2)~~ D. Associated parking area. "Associated parking area"~~:~~ means a parking facility or facilities owned or operated in conjunction with an indirect source.

~~(3)~~ E. To commence construction. "To commence construction"~~:~~ means to engage in a continuous program of construction including site clearance, grading, dredging, or land filling specifically designed for an indirect source in preparation for the fabrication, erection, or installation of the building components of the indirect source. For the purpose of this paragraph, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be considered in determining whether a construction or modification program is continuous.

~~(4)~~ F. To commence modification. "To commence modification"~~:~~ means to engage in a continuous program of modification, including site clearance, grading, dredging, or land filling in preparation for a specific modification of the indirect source.

~~(5)~~ G. Highway project. "Highway project"~~:~~ means the development proposal of a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program.

~~(6)~~ H. Metropolitan area. "Metropolitan area"~~:~~ means the city limits of Duluth and all contiguous incorporated areas in Minnesota; the city limits of Moorhead and all contiguous incorporated areas in Minnesota; the city limits of St. Cloud and all contiguous incorporated areas; Rochester and all area within the boundaries of Olmsted County; and the Twin Cities metropolitan area including Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

~~(b)~~ 6 MCAR § 4.4313 Permit ~~Required~~ requirement.

Except as provided in 6 MCAR §§ 4.4314 and 4.4315, no person ~~shall~~ may cause or allow the construction or modification of any of the ~~following~~ indirect sources listed in A.-D. without first obtaining a permit ~~to do so~~ from the agency~~:~~. If an indirect source is constructed or modified in increments that individually do not require a permit and that are not part of a program of construction or modification in planned incremental phases for which a permit has been issued by the agency, the increments

commenced after December 31, 1974, must be added together to determine the applicability of the requirement to obtain a permit.

A. Parking facilities:

~~(1) any~~ 1. a new parking facility, or other new indirect source with an associated parking area, which has a new parking capacity of 2,000 cars or more~~.~~; or

~~(2) Any~~ 2. a modified parking facility, or ~~any~~ a modification or an associated parking area, which increases parking capacity by 1,000 cars or more, or which increases total parking capacity to 2,000 cars or more.

B. Highways:

~~(3) Any~~ 1. a new highway project wholly within or partially within a metropolitan area with an anticipated average annual daily traffic volume of 20,000 or more vehicles per day within ~~10~~ ten years of the completion of construction~~.~~; or

~~(4) Any~~ 2. a modified highway project which will increase average annual daily traffic volume by 10,000 or more vehicles per day within ~~10~~ ten years after completion of the modification.

C. Airports:

~~(5) Any~~ a new or modified airport construction which will result in the generation of more than 1,000,000 passengers per year on regularly scheduled air carriers and commercial charter flights within ~~10~~ ten years after completion of construction.

~~(6) Where an indirect source is constructed or modified in increments which individually are not subject to review under this regulation, and which are not part of a program of construction or modification in planned incremental phases approved by the Agency, all such increments commenced after December 31, 1974, or after the latest approval hereunder, whichever date is most recent, shall be added together for determining the applicability of this regulation.~~

D. Other sources:

~~(7) Any~~ an indirect source for which ~~will generate mobile sources in a quantity that preparation of~~ the results of an assessment ~~as set forth in Appendix A of this regulation and provided for in Section (d) indicates~~ prepared under 6 MCAR § 4.4315 indicate that a permit is required.

(c) 6 MCAR § 4.4314 Exemptions.

The ~~following~~ owner or operator of an indirect ~~sources are~~ source listed in A.-F. is exempt from the requirement to obtain ~~a~~ an indirect source permit:

A. Existing sources:

~~(1)~~ indirect sources ~~which are~~ that were in operation on ~~the effective date of this regulation~~ February 18, 1975.

B. Sources under construction:

~~(2)~~ indirect sources for which construction ~~has~~ was commenced prior to January 1, 1975.

C. Parking facilities:

~~(3) Any~~ 1. a new parking facility, or other new indirect source with an associated parking area, which has a new parking capacity of fewer than 1,000 cars~~.~~; or

~~(4) Any~~ 2. a modified parking facility, or ~~any~~ a modification of an associated parking area, which increases parking capacity by fewer than 500 cars, provided that the conditions of ~~Section (b) (2)~~ 6 MCAR § 4.4313 A.2. are not exceeded.

D. Airports:

~~(5) Any~~ a new or modified airport construction ~~which~~ that will result in the generation of fewer than 500,000 passengers per year on regularly scheduled air carriers and commercial charter flights within ~~10~~ ten years after completion of construction.

E. Highways:

~~(6)~~ highway projects ~~which~~ that are wholly outside a metropolitan area.

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F. Other sources:

~~(7)~~ indirect sources constructed as part of the Minnesota Implementation Plan to Achieve Carbon Monoxide Ambient Air Quality Standards, specifically the parking ramps constructed by the city of Minneapolis on the fringe of the Minneapolis central business district.

~~(d)~~ 6 MCAR § 4.4315 Assessment.

A. In general. For all indirect sources not described in ~~Section (b) or Section (c)~~ 6 MCAR §§ 4.4313 and 4.4314, the necessity for an indirect source permit shall be determined according to the air quality assessment procedure set forth in ~~Appendix A to this regulation~~ C. No person ~~shall~~ may cause or allow the construction of an indirect source for which an assessment is required until the assessment has been completed to the satisfaction of the director. ~~The Director shall make a determination on whether a permit application is required within seven days of receipt of a satisfactory assessment.~~ If the director determines that a permit application is required, ~~such applications shall~~ the application must be made in accordance with ~~Section (c)~~ 6 MCAR § 4.4317.

~~(e) Permit Application~~

~~Construction or modification of any indirect source subject to this regulation shall not commence until a permit is issued by the Agency or until a determination is made by the Director in accordance with Section (d) that a permit application need not be made. Application for a permit shall be made in accordance with provisions of this section. Every application shall be accompanied with a copy of any draft or final environmental impact statement which has been prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321), or a copy of any environmental assessment or environmental impact statement submitted to the Minnesota Environmental Quality Council.~~

~~(1) For all indirect sources subject to this regulation, other than highway projects:~~

~~(aa) The name and address of the applicant.~~

~~(bb) A map showing the location of the site of the indirect source and the topography of the area.~~

B. Assessment information. To perform the air quality assessment the following information is required:

1. The highest existing peak daily traffic count on the busiest segment of a public road or highway located within one-fourth mile from a point on the property line of the indirect source. This segment of public road or highway shall be referred to as the "busiest roadway."

2. The highest projected peak daily traffic attracted to the proposed indirect source construction or modification occurring at a time during the one-year period immediately following the construction or modification.

3. The highest projected peak daily traffic on the busiest roadway during the one-year period immediately following the construction or modification, not including traffic attracted to the proposed indirect source.

C. Assessment procedure. The director shall make a determination as to whether a permit is required based on the following:

1. A comparison of existing busiest roadway traffic volume to volume likely to result in a violation of the one-hour carbon monoxide standard. If 12 percent of the traffic volume determined pursuant to B.1. is greater than or equal to 2,500 vehicles per hour, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 2. must be followed.

2. A comparison of existing busiest roadway traffic volume to volume likely to result in a violation of the eight-hour carbon monoxide standard. If 60 percent of the traffic volume determined under B.1. is greater than or equal to 5,000 vehicles per eight hours, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 3. must be followed.

3. A comparison of projected busiest roadway and source-attracted traffic to volume likely to result in a violation of the one-hour carbon monoxide standard. If 12 percent of the sum of the traffic volumes determined under B.2.-3. is greater than or equal to 5,000 vehicles per hour, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 4. must be followed.

4. A comparison of projected busiest roadway and source-attracted traffic volumes to volume likely to result in a violation of the eight-hour carbon monoxide standard. If 60 percent of the sum of the traffic volumes determined under B.2.-3. is greater than or equal to 7,500 vehicles per eight hours, a permit is required. If it is less, then no permit is required.

6 MCAR § 4.4316 Circumvention.

No person may circumvent the requirements of 6 MCAR §§ 4.4311-4.4321 by causing or allowing a pattern of ownership or

development to occur over a geographic area which, except for the pattern of ownership or development, would otherwise require an indirect source permit.

6 MCAR § 4.4317 Contents of permit application.

A. In general. A person who applies for an indirect source permit shall submit to the director the information required by 6 MCAR § 4.4005. In addition, the applicant shall submit to the director the information required by B. and, where applicable, the information required by C. and D. If approval is sought for an indirect source to be constructed in incremental phases, the applicant shall submit the information required by this rule for each phase of the construction project at the time of the initial application.

B. Information required for all indirect sources. All applicants for an indirect source permit shall submit the following:

~~(cc)~~ 1. a description of the proposed use of the site, including the normal hours of operation of the facility, and the general types of activities to be operated ~~therein.~~ in it;

~~(dd)~~ 2. a site plan showing the location of associated parking areas, points of motor vehicle ingress and egress to and from the site and its associated parking areas, and the location and height of buildings on the site~~.~~;

~~(ee)~~ 3. an identification of the principal roads, highways, and intersections that will be used by motor vehicles moving to or from the indirect source~~.~~;

~~(ff)~~ 4. an estimate, as of the first year after the date the indirect source will be substantially complete and operational, of the average daily traffic volumes, maximum traffic volumes for one-hour and eight-hour periods, and vehicle capacities of the principal roads, highways, and intersections identified ~~pursuant to subsection (1)(ee)~~ under 3. located within one-fourth mile of all boundaries of the site~~.~~;

~~(gg)~~ 5. availability of existing and projected mass transit to service the site~~.~~;

~~(hh) Where approval is sought for indirect sources to be constructed in incremental phases, the information required by this section shall be submitted for each phase of the construction project.~~

~~(ii)~~ 6. any additional information or documentation that the director or agency deem necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data for carbon monoxide at the proposed site prior to construction or modification. If the director requires the applicant to perform air quality monitoring for carbon monoxide at the proposed site, the director shall not require the applicant to perform monitoring for a period of more than 14 days.

~~(2)~~ C. Information required for airports. An applicant for an indirect source permit for an airport shall submit the following:

~~(aa)~~ 1. an estimate of the average number and maximum number of aircraft operations per day by type of aircraft during the first, fifth, and tenth years after the date of expected completion~~.~~;

~~(bb)~~ 2. a description of the commercial, industrial, residential, and other development that the applicant expects will occur within three miles of the perimeter of the airport within the first five and the first ten years after the date of expected completion~~.~~; and

~~(cc)~~ 3. expected passenger loadings at the airport.

~~(dd) The information required under subsections (1)(aa) through (ii) of this section.~~

~~(3)~~ D. Information required for highway projects. An applicant for an indirect source permit for a highway project shall submit the following:

~~(aa)~~ 1. a description of the average and maximum traffic volumes for one-, eight-, and 24-hour time periods expected within ~~10~~ ten years of date of expected completion~~.~~;

~~(bb)~~ 2. an estimate of vehicle speeds for average and maximum traffic volume conditions and the vehicle capacity of the highway project~~.~~;

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~~(ee)~~ 3. a map showing the location of the highway project, including the location of buildings along the right-of-way~~.~~; and

~~(dd)~~ 4. a description of the general features of the highway project and associated right-of-way, including the approximate height of buildings adjacent to the highway.

~~(ee) Any additional information or documentation that the Director deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data for carbon monoxide at the proposed site prior to construction or modification.~~

~~(ff) The information required under subsections (1)(aa) through (ii) of this section.~~

~~(4) The air quality monitoring requirements of this section shall be limited to carbon monoxide, and shall be conducted for a period of not more than 14 days.~~

6 MCAR § 4.4318 Determination of air quality impact of indirect source.

A. Concentrations of carbon monoxide. The agency shall determine, by evaluation of information submitted by the applicant, the reasonableness of anticipated concentrations of carbon monoxide at reasonable receptor or exposure sites that will be affected by the mobile source activity expected to be attracted by the indirect source. For a highway, the agency shall determine, by evaluation of information submitted by the applicant, the reasonableness of anticipated concentrations of carbon monoxide at reasonable receptor or exposure sites that will be affected by the mobile source activity expected on the highway for the ten-year period following the expected date of completion. For the purposes of this rule "reasonable receptor or exposure sites" means locations where people might reasonably be exposed to carbon monoxide for time periods corresponding to time periods referenced in Minnesota ambient air quality standards.

B. Analytic method. In estimating anticipated carbon monoxide concentrations the applicant shall use the methods set forth in Code of Federal Regulations, title 40, section 52.22 (b)(4)(ii) (1982).

~~(f) Standards for Issuance~~

~~(1) For indirect sources other than highway projects,~~

6 MCAR § 4.4319 Final determination.

The agency shall ~~approve an application~~ issue a permit to construct or modify an indirect source if ~~it~~ the agency determines that the indirect source will not:

~~(aa)~~ A. violate ~~any~~ a control strategy of the Minnesota Implementation Plan to Achieve National Ambient Air Quality Standards; or~~,~~

~~(bb)~~ B. violate state standards for carbon monoxide in ~~any~~ a region or portion thereof.

~~(2) The Agency shall make the determination pursuant to this section by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected to be attracted by the indirect source. Such determination may be made by using traffic flow characteristic guidelines published by the Environmental Protection Agency which relate traffic demand and capacity considerations to ambient carbon monoxide impact by use of appropriate atmospheric diffusion models, or by any other reliable analytic method. The applicant may submit with his application the results of an appropriate diffusion model or any other reliable analytic method, along with the technical data and information supporting such results. Any such results and supporting data submitted by the applicant shall be considered by the Agency in making a determination pursuant to this section.~~

~~(3) For all highway projects subject to this regulation, the Agency shall not grant a permit to construct or modify if it determines that the indirect source will:~~

~~(aa) Cause a violation of any control strategy of the Minnesota Implementation Plan to Achieve National Ambient Air Quality Standards; or,~~

~~(bb) Cause or exacerbate a violation of the state standards for carbon monoxide in any region or portion thereof. The determination pursuant to this section shall be made by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected on the highway for the ten year period following the expected date of completion according to the procedures specified in Section (f)(2) of this regulation.~~

~~(4) The determination of the air quality impact of a proposed indirect source "at reasonable receptor or exposure sites" shall mean such location where people might reasonably be exposed for time periods consistent with the state ambient air quality standards for the pollutants specified for analysis pursuant to this section.~~

~~(g) Permit Procedure~~

~~(1) Within 20 days after receipt of an application or addition thereto, the Director shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of subsection (2) of this section shall be the date on which all required information is received by the Agency.~~

~~(2) Within 30 days after receipt of a complete application, the Director shall:~~

~~(aa) Make a preliminary determination whether the application for an indirect source permit should be approved, approved with conditions in accordance with Section (h) of this regulation, or disapproved;~~

~~(bb) Make available to the public in at least one location in the affected Minnesota Development Region a copy of all materials submitted by the owner or operator, a copy of the Director's preliminary determination, and a copy or summary of other materials, if any, considered by the Director in making the preliminary determination; and,~~

~~(cc) Notify the public, by prominent advertisement in a newspaper of general circulation in each Minnesota Development Region in which the proposed indirect source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Director's preliminary determination on the approvability of the indirect source.~~

~~(3) A copy of the notice required pursuant to this section shall be sent to the applicant and to officials and agencies having cognizance over the location where the indirect source will be situated, as follows: Local air pollution control agencies, the chief executive of the city and county, and the Regional Development Commission in the Minnesota Development Region in which the indirect source is located.~~

~~(4) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Agency in making its final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Agency shall consider the applicant's response in making its final decision. All comments shall be made available for public inspection in at least one location in the Minnesota Development Region in which the indirect source would be located.~~

~~(5) The Agency shall take final action on an application within forty-five days after the close of the public comment period. The Agency shall notify the applicant in writing of its approval, conditional approval, or denial of the application, and shall set forth its reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location of the region in which the indirect source would be located.~~

~~(6) The Agency may extend each of the time periods specified in this section for a period not to exceed 30 days or such other periods as agreed to by the applicant. Nothing herein, however, shall preclude the Agency from extending any of these time periods for an appropriate length of time if it decides to hold a public hearing or public meeting on any permit application, or if an environmental impact statement on the indirect source is prepared.~~

~~(h)~~ 6 MCAR § 4.4320 Permit conditions.

~~(1) Whenever an indirect source as proposed by an owner or operator's application would not be permitted to be constructed for failure to meet the tests set forth pursuant to Section (f) of this regulation, the Agency may impose reasonable conditions on an approval related to the air quality aspects of the proposed indirect source so that such source, if constructed or modified in accordance with such conditions, could meet the tests set forth pursuant to Section (f) of this regulation. Such~~

A. Special conditions. An indirect source permit issued by the agency must contain conditions necessary for the permittee to achieve compliance with all applicable Minnesota or federal statues or rules. These conditions may include, but are not ~~be~~ limited to:

~~(aa)~~ 1. binding commitments to roadway improvements or additional mass transit facilities to serve the indirect source secured by the owner or operator from governmental agencies having jurisdiction ~~thereof~~ over them;

~~(bb)~~ 2. binding commitments by the owner or operator to specific programs for mass transit and paratransit incentives for the employees and patrons of the source; and~~;~~

~~(cc)~~ 3. binding commitments by the owner or operator to construct, modify, or operate the indirect source in ~~such~~ a

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manner ~~as may be~~ necessary to achieve the traffic flow characteristics ~~published by the Environmental Protection Agency prusuant to Section (f) (2) of this regulation~~ determined by the director to be appropriate to prevent violations of carbon monoxide ambient air quality standards.

~~(2) The Agency may specify that any items of information provided in an application for approval related to the operation of an indirect source which may affect the source's air quality impact shall be considered permit conditions.~~

~~(3) Notwithstanding the provisions relating to modified indirect sources contained in Section (b) of this regulation, the Agency may condition any approval by reducing the extent to which the indirect source may be further modified without resubmission for approval under this section.~~

~~(4) No owner or operator shall construct an indirect source except in accordance with the permit as approved by the agency, and no owner or operator shall construct and operate an indirect source except in accordance with conditions imposed by the agency under this section. Subsequent modification to an approved indirect source may be made without applying for permission pursuant to this regulation only where such modification would not violate any condition imposed pursuant to this section and would not be subject to the modification criteria set forth in Section (b) of this regulation.~~

~~(5)~~ B. General condition. An indirect source permit issued by the agency must contain the general condition that approval to construct or modify shall become invalid if construction or modification is not commenced within 24 months after receipt of ~~such~~ the approval. The agency may extend ~~such~~ this time period upon a satisfactory showing that an extension is justified. The applicant may apply for ~~such~~ an extension at the time of initial application or at any time thereafter.

~~(6) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with all local, state and federal regulations.~~

~~(7) The Permittee shall allow the Agency, or any authorized employee or agent of the Agency, when authorized by law and upon presentation of proper credentials, to enter upon the property of the Permittee for the purpose of obtaining information or examining records or conducting surveys or investigations pertaining to the installation or operation of the indirect source covered by the permit.~~

~~(8) The Permittee shall, when requested by the Agency, submit such information and reports which are relevant to the control of pollution regarding the operation of the indirect source covered by the permit.~~

~~(9) The Agency may prescribe other permit conditions related to the maintenance of carbon monoxide standards.~~

~~(i) Circumvention.~~

~~No person shall circumvent the requirements of this regulation by causing or allowing a pattern of ownership or development to occur over a geographic area which, except for the pattern of ownership or development, would otherwise require an indirect source permit.~~

~~(k) Ambient Standards.~~

~~Regardless of whether a permit is required for the indirect source, no owner or operator of an indirect source shall cause or allow a violation of any ambient air quality standard.~~

6 MCAR § 4.4321 Minor modification of permit.

In addition to the corrections or allowances listed in 6 MCAR § 4.4019 C., the director upon obtaining the consent of the permittee may modify an indirect source permit without following the procedures in 6 MCAR §§ 4.4010-4.4019 if the director determines that the modification would not result in an increase in carbon monoxide of greater than one part per million or a violation of the carbon monoxide standard established in 6 MCAR § 4.0001, and that the modification would not subject the permittee to the requirement to obtain a permit modification set forth in 6 MCAR § 4.4313.

~~APPENDIX A~~

~~The air quality assessment required in paragraph (d) will require the following information and procedure:~~

~~(1) Information:~~

~~(a) The highest existing peak daily traffic count on any segment of any public road or highway located within one-fourth mile from any point on the property line of the indirect source. This public road or highway is the busiest roadway to be affected by the modification or construction and is hereinafter referred to as the "busiest roadway." [^{q}e(24)]~~

~~(b) The highest projected peak daily traffic attracted to the proposed indirect source construction or modification occurring at any time during the one year period immediately following the construction or modification. [^{q}p(24)]~~

~~(c) The highest projected peak daily traffic on the busiest roadway during the one-year period immediately following the construction or modification, not including traffic attracted to the proposed indirect source. [^{q}r(24)]~~

(d) Compute the maximum expected one-hour traffic volumes $^{q}e(a)$, $^{q}p(1)$, $^{q}r(1)$, where:

$^{q}e(1) = .12\ ^{q}e(24)$
$^{q}p(1) = .12\ ^{q}p(24)$
$^{q}r(1) = .12\ ^{q}r(24)$

(e) Compute the maximum expected eight-hour traffic volumes $^{q}e(8)$, $^{q}p(8)$, $^{q}r(8)$, where:

$^{q}e(8) = .6^{q}e(24)$
$^{q}p(8) = .6^{q}p(24)$
$^{q}r(8) = .6^{q}r(24)$

(2) Procedure:

(a) STEP 1. Comparison of Existing Air Quality to the One Hour Standard.

If $^{q}e(1)$ is greater than or equal to 2,500 vehicles per hour, a permit application is required and completion of the remaining steps is not required; if it is less, go to STEP 2.

(b) STEP 2: Comparison of Existing Air Quality to the Eight-Hour Standard.

If $^{q}e(8)$ is greater than or equal to 5,000 vehicles per eight hours, a permit application is required and completion of the remaining steps is not required; if it is less, go to STEP 3.

(c) STEP 3: Comparison of Projected Air Quality to the One-Hour Standard.

If $^{q}r(1)$ $^{q}p(1)$ is greater than or equal to 5,000 vehicles per hour, a permit application is required and completion of the remaining step is not required; if it is less, then go to STEP 4.

(d) STEP 4: Comparison of Projected Air Quality to the Eight-Hour Standard.

If $^{q}r(8)$ $^{q}p(8)$ is greater than or equal to 7,500 vehicles per eight hours, a permit application is required. If it is less, then no permit application is required.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Department of Employee Relations

Adopted Rules Governing the State Personnel System (2 MCAR §§ 2.225; 2.2301; 2.303; 2.406; 2.409 and 2.413)

The rules proposed and published at *State Register*, Volume 8, Number 11, pages 429-431, September 12, 1983 (8 S.R. 429) are adopted as proposed.

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Board of Examiners for Nursing Home Administrators

Adopted Rules Governing Licensure and Relicensure of Nursing Home Administrators

The rules proposed and published at *State Register*, Volume 7, Number 43, pages 1547-1553, April 25, 1983 (7 S.R. 1547) are adopted with the following modifications:

Rules as Adopted

~~NHA 1~~ 7 MCAR § 6.001 Statutory authority.

~~The~~ Rules ~~and Regulations herein contained~~ 7 MCAR §§ 6.001-6.024 constitute, comprise, and shall be known as the rules ~~and Regulations~~ of the Board of Examiners for Nursing Home Administrators of the state of Minnesota and are promulgated ~~pursuant to~~ under the authority granted to the ~~said~~ board under ~~and pursuant to Minnesota Statutes 1969 Section 144.954 and Minnesota Statutes 1969 Section 144.959,~~ Minnesota Statutes, sections 144A.19-144A.29 and in accordance with the Administrative Procedure Act ~~Minnesota Statutes 1969 ep. 15~~ in Minnesota Statutes, chapter 14.

7 MCAR § 6.010 License requirements.

A. In general. No initial license shall be issued to a person as a nursing home administrator unless the individual:

1. ~~6.~~ 4. [Unchanged.]

5. has paid ~~all license~~ the following licensure and examination fees as established by the board:

a. an original application fee, not to exceed $75;

b. a state examination fee, not to exceed $50; and

c. a national examination fee, not to exceed $80.

6. [Unchanged.]

7. has a baccalaureate or higher degree from an accredited institution and has satisfactorily completed an approved academic course in each of the following areas:

a. A course in the principles of organizational management and administration which delineates the role, functions, and process of management including planning, staffing, organizing, controlling, delegating, and evaluating outcomes~~;~~.

b. An accounting course which provides an introduction to basic financial concepts, financial statements, definition of accounting terminology, and the recording and reporting of financial events including budgeting~~;~~.

c. A course in social gerontology which includes the study of the social aspects of aging in our society as they relate to services and programs for the infirm or aged, or both~~;~~.

d. A course on issues in health care in which there is a study of at least three of the major social, economic, and ethical issues confronting long-term health care which include nontraditional approaches to health care, relationships of life style to health, patients' rights, right-to-die issues, and dilemmas of health care professionals in terms of morals, ethics and professional commitments~~;~~.

e. A course in health care law which studies common case law and types of legal entities that affect or govern long-term health care organizations including its board and staff and the laws that affect guardianship or conservatorship~~;~~.

f. A course in the administration of long-term care services and programs which is a study of the function and role of professional and nonprofessional personnel, their services, and organizational programs which are needed to provide therapeutic-geriatric services for those requiring long-term health care~~, including a study of commonly accepted medical terms in long term health care;~~.

g. A human resource or personnel management course which is a study of recruitment, screening and selection processes, job descriptions, job evaluations, personnel policies affecting management and human resources, including orientation and development of employees, personnel records, wage and salary administration, labor laws, affirmative action planning, and equal employment opportunity legislation~~;~~.

h. A board pre-approved practicum course which relates knowledge courses to the practice of administration in long-term health care organizations. The course, which must be of a minimum of 300 clock hours, must be under the direction of a faculty person of the educational institution coordinating the course and carried out by a licensed nursing home administrator preceptor. Upon mutual agreement of the educational facility and nursing home preceptor, a licensed nursing home may serve as the practicum site for an applicant who is employed by that nursing home.

i. A course in medical terminology, including a study of commonly accepted medical terms used in long-term care.

B. Waiver provisions.

2. The board shall waive 7 MCAR § 6.010 A.7 h. if the applicant submits evidence of having completed satisfactorily one year continuous, full time as an administrator or in a position as an assistant administrator ~~position~~ in an acute care, skilled care, or intermediate care facility, or as a director of nursing services or a director of social services in a skilled or intermediate care facility.

7 MCAR § 6.013 License; issuance.

C. Acting administrator. If a licensed nursing home administrator is removed from his position by death or other unexpected cause, the owner, governing body, or other appropriate authority of the nursing home suffering such removal may designate an acting nursing home administrator who may serve ~~only after getting an acting license and~~ for no more than 180 days. The owner, governing body or other appropriate authority of the nursing home suffering such removal shall notify the licensure board in writing within 15 days of the termination of service of the administrator as well as the appointment of the new administrator. Upon receipt of notification of a vacancy, the board shall provide, if the designated new administrator is not fully licensed, the appropriate forms for securing an acting license. The board shall expediently process all qualified applicants for acting license. If an application is received after a vacancy occurs, the acting license shall be retroactive to the date the applicant assumed administrative responsibility of the facility.

7 MCAR § 6.014 Reciprocity.

A. General requirements. The board, subject to the law pertaining to the licensing of nursing home administrators prescribing the qualifications for nursing home administrator license, may endorse, without examination, a nursing home administrator license issued by the proper authorities of any other state or political subdivision of the United States~~, and upon payment of a fee established by the board,~~ provided:

4. that an applicant who seeks licensure by reciprocity shall pay a service fee, as established by the board not to exceed $50.

7 MCAR § 6.015 Display of license.

B. Duplicate licenses. Upon receipt of satisfactory evidence that a license has been lost, mutilated, or destroyed, the board may issue a duplicate license upon payment of a fee established by the board, not to exceed $25.

7 MCAR § 6.016 Renewal.

B. Fees; time for renewal. Upon making an application for a renewal of his license such licensee shall pay the annual fee as established by the board, not to exceed $125. Renewal applications received after July 1 shall pay the late filing fees as established by the board not to exceed $30 for the first six months and $50 for the second six months. The applicant shall submit evidence satisfactory to the board that during the annual period immediately preceding such application he has complied with the rules of this board and continues to meet the requirements as established, including, but not limited to, continuing educational requirements for relicensure. Nonacademic continuing education requirements of relicensure shall be completed by May 1 of each year for the ensuing licensure year; however, upon presentation of a written petition, licensees may be granted an extension for an appropriate period of time. Extensions will only be granted in unusual circumstances. Applicants granted extensions will be required to make payment of applicable late filing fees.

7 MCAR § 6.017 Revocation, suspension, refusal.

B. Criteria for disciplinary action. In determining whether a person is incompetent to serve in the profession of nursing home administration as provided in A., the non-inclusive items listed in 1.-11. may be considered. No person shall be licensed or continue to be licensed as a nursing home administrator if he or she:

1. Has practiced fraud, deceit, or misrepresentation in his or her capacity as a nursing home administrator~~;~~ ~~or~~.

2. Has committed acts of misconduct in the operation of a nursing home under his or her jurisdiction~~;~~ ~~or~~.

3. Is habitually overindulgent or addicted to the use of habitforming drugs, including alcohol~~,~~; a legend drug as defined in Minnesota Statutes, chapter 151~~,~~; a chemical as defined in Minnesota Statutes, chapter 151~~,~~; or a controlled substance as defined in Minnesota Statutes, chapter 152; and this overindulgence or addiction has affected the person's performance of his or

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

her duties. In reviewing this disciplinary matter, the board shall consider any attempt the person has made toward rehabilitation.

4. Has practiced without annual registration; ~~or~~.

5. Has wrongfully transmitted or surrendered possession of his or her license or certificate to any other person, either temporarily or permanently; ~~or~~.

6. Has paid, given, has caused to be paid or given or offered to pay or give to any person, a commission or other consideration for solicitation or procurement either directly or indirectly for nursing home patronage; ~~or~~.

7. Has practiced fraudulent, misleading, or deceptive advertising with respect to the institution of which he or she is an administrator, to any person; ~~or~~.

8. Has falsely impersonated another licensee of a like or different name; ~~or~~.

9. Has failed to exercise true regard for the safety, health, and life of a patient; or.

10. Has willfully permitted unauthorized disclosure of information relating to a patient or the patient's record; ~~or~~.

7 MCAR § 6.019 Program approval.

A. Approval of programs for licensure. A program of study offered by an accredited educational institution must have prior approval of the board in order to be acceptable for meeting nursing home administrator licensure requirements. The board shall approve programs of study which include courses in the areas described in 7 MCAR § 6.010 A.7.a.-h. upon payment of a service fee as established by the board, not to exceed $40 per program.

Renumbering. ~~Renumber NHA 1 as 7 MCAR § 6.001.~~ Renumber NHA 12 as 7 MCAR § 6.012. Renumber NHA 22 to 24 as 7 MCAR §§ 6.022 to 6.024.

Department of Labor and Industry
Occupational Safety and Health Review Board

Adopted Rules of Procedure for Practice Before the Occupational Safety and Health Review Board

The rules proposed and published at *State Register*, Volume 8, Number 5, pages 160-171, August 1, 1983 (8 S.R. 160) are adopted with the following modifications:

Rules as Adopted

8 MCAR § 1.7250 General provisions.

A. Definitions. For the purposes of 8 MCAR §§ 1.7250-1.7255, the following terms have the meanings given them.

2. "Commissioner," "board," ~~"person,"~~ "employer," and "employee," have the meanings set forth in Minnesota Statutes, section 182.651.

B. Scope of rules. Rules 8 MCAR §§ 1.7250-1.7255 shall govern all proceedings before the board~~, except~~. Additionally, all contested case and rule hearing proceedings are governed by 9 MCAR §§ 2.101-2.222.

E. Service and notice.

4. Service must be certified by a written statement that sets forth the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the pleading or document.

7. If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within two working days of receiving the acknowledgement of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form complies with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of Labor and Industry for violation of the Minnesota Occupational Safety and Health Act of 1973. The citation has been contested and will be the subject of a hearing. Affected employees are entitled to participate in this hearing as parties under the terms and conditions established by the Occupational Safety and

Health Review Board in its rules of procedure. Notice of intent to participate should be sent to: Executive Secretary, Occupational Safety and Health Review Board, 444 Lafayette Road, St. Paul, MN 55101, or any other address that the review board has. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor and Industry for abatement of the violations has been contested and will be the subject of a hearing.

21. If a settlement proposal is filed with the hearing examiner, it shall be served upon affected employees by the employer. For affected employees represented by an authorized employee representative, service shall be accomplished by personal delivery or first class mail to the representative. For affected employees not so represented, service shall be accomplished by posting. Proof of service of the settlement proposal on affected employees shall be filed with the hearing examiner.

8 MCAR § 1.7251 Parties and representatives.

A. Party status.

1. Affected employees or an authorized representative may choose to participate as parties provided they file notice of intent to participate at least five days before the start of the hearing. The notice of intent to participate must contain the employees' names, addresses, representatives, if any, and a statement that they are affected employees of the cited employer. This notice shall be filed with the executive secretary if a hearing examiner has not yet been assigned. After a hearing examiner has been assigned, this notice shall be filed with the hearing examiner and served upon all other parties.

3. Intervention and appearance by nonparties may be granted pursuant to 9 MCAR § 2.210.

8 MCAR § 1.7252 Pleadings and motions.

D. Employer contests.

2. Notice to respondent. The commissioner shall file and serve on the respondent no later than 40 days after receiving the notice of contest a notice stating the following:

d. the name of the agency official or member of the Attorney General's staff to be contacted to discuss informal disposition under 9 MCAR § 2.207 or discovery under 9 MCAR § 2.214 C.; ~~and~~

e. that ~~a failure to appear at the hearing may result in the allegations of the pleadings being taken as true~~ respondent has a right to a contested case hearing before an independent hearing examiner from the Office of Administrative Hearings pursuant to Minnesota Statutes, sections 14.48 to 14.62, and 182.664, subdivision 3;

f. that respondent may present evidence and argument with respect to the issues and cross-examine witnesses;

g. where the procedural rules may be obtained;

h. that parties may attempt to settle the matter without a hearing; and

i. that should respondent wish to initiate discovery pursuant to 9 MCAR § 2.214 C. prior to the setting of a hearing date, respondent must file a discovery motion with the review board and the case will be transferred to the Office of Administrative Hearings for a decision on the discovery motion.

K. Notice of readiness for hearing.

1. Subsequent to the timely filing of an answer, a party that is prepared for hearing may file a notice of readiness for hearing with the board and serve a copy on all parties.

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2. Upon receipt of the notice of readiness for hearing, the board shall schedule a hearing. The board shall serve a written notice of hearing and order on all parties at least 30 days prior to the hearing date. The employer shall serve a copy of the notice of hearing and order on affected employees and authorized employee representatives pursuant to 8 MCAR § 1.7250 E. The notice of hearing and order must state the following:

a. that if a party chooses to appear at the hearing, a notice of appearance must be filed by that party with the hearing examiner within 20 days of the date of service of the notice of hearing and order pursuant to 9 MCAR § 2.205; and

b. that a failure to appear at the hearing may result in the allegations of the pleadings being taken as true.

8 MCAR § 1.7253 Post hearing procedures.

B. Notice of appeal.

3. The notice of appeal must be received by the board at its offices in St. Paul, Minnesota, on or before the 30th day following ~~publication~~ issuance of the hearing examiner's findings and decision.

8 MCAR § 1.7254 Settlement.

C. Settlement agreements must contain a provision stating ~~that~~ the date on which the employer has served the agreement upon affected employees in the manner prescribed by 8 MCAR § 1.7250 E.21.

I. An affected employee may file with the hearing examiner an objection to a proposed settlement agreement within ten days of service of the proposed agreement upon the employee. The hearing examiner shall give consideration to the objection before approving or disapproving the settlement.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Energy and Economic Development

Notice of Postponement of Hearing Regarding Minnesota Energy Conservation Service Program

The Energy Division of the Department of Energy and Economic Development hereby announces that the public hearing scheduled for December 20, 1983 regarding the amendment of the rules governing the Minnesota Energy Conservation Service Program, 6 MCAR § 2.2300-2.2313 is postponed.

The Department will reschedule the public hearing for a later date. Once the exact date of the hearing is determined, a notice will be published in the *State Register* and mailed to the Departments' list of interested persons.

The purpose of the postponement is to allow further public comment on the rules proposed by the Department and published in the *State Register* November 14, 1983, Volume 8, Number 20, page 1106-1134. Persons desiring to comment on the rules proposed are urged to submit their comments as soon as possible to: Mark Polich, MECS Program Manager, Energy Division, Department of Energy and Economic Development, 150 East Kellogg Blvd., St. Paul, MN 55101.

Housing Finance Agency
Home Improvement Division

Notice of Fund Availability for Solar Bank Deferred Loans

The Minnesota Housing Finance Agency announces that funds have been received from the Solar Energy and Energy Conservation Bank of the U.S. Department of Housing and Urban Development for the purpose of providing energy financing

in the form of deferred loans to homeowners residing in one to four unit buildings, and who are ineligible to receive such energy financing from other sources. Up to $5,000 is available to homeowners whose family income is below 150% of the median family income for the county of residence. The deferred loan is repaid only if the borrower sells, transfers or conveys the property, or ceases to reside in the property for a period of 10 years following the date of the loan.

Applications will be accepted by program administrators upon referral by Northern States Power Company, or such other entity as MHFA approves, beginning January 1, 1983 until such funds are expended or until August 31, 1984, whichever is earlier. Such application must include the following:

— Homeowner Application & Certifications and Administering Entity Worksheet;

— Energy Audit and Work Write-up;

— Contractor Homeowner Warranties;

— Contractor Bid(s);

— Combination Loan Repayment Agreement, Mortgage, Security Agreement, and Fixture Financing Statement;

— Credit Reviews (where applicable).

Such applications must be submitted to MHFA for final approval.

The Solar Bank Deferred Loan Program is being implemented in the Northern States Power Company Service Area and Minnegasco, Inc. Service Area through the following administrators.

Dakota County Housing and Redevelopment Authority

Metropolitan Council Housing and Redevelopment Authority

Minnesota Valley Action Council

Region 6E Community Action Council

Scott Carver Economic Opportunity Agency

Tri County Action Programs, Inc.

Future Notices of Fund Availability will identify additional service areas and program administrators.

For more information on this program contact:

Kathleen Anderson
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
(612) 296-8844

Department of Public Welfare
Income Maintenance Bureau

Outside Opinion Sought Concerning Rules Governing the General Assistance Program

Notice is hereby given that the Minnesota Department of Public Welfare is considering amendments to rules governing the General Assistance program, including 12 MCAR § 2.055 (permanent rule) and 12 MCAR 2.05501 through 2.05509 (temporary rules), in order to incorporate statutory changes, add specificity, and to make permanent existing temporary rules.

The commissioner is authorized to promulgate rules for the General Assistance program by Minnesota Statute § 256D.04 and Laws of Minnesota, 1983, ch.312.

The proposed changes to the rule include but are not limited to:

1. Establishing the rights and responsibilities of the Department of Public Welfare, local welfare agencies, and applicants for or recipients of General Assistance concerning work registration, work requirements, and participation in the Minnesota Emergency Employment Development Act (MEED) program; and

2. Establishing standards of assistance; and

3. Authorizing local welfare agencies to enter into a contract with the Department of Economic Security for the purpose of determining the eligibility of MEED program applicants or participants for an Employment Allowance; and

4. Setting forth the policies of the Department of Public Welfare affecting applicants and recipients who apply for the federal Supplemental Income Program, and affecting those agents who provide special assistance to the individual in applying for or securing the federal program.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Michael Sirovy
Department of Public Welfare
Income Maintenance Policy Development Section
444 Lafayette Road, 2nd floor
St. Paul, Minnesota 55101

Oral statements of information and comment will be received over the telephone at (612) 297-2011 between 9:00 am and 4:00 pm Mondays through Fridays.

Statements of information and comment will be accepted until further notice. Any written material received by the Department shall become part of the hearing record. Oral statements will be considered but will now become part of the hearing record.

Department of Public Welfare
Income Maintenance Bureau

Outside Opinion Sought Concerning Temporary Rules to Be Promulgated Regarding General Assistance and Supplemental Security Income

Notice is hereby given that the Minnesota Department of Public Welfare intends to promulgate temporary rules governing its policies affecting certain General Assistance applicants and recipients who apply for the federal Supplemental Security Income program, and affecting those agents who, under the provisions of Minn. Stat. 256D.05, Subd. 5, provide special assistance to the individual in applying for or securing the federal program. The General Assistance program provides qualified individuals and families with cash resources to meet their basic needs for food, shelter, clothing, and other essential items. The federal Supplemental Security Income program provides for similar needs, with qualification dependent upon the individual's age or disability. The General Assistance program, financed through state and county funds, is intended only for those persons who cannot qualify for a federally financed program.

In its proposed temporary rules, the Department will set forth its policies concerning:

a) the identification of applicants for and current recipients of General Assistance who may be eligible for Supplemental Security Income, including the requirements imposed upon those individuals to file applications with the Social Security Administration; and

b) the policies which will govern the implementation of Minn. Stat. 256D.06 Subd. 5, including:

1) a definition of special assistance to be rendered by agents acting in the applicant's behalf;

2) specifying with whom and under what terms the local welfare agency may contract with outside agents to provide the special assistance to General Assistance applicants and recipients; and

3) establishing reasonable fees, costs, and disbursements to those agents from the state share of Interim Assistance collected.

All interested or affected persons or groups are invited to participate and to suggest methods which the Department might adopt in its implementation of these policies. Statements of information and comment may be made orally or in writing. All comments will be considered; however, only written comments related to this solicitation shall become a part of the official record. Oral statements of information and comment will be received over the telephone at (612) 297-3919 between 9:00 a.m. and 4:00 p.m., Mondays through Fridays. Written statements may be addressed to:

Linda Ady
Assistance Payments Division
Minnesota Department of Public Welfare
444 Lafayette Road — 2nd Floor
St. Paul, MN 55101

All statements of information and comment will be accepted by the Department until further notice.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is January 10, 1984.

WORLD TRADE CENTER COMMISSION has 1 vacancy open immediately for a person knowledgeable in the areas of finance, export business and education. The commission shall study private and public financial commitment required for a Minnesota World Trade Center. Members are appointed by the Governor. For specific information contact World Trade Center Commission, Roberta Schneider, 130 Capitol, St. Paul 55155; (612) 296-0057.

Department of Transportation

Petition of the City of Minneapolis for a Variance from State Aid Standards for Vertical Clearance

Notice is hereby given that the City Council of the City of Minneapolis made a written request to the Commissioner of Transportation for a variance from minimum design standards for the reconstruction of the Burnham Road Bridge over the Chicago Northwestern Railroad.

The request is for a variance from 14 MCAR § 1.5032, H., 1., c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a vertical clearance of 20 feet instead of the required 22 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

December 2, 1983

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of the City of St. Cloud for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Cloud has made a written request to the Commissioner of Transportation for a variance from minimum street width standards for the reconstruction of Ninth-Tenth Avenue South from First Street South to six-hundred feet South of First Street South.

The request is for a variance from 14 MCAR § 1.5032, H., 1., d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a street width of sixty feet curb-to-curb with a fourteen feet median instead of the required sixty-eight feet street width.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

December 7, 1983

Richard P. Braun
Commissioner of Transportation

SUPREME COURT

Decisions Filed Wednesday December 7, 1983

Compiled by Wayne O. Tschimperle, Clerk

CX-83-1767 Hancock-Nelson Mercantile Company, Inc., et al., Petitioners, v. Ronald Weisman, Respondent.

A writ of prohibition will not be granted where the trial court, after hearing, has found probable cause to believe petitioners by filing a financing statement without obtaining consent of a court appointed receiver violated the court's order granting the receiver all powers to operate the corporation business and make all necessary day-to-day business decisions, and violated Minn. Stat. Chapter 588.

Petition for Writ of Prohibition denied. Popovich, C.J.

C1-83-1141 State of Minnesota, Respondent, v. Duane Frey, Appellant.

The trial court did not err in refusing to depart from the presumptive sentence range of 90-104 months established by Sentencing Guidelines and grant a durational reduction of one-third because of the defendant's more passive role as an accomplice for burglary of a dwelling by another armed with a dangerous weapon.

Affirmed. Popovich, C.J.

C6-83-1197 State of Minnesota, Respondent, v. Kurt Dean Doughman, Appellant.

1. It is desirable, but not mandatory, for a trial court to interrogate a defendant and to require the defendant to sign a "Petition to Plead Guilty" as suggested in the Minnesota Rules of Criminal Procedure before accepting a guilty plea. There are other means of building an adequate record on which to evaluate a guilty plea.

2. If a defendant has had a chance to consult with an attorney about his case a presumption arises that the defendant was fully informed of his constitutional rights.

3. A court may weigh a defendant's criminal history in evaluating whether his guilty plea was knowing and intelligent.

4. The fact that a defendant may receive a more severe penalty if he goes to trial instead of accepting a plea bargain does not make his plea involuntary.

Affirmed. Foley. J.

C5-83-1174 Jack Robert Gerson, Relator, v. Commissioner of Economic Security.

Reversed and remanded. Wozniak, J.

C2-83-1147 Valentine Ramirez, Relator, v. Metro Waste Control Commission, Respondent, and Commissioner of Economic Security, Respondent.

1. Viewing the findings of the representative of the commissioner of Economic Security in the light most favorable to his decision, there is evidence reasonably tending to sustain the conclusion that claimant voluntarily terminated his employment without good cause attributable to his employer.

2. When an employee freely chooses to resign his employment to protect his work record from showing a discharge for tardiness, his resignation constitutes voluntary termination of employment without good cause attributable to the employer, a disqualifying condition for unemployment compensation benefits under Minn. Stat. Sec. 268.09, subd. 1(1).

Affirmed. Sedgwick, J.

C8-83-1508 State of Minnesota, Respondent, v. Nate Baxter Compton, Appellant.

A six-month delay between the date of signing an arrest and detention order and the date of the revocation hearing was unreasonable where defendant was in prison on another offense and that fact was known to the court. The defendant is entitled to credit against the sentence imposed on the prior felony for time spent in prison waiting for a revocation hearing, notwithstanding that his imprisonment resulted from an unrelated felony. We reverse and order credit of 189 days against defendant's sentence.

Reversed. Sedgwick, J.

C3-83-1156 Scott Hogenson, Relator, v. Brian Knox Builders, Respondent, and Commission of Economic Security, Respondent.

1. A conclusion of law drawn by the commissioner of economic security is not binding on the reviewing court if it does not have reasonable support in the findings.

2. A mere application for unemployment benefits cannot be deemed misconduct under Minn. Stat. § 268.09, subd. 1(2).

Remanded for proceedings consistent with this opinion.

Lansing, J.

C2-83-1181 James Grover Holtz, Appellant, v. Commissioner of Public Safety, Respondent.

1. Trial court did not err in concluding that responsible and probable grounds existed to invoke the implied consent law.

2. Trial court did not err in concluding that the driver was properly advised of his rights under the implied consent law even though the police officer failed to read the entire implied consent advisory form.

Affirmed. Lansing, J.

C7-83-1144 William P. Maher, Appellant, v. All Nation Insurance Company, a Minnesota Corporation, and Mutual Service Casualty Insurance Company, a Minnesota Corporation, Respondents.

1. The insurer failed to make a meaningful offer of underinsured motorist coverage.

2. An insurance policy which limits underinsured motorist coverage by definition to resident relatives who do not own a private passenger automobile, defined as a passenger or station wagon-type automobile, covers an owner of a pickup truck.

3. An insurance policy restriction which limits underinsured motorist coverage by definition to resident relatives who do not own an automobile is void as against public policy.

Reversed. Parker, J.

CX-83-1879 Frank Liptak, Defendant-Petitioner, v. State of Minnesota, ex rel. City of New Hope and Jean Coone, Plaintiff-Respondents.

Denied. Popovich, C.J.

Decisions Filed Friday, December 9, 1983

Compiled by Wayne O. Tschimperle, Clerk

CX-83-554 & C9-83-1002 State of Minnesota, Respondent, v. Ronald William Back, Appellant, James Croft, Appellant.

Trial judge did not err in refusing to depart durationally from presumptive sentence in sentencing man who participated in shooting spree that resulted in the death of a woman, and a different trial judge did not err in departing durationally from the presumptive sentence in sentencing a codefendant who actually fired the shot that killed the victim.

Affirmed. Amdahl, C.J.

C2-83-144 Benny Ronald Washington, Appellant, v. State of Minnesota, Respondent.

Evidence was sufficient to sustain conviction for assault with a dangerous weapon.

Affirmed. Peterson, J.

C4-82-1205 State of Minnesota, Respondent, v. Robin Frost, Appellant.

1. Evidence was sufficient to convict defendant of second-degree manslaughter.

2. Trial court did not err in its instructions on the elements of second-degree manslaughter or in refusing to submit the lesser offense of reckless use of a firearm.

3. Trial court did not err in refusing to dispositionally depart from the presumptive sentence by sentencing defendant to a probationary term.

Affirmed. Peterson, J.

C4-82-1012 State of Minnesota, Respondent, v. Jerry A. Wellman, Appellant.

Defendant received a fair trial and evidence was sufficient to support his convictions of third-degree assault; presence of severe aggravating circumstances justified use of both a durational departure and a departure with respect to consecutive service.

Affirmed. Wahl, J. Concurring Specially, Amdahl, C.J.

C8-82-1529 In the Matter of the Arbitration of Merlyn J. Woog, claimant, Respondent, v. The Home Mutual Indemnity Company, Appellant.

On a motion to vacate an arbitration panel's award of underinsured motorist benefits, the trial court failed to make a de novo review of the arbitrability of disputed issues on coverage, stacking, and set-off; the case is remanded to the trial court for a review of the arbitrability issues.

Reversed and remanded for further proceedings. Simonett, J.

SUPREME COURT

CX-82-1130, C1-82-1131, CX-82-1354 Northern States Power Company, petitioner, Respondent, v. Minnesota Public Utilities Commission, Appellant, and Minnesota Department of Public Service, intervenor, Appellant, Minnesota Office of Consumer Services, Appellant, City of St. Paul, et al., Intervenors-Respondents Below, Minnesota Public Interest Research Group, intervenor, Appellant.

The acceptance by the Federal Energy Regulatory Commission of a filed amended coordinating agreement between Minnesota and Wisconsin electrical power utilities established a wholesale rate which must be considered by the Minnesota Public Utilities Commission as an expense of power purchased in setting rates for Minnesota retail electric power purchases.

Affirmed. Kelley, J.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota

Tax Court

Claude E. and Dorothy Vershure,

Appellants,

vs.

The Commissioner of Revenue,

Appellee.

In the Matter of the Appeal from the Commissioner's Order dated September 10, 1982, relating to the Individual Income Tax of Appellants for the Years Ending 1978, 1979, 1980 and 1981

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

Docket No. 3703

The above matter was tried before Judge Carl A. Jensen, Minnesota Tax Court, in St. Paul, Minnesota, on July 22, 1983.

Richard W. Davis of Altman, Weiss & Bearmon appeared on behalf of Appellants.

Amy Eisenstadt, Special Assistant Attorney General, appeared on behalf of the Appellee.

Syllabus

A domicile once shown to exist is presumed to continue until the contrary is shown.

Findings of Fact

1. Appellants Claude and Dorothy Vershure are cash basis taxpayers. This case involves their 1978 through 1981 Minnesota income tax. The issue in this case is appellants' domicile and residency.

2. Appellants Claude and Dorothy Vershure were domiciliaries of the State of Minnesota until at least September, 1973.

3. Appellant Dorothy Vershure was born in Moose Lake, Minnesota. She attended high school in McGregor, Minnesota, and attended Brainerd Junior College, Brainerd, Minnesota for two years. She attended pharmacy school at the University of North Dakota, Fargo, North Dakota, graduating in June, 1973. She returned to Minnesota after graduation.

4. Appellant Dorothy Vershure's parents live in McGregor, Minnesota. All her siblings, except one brother, live in Minnesota.

5. Appellant Claude Vershure's parent live in Laporte, Minnesota.

6. Appellant Claude Vershure attended nursing school in Hibbing, Minnesota.

7. In the spring of 1973, Claude and Dorothy Vershure purchased three acres of real estate in Laporte, Minnesota, which they sold in September, 1973.

8. Since September, 1973, Dorothy Vershure has been a commissioned officer in the U. S. Public Health Service (PHS).

9. Dorothy Vershure considered Laporte, Minnesota to be her permanent home at the time she accepted her appointment in the Public Health Service.

10. On September 17, 1973, Dorothy Vershure was called to active duty and ordered to report to the PHS Indian Health Center, McLaughlin, South Dakota on September 25, 1973.

11. While stationed in South Dakota, Claude and Dorothy Vershure were required to live in government housing.

12. Claude and Dorothy Vershure opened a checking and savings account in South Dakota.

13. From May 25, 1972 through April 22, 1974, Claude and Dorothy Vershure maintained a checking account at the First National Bank, Cass Lake, Minnesota. The mailing address for the account was Laporte, Minnesota.

14. While in South Dakota, Dorothy Vershure was registered with the State of Minnesota as an intern pharmacist. The address stated on her registration application was Laporte, Minnesota.

15. In March, 1974, Dorothy Vershure applied for registration as a pharmacist with the State of Minnesota.

16. Dorothy Vershure took the pharmacist license examination in Minnesota and was licensed by the State of Minnesota on April 2, 1974. She has never applied for, or been granted, a pharmacist license by the State of South Dakota.

17. In the spring of 1974, Dorothy Vershure requested a transfer to the PHS Indian Health Center, White Earth, Minnesota.

18. By a Transfer Order dated May 9, 1974, Dorothy Vershure was transferred to White Earth, Minnesota, effective June 11, 1974. According to the Order, this was a permanent transfer.

19. On May 9, 1974, Claude and Dorothy Vershure applied for a loan in the amount of $13,000.00 from the Peoples State Bank, Frazee, Minnesota. The loan was obtained and was used to purchase a house and 80 acres of property in Frazee, Minnesota.

20. In October, 1975, this property was sold and another home was purchased in Lake Park, Minnesota. The Vershures received a homestead credit on the Lake Park home from the date of purchase through 1982.

21. Claude Vershure has maintained his registered nurse license in the State of Minnesota from 1972 to the present. His address of record was Laporte, Minnesota until 1975 when it was changed to Lake Park, Minnesota.

22. In October, 1973, Claude Vershure obtained a registered nurse certificate in South Dakota. He renewed his South Dakota license in 1976.

23. In April, 1976, commissioned officers in the Public Health Service became eligible for the benefits provided under the Soldiers' and Sailors' Relief Act of 1940.

24. Claude and Dorothy Vershure registered to vote in South Dakota in October, 1976. They first voted in South Dakota in November, 1976, and voted again in 1980, voting both times by absentee ballot.

25. Prior to April or May, 1976, Minnesota state income taxes were withheld from Dorothy Vershure's paychecks.

26. Claude and Dorothy Vershure filed a 1975 Minnesota income tax return in January or February, 1976, checking the box marked "resident".

27. From 1977 to 1979 Claude and Dorothy Vershure owned a lake home on Summer Island, in Becker County, Minnesota.

28. Claude and Dorothy Vershure have never owned recreational property in South Dakota.

29. Dorothy Vershure did not file a State of Legal Residence Certificate with the Public Health Service, claiming a South Dakota residence until December 10, 1979.

30. From 1978 through 1981 Claude and Dorothy Vershure held an interest in property, other than their homestead, in Lake Park, Minnesota.

31. Although licensed by the State of South Dakota, all motor vehicles owned by Claude and Dorothy Vershure were physically located in Minnesota. Their Skidoo snowmobile was not licensed in any state.

32. In 1978, Claude and Dorothy Vershure purchased a Lund boat and registered that boat in Minnesota on July 25, 1978.

33. In 1978, Claude and Dorothy Vershure licensed a homemade trailer in Minnesota.

34. On May 1, 1979, Claude and Dorothy Vershure registered a Coleman canoe with the State of Minnesota.

35. In May, 1978, Claude Vershure formed the Anderson-Vershure Construction Company.

36. Claude and Dorothy Vershure had a checking account at the Detroit Lakes State Bank during the period of January 1, 1978 to September, 1980.

37. Claude and Dorothy Vershure had a savings account at the Ogema State Bank, Ogema, Minnesota during the period of January 1, 1978 through December 31, 1981.

38. Claude and Dorothy Vershure had a savings account and a checking account at the Peoples State Bank, Frazee, Minnesota during the period of January 1, 1978 through December 31, 1981.

39. Claude and Dorothy Vershure received the following loans from the Peoples State Bank, Frazee, Minnesota: $5,000.00 in May, 1978, $20,000.00 in August, 1978 and $6,000.00 in January, 1980.

40. Claude and Dorothy Vershure purchased malpractice insurance, life insurance and insurance for their home, lake home and other real property through Minnesota insurance agencies.

41. Claude and Dorothy Vershure have two children. Both attended Minnesota schools during the period of January 1, 1978 through December 31, 1981.

42. During the period of January 1, 1978 to December 31, 1981, Claude and Dorothy Vershure had the following recreational licenses: Missouri fishing license; Alaskan fishing license; Canadian fishing license; and Minnesota fishing licenses. They did not have any South Dakota recreational licenses.

43. Appellants were residents of Minnesota and domiciled in Minnesota during the years 1978 through 1981.

44. Appellee accepted the filing of appellants' income tax return for the year 1976. Appellants relied on this and continued to file income tax returns in the same manner. We find that appellee is estopped from collecting interest on unpaid amounts for all periods prior to the date of the Order of September 10, 1982.

Conclusions of Law

1. Appellants were residents of Minnesota and domiciled in Minnesota during the years 1978 through 1981 and were subject to Minnesota income taxes during those years. The Orders of the Commissioner assessing additional income tax for those years are confirmed except that interest shall be due and payable only from September 10, 1982, to the date of payment.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

December 9, 1983

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

Minn. Stat. § 290.17(2) (1982) provides that the income from personal services of all Minnesota residents shall be assigned to Minnesota for income tax purposes. A resident is "any individual domiciled in Minnesota and any other individual maintaining an abode therein during any portion of the tax year who shall not, during the whole of such year, have been domiciled outside the state." Minn. Stat. § 290.01, subd. 7 (1952). A Department of Revenue income tax regulation, 13 MCAR § 1.6001, defines domicile:

The term "resident" means any individual person maintaining a home in Minnesota during any part of a tax year who is, during that part of such year, domiciled in Minnesota. The term "domicile" means the bodily presence of an individual person in a place coupled with an intent to make such a place one's home.

The domicile of any person shall be that place in which that person's habitation is fixed, without any present intentions of removal therefrom, and to which, whenever absent, that person intends to return.

A person who leaves home to go into another jurisdiction for temporary purposes only is not considered to have lost that person's domicile.

* * * * *

The domicile of a member of the armed forces will be governed by the facts just prior to becoming a member of the armed forces unless the person takes the necessary steps to establish a new domicile.

The mere intention to acquire a new domicile without the fact of physical removal, does not change the status of the taxpayer, nor does the fact of physical removal, without the intention to remain, change the person's status. The presumption is that one's domicile is the place where one lives. An individual can have only one domicile at any particular time. *A domicile once shown to exist is presumed to continue until the contrary is shown.* An absence of intention to abandon a domicile is equivalent to an intention to retain the existing one. No positive rule can be adopted with respect to the evidence necessary to prove an intention to change a domicile but such intention may be proved by acts and declarations, and of the two forms of evidence, acts shall be given more weight than declarations.

* * * * *

(Emphasis added).

The regulation goes on to list a number of factors to consider in determining whether or not a person is domiciled in the State of Minnesota. No single item in the list, by itself, establishes domicile. Among the factors relevant to the case at bar are the following:

1. Location of domicile for prior years.

2. Where the person votes or is registered to vote. Casting an illegal vote does not establish domicile for income tax purposes.

* * * * *

4. Classification of employment as temporary or permanent.

5. Location of employment.

6. Location of newly acquired living quarters whether owned or rented.

7. The present status of the former living quarters, i.e. was it sold, offered for sale, rented or available for rent to another.

8. Homestead status has been requested and/or obtained for property tax purposes on newly purchased living quarters and the homestead status of the former living quarters has not been renewed.

9. Ownership of other real property.

10. Jurisdiction in which a valid driver's license was issued.

11. Jurisdiction from which any professional license was issued.

* * * * *

13. Jurisdiction from which any motor vehicle license was issued and the actual physical location of the vehicles.

* * * * *

15. Whether an income tax return has been filed as a resident or nonresident.

16. Whether the person has fulfilled the tax obligations required of a resident.

17. Location of any bank accounts, especially the location of the most active checking account.

18. Location of other transactions with financial institutions.

* * * * *

20. Location of business relationships and the place where business is transacted.

* * * * *

22. Address where mail is received.

23. Percentage of time (not counting hours of employment) that the person is physically present in Minnesota and the percentage of time (not counting hours of employment) that the person is physically present in each jurisdiction other than Minnesota.

* * * * *

25. Location of schools at which the person, the person's spouse, or children attend, and whether resident or nonresident tuition was charged.

26. Statements made to an insurance company, concerning the person's residence, and on which the insurance is based.

* * * * *

The regulation and the case law make it clear that once a domicile is established it continues until another domicile has been established elsewhere. *Sarek v. Commissioner*, Minn. Tax Court #2524 (April 19, 1979), *American Law Institute, Restatement, Conflict of Laws*, ch. 2, § 23. The taxpayer has the burden of proving that he established a new domicile outside of Minnesota. *McCutchan v. Commissioner*, Minn. Tax Court #563 (January 20, 1956).

To establish a new "domicile" requires physical presence in a given jurisdiction coupled with an intention to make such place one's home. *Miller's Estate v. Commissioner of Taxation*, 240 Minn. 18, 59 N.W. 2d 925 (1953). The question of intent, as gathered from a person's act and declarations is a question of fact. *In re Estate of Smith*, 242 Minn. 85, 89, 64 N.W. 2d 129, 131 (1954). A person's course of conduct is accorded greater weight than his self-serving declaration of domicile. *See, Texas v. Florida*, 306 U.S. 398, 425 (1939); *Seecomb v. Bovey*, 135 Minn. 353, 356, 160 N.W. 1018, 1019 (1917). "A mere place of residence and a few other contacts are not enough to establish a new domicile." *Sarek v. Commissioner, supra*. Domicile is not

something easily abandoned or accidentally changed. *Lindberg v. Commissioner*, Minn. Tax Court #359 (March 30, 1950), *McCutchan, supra.*

Generally, a person inducted into military service retains his domicile or residence in the state from which he entered military service. *Prudential Life Ins. Co. of America v. Lewis*, 306 F. Supp. 1177 (Ala. 1969). It has long been the rule that presence at a soldiers' military station, without more, cannot make that station his domicile and "[a] corollary of this rule is that a serviceman who lives on the military base, even if his family is living on base with him, cannot establish a domicile at the base (cites omitted)." *Stifel v. Hopkins*, 447 F. 2d 1116 (6th Cir. 1973). *See also Restatement, Conflict of Laws* 2d §17.

In *Harris v. Harris*, 205 Iowa 108, 215 N.W. 661 (1927), the Court addressed the issue of whether a person, an officer in active service of the Army of the United States, can acquire a domicile in the Army post or camp where he is stationed, even though he establishes his family there. The Court held in the negative stating:

. . . a person under such circumstances cannot, in any proper sense of the term, have a residence anywhere other than the home he has left, since he has no choice as to where he goes, the time he can remain, or when he shall return. To gain either an actual or legal residence there is, of necessity, involved at least the exercise of volition in its selection, and this cannot be affirmed of the residence of either a soldier or sailor in active service.

The rule stated above does not absolutely preclude a member of the military from establishing a domicile in the state he or she is stationed. To do so, however, the person must establish an off-base home as well as taking other positive steps that indicate an intent to establish a new domicile. *See, Ellis v. Southeast Construction Co.*, 260 F.2d 280 (8th Cir. 1958); *Deese v. Hundley*, 283 F. Supp. 848 (D.C.S.C. 1964).

Appellants did not establish an off-base home while stationed in South Dakota. Rather, they lived in government housing, which they were required to do. Under present case law, it is legally impossible for appellants to have established a domicile in South Dakota under these circumstances.

Further, appellants have not shown sufficient other facts that would indicate their intent to make South Dakota their domicile. In the case of a member of the armed services, the evidence to sustain a change of domicile to the place where he or she may be stationed must be "clear and unequivocal". *Ferrara v. Ibach*, 285 F. Supp. 1017 (D.C.S.C. 1968). The facts in this case do not meet this standard of proof.

Mrs. Vershure testified that at the time she joined the Commissioned Corps, she and her husband wanted to travel around the country and do different things and that they did not particularly intend to return to Minnesota. However, in *Connor v. COT*, Docket No. 315 (July 8, 1948), the Court stated:

It is also quite clear that the mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile, (cite omitted) and that a person cannot be said to lose his domicile or residence by leaving it with an uncertain, indefinite, or half-formed purpose to take up his residence elsewhere (cite omitted).

Appellants opened banking accounts, opened a post office box and attended church in South Dakota. These are no more than the normal incidences of conducting one's life where one lives. South Dakota drivers' licenses were obtained in December, 1973. Mr. Vershure obtained a South Dakota Registered Nurse Certificate in October, 1973. He would have had to do this in order to gain employment in his field while living in South Dakota. Two vehicles were registered in South Dakota in 1974.

A mere place of residence and a few other contacts are not enough to establish domicile. *Sarek v. Commissioner, supra.*

Intent must be implemented by action, which in fact, integrates one's life with the new community. *Coulter v. COT*, Docket No. 257 (October 8, 1946).

In contrast, the facts show that the appellants maintained connections with the State of Minnesota during the period in question. There is no question that appellants were domiciliaries of the State of Minnesota prior to Mrs. Vershure's transfer to South Dakota. Both were born, raised and educated in Minnesota. In the spring of 1973, appellants bought three acres of property in Cass Lake, Minnesota. A checking account was opened in May, 1973 in Cass Lake and the account was kept open during the period appellants lived in South Dakota. Although appellants testified that the account was left open only for the purpose of covering outstanding checks, deposits were made as late as February, 1974. (*See* appellee's Exhibit H) The mailing address used by the bank at all times the account was open was Laporte, Minnesota.

In April, 1974, while in South Dakota, Mrs. Vershure applied to take the Minnesota pharmacist exam. She did not apply to take the test in South Dakota and has never been licensed as a pharmacist in that state. Since the tests in both states are essentially the same, there would have been no advantage in taking one test over the other. One would also reasonably expect Mrs. Vershure to obtain a license in the state she intended to make her home after retirement. Mr. Vershure maintained his registered nurse license in Minnesota in 1973 and 1974. Although he had his license certified to South Dakota, he did not change his address of record to South Dakota. Mr. Vershure testified that he maintained his Minnesota license because he would have had to take the state board again or perhaps make up continuing education credits. However, Minn. Stat. § 148.251 provides a simple procedure for allowing a license to lapse:

A person licensed under the provisions of sections 148.171 to 148.285 who desires to retire from practice temporarily, shall send a written notice to the board. Upon the receipt of such notice, the board shall place the name of such person on the non-practicing list. While so remaining on the list, the person shall not be subject to the payment of any fees, and shall not practice nursing in this state. When such person desires to resume practice, he or she shall make application for re-registration and pay the annual registration fee for the current year to the board, and the registration certificate shall be issued to such applicant, and such person shall immediately be placed on the practicing list as a licensed registered nurse.

(Emphasis added.)

The actions taken by appellants from the time of the transfer to Minnesota in 1974 through 1981 clearly indicate that Minnesota was in fact their domicile. In appellants' Answers to Appellee's Requests for Admissions, appellants admitted that the transfer took place pursuant to Mrs. Vershure's application for an open position in Minnesota. At trial, Mrs. Vershure qualified her admission by stating that she never made a formal application. Instead, the service unit director at White Earth, a personal friend of the Vershures, asked Mrs. Vershure if she was interested in the job and Mrs. Vershure said yes. At that point, her superiors in Aberdeen were contacted and the paperwork was done, resulting in an official order of transfer. The Order itself was no more than a technicality. Mrs. Vershure was not transferred to Minnesota under compulsion, but at her own request. She has not requested a transfer back to South Dakota since 1974.

Before the transfer to Minnesota took place, appellants decided to purchase a home in Minnesota. Appellants applied for a loan of $13,000 to purchase a house and 80 acres of property in Frazee, Minnesota in May, 1974. This property was purchased in June, 1974 for $26,000.00. The loan was obtained from the Peoples State Bank, Frazee, Minnesota. Appellants homesteaded this property.

In October, 1974 appellants sold that property and bought another home in Lake Park, Minnesota. A contract for deed was filed in October, 1975 and a warranty deed filed in 1978. This property was homesteaded from 1975 through 1982. Although appellants did not apply for homestead status, they were aware that it had been granted and never asked that the status be removed.

Appellants bought a lake home in Minnesota in 1977 which they owned until 1979. Mr. Vershure made extensive improvements to the lake home. They bought a boat and canoe for use in Minnesota. Appellants never purchased any recreational property in South Dakota.

In May, 1978, Mr. Vershure formed the Anderson-Vershure Construction Company. The Vershures mortgaged the family home in order to start the business. The company was engaged in the business of constructing log homes for resale in Minnesota. A venture of this type involves a time and financial commitment that is indicative of substantial ties to the state.

From 1978 to 1982, appellants held an interest in another piece of property in Lake Park, Minnesota. Mrs. Vershure testified that it was held by the construction company. However, a 1982 deed lists the grantors as the Andersons and Vershures, individually. Although Mrs. Vershure testified that the deed could not have the company as the grantor, there is no law in Minnesota preventing a partnership from owning and conveying property in its own name.

During the period of 1978 through 1981, the appellants had several bank accounts in Minnesota. From January 1, 1978 through December 31, 1981, appellants had both a savings and a checking account with the Peoples State Bank, Frazee, Minnesota. Appellants had a checking account with the Detroit Lakes State Bank, Detroit Lakes, Minnesota from January 1, 1978 through December 31, 1981. Appellants had a savings account at the Ogema State Bank, Ogema, Minnesota. This is much more than would be necessary to take care of everyday living expenses during a temporary residency.

Appellants also obtained several loans from the Peoples State Bank in Frazee, Minnesota. In 1974, they borrowed $13,000.00 to purchase their first home. In May, 1978 they obtained a loan of $5,000.00, and in August, 1978 they received a loan of $20,000.00. A loan of $6,000.00 was obtained in January, 1980 to purchase a Mercedes Benz.

In 1978 appellants purchased a motor boat and trailer. The boat was registered in Minnesota and a Minnesota license was obtained for the trailer in 1978. In 1979, appellants purchased a Coleman canoe which they also registered in Minnesota. Appellants also owned a Skidoo snowmobile, which they did not license in Minnesota or South Dakota, although they are required to do so by law.

Appellants obtained several insurance policies from Minnesota companies. They purchased malpractice insurance from a Minneapolis agency and life insurance through a St. Paul agency. They insured their home, the lake home and the property owned with the Andersons with a Lake Park insurance company.

During the period of 1978 through 1981, appellants held fishing licenses in Minnesota, Alaska and Canada and had Minnesota fishing licenses each year. Although Mrs. Vershure testified that the fishing and hunting facilities in South Dakota were a major attraction of that state, they did not have any South Dakota recreational licenses for the period of 1978 through 1981.

The facts show that at the time appellants moved back to Minnesota in 1974, they had not established a domicile in South

Dakota. It also appears that the issue of residency did not come to their attention until May, 1976 when they found out that Mrs. Vershure was eligible for relief under the Soldiers' and Sailors' Relief Act. One section of this act provides that the state where a serviceperson is stationed cannot tax that person's military income if he or she is a resident of another state. It was at this point, appellants became aware of the possible benefits of claiming another domicile.

Prior to May, 1976, appellants had Minnesota taxes withheld from their paychecks. When appellants filed their 1975 Minnesota individual income tax return in January or February, 1976, they checked the box marked resident, rather than non-resident. In answer to appellee's Requests for Admissions, appellants stated that they did so because it would cause less confusion. Mr. Joe Nelson, a tax examiner with the Department of Revenue, testified that, in fact, which box was checked would have made no difference to the substantive portion of the return.

After becoming aware of the Soldiers' and Sailors' Relief Act in May, 1976, appellants did take some further steps in an attempt to retroactively establish a South Dakota residency. Although they had never voted previously, in October, 1976, they registered to vote in South Dakota, voting in November, 1976 and again in November, 1980 by absentee ballot. They continued to license their vehicles in South Dakota and renewed their South Dakota drivers' licenses. Mr. Vershure renewed his South Dakota registered nurse certificate in 1976. (See appellee's Exhibit 4) But these steps, taken after appellants had been back in Minnesota for two years, do not support appellants' claim of forming the requisite intent to change domicile while they were physically present in South Dakota, and it is necessary that residence in fact and intent concur in order to establish a new domicile. In re Adoption of Pratt, 219 Minn. 414, 18 N.W. 2d 147 (1945).

In the present case, once one goes beyond the declarations of appellants and looks at how they actually conducted their lives from 1973 through 1981, there can be no doubt that the domicile remained in Minnesota. The overwhelming weight of appellants' actions show that they maintained "deep roots . . . embedded in the social and economic life of the old community." Coulter v. Commissioner of Taxation, Docket No. 257 (Oct. 8, 1946).

Minnesota Statutes § 290.56 states as follows:

Where a taxpayer is liable for additional taxes under this chapter, interest shall be added to the additional amount, at the rate specified in section 270.75, from the due date of the original return.

Prior to February 1, 1982, the interest rate specified in Minn. Stat. § 270.75 was 8 percent. From February 1, 1982 to January 1, 1983, the interest rate under this section was 20 percent. According to Minn. Stat. § 270.75, subd. a, beginning in January, 1983, the interest rate is to be adjusted each year to the adjusted prime rate charged by banks during September of the immediately preceding year. The interest rate has been adjusted to 14 percent for 1983.

The legislature has clearly mandated that interest shall be assessed on unpaid taxes and specifically set the interest rate at 20 percent for the period of February, 1982 to January, 1983. Where the intention of the legislature is clearly manifested by plain and unambiguous language, no construction is necessary nor permitted. 17B Minn. Dunn. Dig. Statutes § 894; (3rd Ed. 1970). In Moser v. COR, Docket No. 3598-S (Oct. 1, 1982), the Court refused to abate the assessment of interest at the 20%. Although Moser is a small claims court case and not precedent, the Court did state that while 20% interest was high, it was not unreasonable in light of the economy in 1982 and that it was bound to follow the statute.

Of course, appellants could have avoided the assessment of interest by paying the tax pending the outcome of their appeal. The Minnesota Supreme Court has repeatedly recognized that interest is not a penalty but is the payment of a reasonable sum for the loss of use of money. General Mills, Inc. v. State, 303 Minn. 66, 226 N.W. 2d 296 (Minn. 1975). If the appellants are not required to pay the assessed interest, the State of Minnesota is not being fully compensated and appellants are being unjustly enriched, having had the full use of these tax dollars since they were due to the present time.

It would appear that appellants did not pay Minnesota income taxes for the years 1976 and 1977. Since it now appears that they should have paid income taxes for these years, it may compensate somewhat for the interest that is assessed. The fact that the 1976 and 1977 tax returns were accepted does not bind the state, although there have been no changes that would affect residency or domicile between those years and subsequent years. We find that Appellants' domicile has always been Minnesota.

The simple fact that they intended to retire in South Dakota is not of much weight. Many people spend various amounts of time in such states as Florida and Arizona with an intention to retire there, but the change of domicile does not occur until the intention and physical facts coincide. It is true that Appellants did do some of the things that would ordinarily be connected with a change of domicile.

It is interesting to note that the word domicile is derived from the Latin "domus" which means home or dwelling house. Domicile is also considered to be the permanent home to which a person has the intention of returning. Obviously, since the place that appellants lived was owned by the government, they could not have had the intention of returning to that home. Appellants actually testified that they had planned perhaps to go to Rapid City rather than to McLaughlin where they had lived in the Army property.

The matter of the registration of their motor vehicles since 1974 raises an interesting question. Minn. Stat. § 168.181 reads in part as follows:

Subdivision 1. Notwithstanding any provision of law to the contrary or inconsistent herewith the registrar of motor vehicles with the approval of the attorney general is hereby empowered to make agreements with the duly authorized representatives of the other states, District of Columbia, territories and possessions of the United States or arrangements with foreign countries or provinces exempting the residents of such other states, districts, territories and possessions and foreign countries or provinces using the public streets and highways of this state from the payment of any or all motor vehicle taxes or fees imposed by Minnesota Statutes, Chapter 168, subject to the following conditions and limitations:

* * * *

(3) Upon condition that the exemptions provided herein shall not apply to a passenger automobile or house trailer owned by a resident of any state, district, territory or possession or foreign country or province temporarily residing in this state while gainfully employed on the same job for a period of six months or more.

* * * *

Although that is not an issue in this case, it appears that the vehicles of appellants should possibly have been subject to Minnesota motor vehicle license fees during all of the years since 1974. This is obviously only reasonable since these fees are all used on the maintenance of the Minnesota highways and these vehicles were driven almost exclusively on Minnesota highways.

We might also refer again to the fact that appellants have received homestead treatment on their residence in Minnesota for all or most of the years involved herein. Such treatment amounts to a tremendous reduction in real estate taxes that appellants have paid. A great deal of the reduction for homestead taxes is by reimbursement to the taxing districts from the income taxes collected by the State of Minnesota. It would obviously be unfair for the appellants to be receiving these benefits without contributing to the payment of income taxes.

Appellants indicated that they were given homestead treatment on their property without application by them. The tax statements undoubtedly showed very clearly that they were receiving the benefits of homestead treatment and the very word "homestead" must imply to almost anyone that that is the residence or domicile of the person.

Although it is not an issue to be decided by this Court, we have some question about the legitimacy of appellants voting in South Dakota. They were just as eligible to vote in South Dakota in 1974 as they were in 1976, but they did not do so. The fact that the Soldiers' and Sailors' Relief Act went into effect in 1976 may have misled them into believing that they were able to choose South Dakota as their domicile and, therefore, avoid Minnesota income taxes. We doubt that they have ever participated in any local elections and we would have no idea where they might feel they would be entitled to vote in local elections.

The evidence is overwhelming that appellants have always been domiciled in Minnesota, and we have so found.

As we have stated above, interest is ordinarily payable on delinquent income taxes from the date the income taxes were due. In this case, however, we have found that appellants relied on the acceptance of the manner of filing for the year 1976 and the same manner was followed in subsequent years. Although we find that the income tax is due, we do find that the appellee is estopped from collecting interest on the income tax until appellants had been notified that the acceptance of the 1976 income tax return was incorrect.

Formerly estoppel could be used against the government only when it was acting in its proprietary capacity. This has been changed so that estoppel now can lie when the government is acting in its sovereign capacity. The Supreme Court has clearly stated this in Mesaba Aviation Division v. County of Itasca, 258 N.W. 2d 877 (Minn. 1977), and Ridgewood Development Co. v. State, 294 N.W. 2d 288 (Minn. 1980). In the Ridgewood case the Supreme Court referred to the Mesaba case and stated:

"We cautioned that estoppel would only be applied against the government acting in a sovereign capacity 'if the equities advanced by the individual are sufficiently great.'"

In both of these cases the Supreme Court found there was no estoppel. However, in the Ridgewood case three judges dissented and one did not participate. All judges acknowledged that estoppel would lie under proper circumstances even when the government is acting in its sovereign capacity.

In Townboard of Marshan v. City Council of Hastings, 298 N.W. 2d 353 (Minn. 1980), the Court again discussed the matter of estoppel. The Court held that the time fixed for a request for a hearing was fixed by law and could not be the subject of waiver or estoppel. However, the Court went on to state:

"To create an estoppel, one must act to his detriment and in reliance upon the acts or omissions of another."

We find here that appellants did rely on the acts of appellee to their detriment as to interest and we, therefore, find that the appellee is estopped from collecting interest until appellants had been notified that the prior approval was incorrect.

C.A.J.

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C6-83-79 Kenneth F. Bickel and Lorraine A. Bickel, Respondents, v. Larry D. Ostenson and Nancy Ostenson, Respondents, Donald O. Ostenson, et al., Defendants, Vern Carlson, Appellant.

Under the unique circumstances presented, the trial court abused its discretion in failing to vacate a default judgment against the individual when it granted the corporate defendant's motion.

Reversed and remanded. Peterson, J.

C4-83-193 & CX-83-196 Erie Mining Company, Respondent-Petitioner, v. Commissioner of Revenue, Petitioner-Respondent.

1. Subsequent to our decision in *Guilliams v. Commissioner of Revenue*, 299 N.W.2d 138 (Minn. 1980) the tax court has no jurisdiction over constitutional issues unless a district court refers the constitutional issues to the tax court.

2. The taconite tax provision of Minn. Stat. § 298.24, subd. 1(c), which taxes the higher of current year production or the average of the last three years of production, does not violate the uniformity clause of the Minnesota Constitution since it is a computational method which taxes production in lieu of a property tax.

3. Although Minn. Stat. § 298.24, subd. 1(c) creates two classifications of taconite property taxpayers, it does not violate the equal protection clause because the distinction is rationally related to a legitimate governmental purpose.

4. Even though Minn. Stat. § 298.24, subd. 1(c) utilizes previous tax years to compute present tax liability, it does not violate the due process clause as retroactively applied, since it is a valid property tax.

5. If the averaging method is used under subdivision 1(c) of Minn. Stat. § 298.24 then it must also be used for subdivision 1(a), the price index adjustment, and subdivision 1(b), the iron content adjustment of the taconite tax.

Affirmed in part, reversed in part. Todd, J.

Concurring Specially, Yetka, J.

C5-82-1598 James P. Hearne, d/b/a J. P. Hearne & Associates, Respondent, v. Kirk F. Waddell, d/b/a Integrated Business Computers, Defendant, Integrated Business Computers, Inc., Appellant.

Under the unique circumstances presented, the trial court abused its discretion in failing to vacate the default judgment entered against a corporate defendant when the default judgment entered against the individual defendant was vacated.

Reversed and remanded. Scott, J.

C7-83-1080 In Re Petition for Disciplinary Action against Dixon E. Jones, an Attorney at Law in the State of Minnesota.

Attorney publicly reprimanded and placed on probation, with conditions.

Per Curiam.

Errata

The following changes are to be made in the Pollution Control Agency's proposed rules relating to permits published at Volume 8, Number 25, pages 1422-1479, December 19, 1983:

At 8 S.R. 1422, 6 MCAR § 4.4005 A., change the colon at the end of the phrase to a semicolon.

At 8 S.R. 1422, 6 MCAR § 4.4005 B., change the colon at the end of the phrase to a semicolon.

At 8 S.R. 1435, 6 MCAR § 4.4106 B.14.d., the second sentence should be changed to read:

The applicant's right to make this request expires ~~250~~ 270 days after the promulgation by the Environmental Protection Agency of an effluent limitation guideline that pertains to the pollutant discharged by the applicant that is subject to the best available technology requirement, or at the close of the public comment period established under 6 MCAR § 4.4010 D., whichever is earlier.

At 8 S.R. 1438, 6 MCAR § 4.4107 F.41., change "N-nitrosodimenthylamine" to "N-nitrosodimethylamine."

At 8 S.R. 1438, 6 MCAR § 4.4107 F.44., change "phenathrene" to "phenanthrene."

At 8 S.R. 1440, 6 MCAR § 4.4107 J.15., change "chlopyrifos" to "chlorpyrifos."

At 8 S.R. 1441, 6 MCAR § 4.4107 J.21., change "diaxinon" to "diazinon."

At 8 S.R. 1445, 6 MCAR § 4.4109 C., the second sentence should be changed to read:

The director may also require implementation of best management practices if the director finds that this requirement is necessary to achieve compliance with an effluent limitation, standard, or prohibition or to comply with Minnesota or federal statutes or rules, including requirements for the control of toxic pollutants and hazardous substances from ancillary activities.

At 8 S.R. 1448, 6 MCAR § 4.4203 B.4., change "6 MCAR § 4.9414" to "6 MCAR § 4.9214."

At 8 S.R. 1453, 6 MCAR § 4.4208, change "except as provided" to "except as otherwise provided."

At 8 S.R. 1453, 6 MCAR § 4.4208 D.2., change "or how to contact" to "or how contact."

At 8 S.R. 1456, 6 MCAR § 4.4211 K., change "6 MCAR § 4.9310 G.1. and 2." to "6 MCAR § 4.9320 G.1. and 2."

At 8 S.R. 1468, 6 MCAR § 4.4223 B.3.a., change "The permittee" to "the permittee."

At 8 S.R. 1472, 6 MCAR § 4.4311 C.1., the semicolon at the end of the phrase should be underlined.

At 8 S.R. 1473, 6 MCAR § 4.4313 A.1., change "a new parking facility" to "a new parking facility."

At 8 S.R. 1473, 6 MCAR § 4.4314, the title should read as follows:

~~(c)~~ 6 MCAR § 4.314 Exemptions.

At 8 S.R. 1473, 4.4314 D., change "a new or modified airport" to "a new or modified airport."

At 8 S.R. 1474, 4.4315, underline the period after "Assessment."

At 8 S.R. 1477, 4.4320, underline the period after "Permit conditions."

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

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

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 28th day of February, 1984. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Agency, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Agency published its notice of intent to adopt the above-captioned rules, together with the proposed rules, in the State Register on December 19, 1983 (8 S.R. 1419).

2. On December 15, 1983, the Agency gave the same notice by United States mail to all persons who have registered their names with the Agency pursuant to Minn. Stat. §14.14 (1982).

3. The notice of the Agency's intent to amend the rules afforded all interested persons 30 days to submit data and views on the proposed rules and to request a hearing on the proposed rules. The notice was in all respects in compliance with the requirements of Minn. Stat. §14.22 (1982).

4. The Agency prepared a Statement of Need and Reasonableness and made it available to the public upon the date of mailing of the notice of intent to adopt the rules.

5. The 30 day comment period, as set out in the notice, expired on January 20, 1984.

6. During the comment period, the Agency received four written comments and one oral comment from the public. The Agency also received six written comments from the Agency staff. Of these, none contained a request for a public hearing.

7. The Agency finds that certain modifications to the proposed rules are supported by the data and views submitted to the Agency within the comment period. Specifically, the Agency makes the following findings with respect to each of the modifications:

a. Modifications to 6 MCAR §4.4001 - 4.4021, Permits.

1. 6 MCAR §4.4002 I., Scope of rules (air emission facility permits.

The third sentence of this rule contains an incorrect cross reference to 6 MCAR §4.4010 E., where the correct cross reference

should be to 6 MCAR §4.4010 E.3. Therefore it is necessary and reasonable to modify this sentence as follows:

> 6 MCAR §4.4010 E.3. does not apply to permits for construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of 100 tons per year to 250 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of 500 tons per year to 5,000 tons per year.

2. 6 MCAR §4.4004 B., Application deadline for modification or revocation and reissuance of existing permits.

This rule contains a reference to federal "guidelines." The Agency's intent in this rule was to refer to federal effluent guidelines, which are actually promulgated as regulations by the U.S. Environmental Protection Agency. It is reasonable and necessary to modify this rule to make this intent clear, as follows:

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

3. 6 MCAR §4.4010 C., Fact sheet.

This rule relates to the preparation of a fact sheet in connection with certain permits. During the public comment period the Agency

received a comment about the fact that the rule does not clearly state that the fact sheet will be mailed to the applicant and to any other person on request, although this is in fact the Agency's intent as well as its actual practice with respect to fact sheets that were prepared in the past pursuant to Minn. Rule WPC 36. Therefore it is necessary and reasonable to modify this rule to make this intent clear, as follows:

> The director shall prepare a fact sheet for each draft permit described in 6 MCAR §4.4108 B. for each draft permit proposed to be issued under 6 MCAR §§4.4021 and 4.4217 A., and for each draft permit that the director finds is the subject of widespread public interest or involves issues of major importance to the agency or to the public. The director shall send a copy of this fact sheet to the applicant and upon request to any other person. The fact sheet must set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The fact sheet must include, if applicable:

4. 6 MCAR §4.4013 B., Public information meeting.

This rule needs the addition of the word "hearing" after the phrase "contested case." This word was unintentionally omitted from the final version of the rules. The rule should read as follows:

> If the agency finds that the holding of a contested case hearing is not justified under A., the agency shall nevertheless hold a public informational meeting if the agency determines that a public informational meeting would help clarify or resolve issues regarding the terms of the draft permit.

5. 6 MCAR §4.4014, Final determination.

As proposed, this rule provides that the Agency shall issue,

reissue, revoke and reissue, or modify a permit if the Agency determines that the proposed permittee or permittees will comply with "all applicable state and federal pollution control statutes and rules." The Agency has identified a potential problem with this language and finds that a modification to the rule is needed and reasonable, as discussed below.

The problem identified by the Agency is that under the language of the proposed rule, a person could make a claim that the Agency should not issue a permit if the proposed permittee would not comply with a statute or rule administered by another State agency. The Agency did not intend by this rule to become the enforcement agency for state and federal rules other than those it is required by law to administer. Therefore, the Agency is modifying the rule to make it clear that the Agency will limit its examination to those statutes and rules administered by the Agency and to the conditions which are in the permit.

The following modifications to Sections A., B.1. and B.2 of the rule are needed and reasonable:

> A. Agency action. Except as provided in B., the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules <u>administered by the agency, and conditions of the permit</u> and that all applicable requirements of Minnesota Statutes, chapter 116D and the rules promulgated thereunder have been fulfilled.

B. Agency findings. The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance or to revoke a permit without reissuance:

1. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit;

2. that there exists at the facility to be permitted unresolved noncompliance with applicable state and federal pollution control statutes and rules ~~or permit conditions~~ administered by the agency, or conditions of the permit, and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

6. 6 MCAR §4.4015 B.2., Special conditions: requirements for monitoring and testing and reporting of monitoring and testing results.

The Agency finds that the following modification to this rule is necessary and reasonable.

Requirements for monitoring and testing and reporting of monitoring and testing results. Monitoring and testing requirements must specify the type, interval, and frequency of monitoring and testing activities that are sufficient to yield ~~data~~ representative ~~of the pollutant or situation monitored or tested~~ data to determine whether there is compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. As appropriate, the permit must contain requirements for the proper use, maintenance, and installation of monitoring and testing equipment or methods. The permit must require the permittee to keep accurate records of monitoring and testing activities and to submit to the director periodic reports of monitoring results required by the permit and, as requested by the director, the results of other monitoring and testing undertaken by the permittee that are related to compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. Reporting of monitoring results must contain the certification in 6 MCAR §4.4007.

This new language clarifies the purpose of the monitoring and testing requirements to be included in the permit.

7. 6 MCAR §4.4015 C.6., General conditions.

The second sentence of this rule contains a misspelled word The word "auxilliary" should be changed to "auxiliary."

8. 6 MCAR §4.4017 C., Justification to commence modification of permit or revocation and reissuance of permit.

Like 6 MCAR §4.4004 B., this rule contains a reference to federal guidelines, which is intended by the Agency to refer to effluent guidelines (see discussion above). Therefore the Agency finds it needed and reasonable to make the following amendment to 6 MCAR §4.4017 C., which allows the Agency Director to commence proceedings to modify a permit or to revoke and reissue a permit where:

> C. the agency or the federal government promulgates a new or amended pollution standard, limitation, or effluent guideline that is applicable to the permitted facility or activity;

9. 6 MCAR §4.4017 G., Justification to commence modification of permit or revocation and reissuance of permit.

6 MCAR §4.4017 consists of a list of items which constitute justification for the director to commence proceedings to modify a permit or revoke and reissue a permit. Just before the end of the list, in G., the word "and" appears. During the public comment period, the Agency received a comment that the word "and" was confusing. The Agency agrees and finds that the use of the word

"or" would clarify the Agency intent in this rule. Therefore the Agency hereby modifies G. to change "and" to "or."

10. 6 MCAR §4.4019 B. Modification solely as to ownership or control.

This rule allows for the modification of a permit without following the procedures of 6 MCAR §§4.4010 - 4.4013 if the only change in the permit is the ownership or control of the permitted facility or activity and if the Agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee.

The Agency has received a comment in opposition to the requirement for a binding written agreement. The Agency has reexamined this rule and agrees that there does not need to be a binding written agreement for facilities where the pollution stops as soon as the facility is closed or the activity is stopped. However, for sanitary landfills and hazardous waste facilities, closure of the facility will not necessarily end the pollution problem, and therefore such an agreement is desirable. In addition, for the hazardous waste program, federal rules require that the Agency include this requirement in this rule.

The Agency finds that amending this rule to require a binding written agreement only for solid and hazardous waste facilities is needed and reasonable and hereby modifies the rule

as follows:

> Modification solely as to ownership or control. Upon obtaining the consent of the permittee, the agency ~~may~~ shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR §§4.4010-4.4013 if the agency finds that no other change in the permit is necessary. ~~and if~~ If the permit is a permit described in 6 MCAR §4.4002 A. or B., the agency must also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification.

b. Modifications to 6 MCAR §4.4101 - 4.4111, NPDES Permits.

1. 6 MCAR §4.4107 C.5., Parameters [of effluent analysis by existing manufacturing, commercial, mining, and silvicultural discharges].

This rule contains typographical errors and should be corrected. The Agency finds that it is necessary and reasonable to correct the rule as follows:

> The applicant shall analyze, using a screening procedure not calibrated with analytical standards for 2,3,7,8 - tetrachlorodibenzo-p-dioxin if:
>
> a. the applicant uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5, TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloroproprionate (Erbon); 0,0-dimethyl 0-(2,4,5-trichlorophenyl) ~~phosphorothicate~~ phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

b. the applicant knows or has reason to believe that 2,3,7,8 tetrachlorodibenzo-p-dioxin is or may be present in an effluent.

2. 6 MCAR §4.4110 A., General conditions.

The Agency finds that it is necessary and reasonable to correct a typographical error in the first line of this rule. It should read "National Pollutant Discharge Elimination System permits."

c. Modifications to 6 MCAR §4.4311 - 4.4321, Indirect Source Permits.

1. 6 MCAR §4.4320 A.3., Permit conditions.

During the public comment period the Agency received a comment concerning the provision of the rule which makes the Director responsible for determining traffic flow characteristics which will be the basis of permit conditions. In actuality, the applicant will propose the traffic flow characteristics which will prevent violations of carbon monoxide ambient air quality standards, and the Director will review that determination in fashioning permit conditions. The Agency finds it necessary and reasonable to modify the proposed rule amendment to clarify the intent of the rule, as follows:

3. binding commitments by the owner or operator to construct, modify, or operate the indirect source ~~in a manner necessary~~ to achieve the traffic flow characteristics ~~determined by the director to be appropriate~~ necessary to prevent violations of carbon monoxide ambient air quality standards.

2. 6 MCAR §4.4321, Minor modification of permit.

This rule allows a modification to be made to an indirect

source permit without following full public notice procedures if the Director finds that the modification would not result in an increase in carbon monoxide of greater than one part per million (ppm) or a violation of the carbon monoxide standard established in 6 MCAR §4.0001 and that the modification would not subject the permittee to the requirement to obtain a permit modification as set forth in 6 MCAR §4.4313.

The Agency has determined that this rule as proposed does not completely address the ambient carbon monoxide standard because the standards are based on two averaging periods. The first is an eight-hour average for the 9 ppm standard and the second is a one-hour average for the 30 ppm standard. The Agency originally proposed one ppm as a threshold level, relating to the 8-hour standard. This value was selected because it represents a number slightly greater than the smallest change in ambient carbon monoxide levels that can be detected with properly operating carbon monoxide monitors but it is still a small fraction (one-ninth) of the allowable concentration.

To address both averaging periods of the ambient carbon monoxide standard the Agency has determined that a threshold level for the one-hour averaging period also needs to be included in the rule. Therefore the Agency finds it necessary and reasonable to add to the rule a provision for a 3 ppm theshold level with respect to the one-hour standard. This 3 ppm value is in

approximately the same proportion to the 30 ppm standard as the one ppm is to the 9 ppm standard.

The Agency also finds it necessary and reasonable to change the cross reference in the rule that is intended to refer to public notice procedures. As proposed, the rule refers to 6 MCAR §§4.4010 - 4.4019. This reference is too inclusive and should be changed to only refer to 6 MCAR §§4.4010 - 4.4013.

The Agency also finds it necessary and reasonable to delete the portion of the rule which requires the Director to find that the modification would not subject the permittee to the requirement to obtain a permit modification as set forth in 6 MCAR §4.4313. This portion of the rule creates an anomaly in the rule because it would only allow the simplified modification procedure for a change which does not subject the permittee to the requirement to obtain a permit modification. Therefore it is reasonable to delete this portion of the rule.

The Agency hereby amends the rule as follow:

> Minor modification of permit. In addition to the corrections or allowances listed in 6 MCAR §4.4019 C., the director upon obtaining the consent of the permittee may modify an indirect source permit without following the procedure in 6 MCAR §§4.4010 - ~~4.4019~~ 4.4013 if the director determines that the modification would not result in an increase in carbon monoxide of greater than one part per million with respect to the eight-hour carbon monoxide standard, and that the modification would not result in an increase in carbon monoxide of greater than three parts per million with respect to the one-hour carbon monoxide standard, and that the modification would not result in ~~or~~ a violation of the

carbon monoxide standard established in 6 MCAR §4.0001 ~~and that the modification would not subject the permittee to the requirement to obtain a permit modification set forth in 6 MCAR §4.4313~~.

d. Modifications to 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

1. 6 MCAR §4.4203 B.7., Permit requirements; exclusions.

This rule sets forth the activities which require a hazardous waste permit and the conditions under which a person is excluded from having to obtain a hazardous waste facility permit. 6 MCAR §4.4203 B.7. refers to reuse/recycle facilities regulated under 6 MCAR §4.9129. 6 MCAR §4.9129 B.1. has been amended and the provisions have been renumbered so that the cross-reference needs to be corrected to be consistent. Therefore the Agency finds it necessary and reasonable to amend the cross reference as follows:

> The ownership or operation of a facility that is used to manage hazardous waste described in 6 MCAR §4.9129 B.1. or 2. that is to be beneficially used, reused, recycled, or reclaimed, unless 6 MCAR §4.9129 B.1.~~i.~~ j. provides otherwise.

2. 6 MCAR §4.4221 C.1. Hazardous waste thermal treatment facility permits; trial burn plan.

This rule sets forth the information which must be contained in the trial burn plan for a hazardous waste thermal treatment unit. 6 MCAR §4.4221 C.1. refers to the anlaytical techniques to be used when analyzing wastes to be treated, and references a U. S. Environmental Protection Agency document on waste evaluation methods. This document SW-846 is referenced in 6 MCAR §4.9102 G.

However, it has been brought to the Agency's attention that this document has been revised and updated. 6 MCAR §4.9102 will be amended to refer to the revised and updated document. To assure that the correct document is specified, the Agency finds that it is necessary and reasonable to change §4.4221 C.1. so that it cross-references SW-846 "as referenced in 6 MCAR §4.9102." This change will also make this rule consistent with 6 MCAR §4.4214 C., which cross-references 6 MCAR §4.9102 with regard to SW-846. The Agency hereby amends the rule as follows:

> 1. the results of an analysis of each waste or mixture of wastes to be burned, that uses the analytical techniques set forth in ~~Test Methods for the Evaluation of Solid, Physical/Chemical Methods, publication number~~ the United States Environmental Protection Agency document SW-846 as referenced in 6 MCAR §4.9102, ~~1980, of the Office of Solid Waste, United States Environmental Protection Agency~~ or that uses analytical techniques found by the director to be equivalent to them. This analysis must include:
>
> 3. 6 MCAR §4.4214 C.6.a., Part B information and special procedural requirements for thermal treatment facilities.

This rule sets forth the information which must be submittted in the permit application for a thermal treatment unit. Section C. specifies the information requirements for units which are utilizing comparative data in lieu of trial burn results in the permit application. The data requirements are based on the technical standards for thermal treatment units found in 6 MCAR §4.9321. One of the monitoring requirements is continuous monitoring of carbon monoxide, oxygen, and carbon dioxide.

Accordingly, 6 MCAR §4.4214 C.6.a. should refer to expected levels of carbon monoxide, oxygen, and carbon dioxide in the stack exhaust gas rather than just a carbon monoxide level. The Agency finds that it is necessary and reasonable to amend this rule as follows:

a. expected carbon monoxide, oxygen, and carbon dioxide levels in the stack exhaust gas;

4. 6 MCAR §4.4221 F.9., Hazardous waste thermal treatment facility permits; conduct of trial burn.

This rule sets forth the analyses and determinations which must be performed during or after a trial burn. They are based on the technical standards for thermal treatment units found in 6 MCAR §4.9321. One of the monitoring requirements in 6 MCAR §4.9321 G.1.b. is continuous monitoring of carbon monoxide, oxygen, and carbon dioxide. Accordingly, 6 MCAR §4.4221 F.9. should refer to a continuous measurement of carbon monoxide, oxygen, and carbon dioxide rather than just a carbon monoxide. The Agency finds that it is necessary and reasonable to amend this rule as follows:

9. a continuous measurement of carbon monoxide, oxygen, and carbon dioxide in the exhaust gas; and

5. 6 MCAR §4.4223, Terms and conditions of hazardous waste facility permits.

This rule specifies the conditions which must be contained in a hazardous waste permit. 6 MCAR §4.4223 B.3. sets forth the procedure to be followed by the permittee and Director regarding certification prior to operations commencing at a new or modified

facility. This procedure is consistent with the requirements given in 6 MCAR §4.9100 - 4.9560 regarding new or modified facilities. However, the Agency has received a comment from an interested person requesting that the same procedure be used with regard to repairs done on surface impoundments. The technical rules require surface impoundment repairs as well as facility construction or modification to be certified. The Agency agrees that repairs to surface impoundments should be certified and inspected the same as general facility construction or modification. Therefore, the Agency finds that it is reasonable and necessary to amend this rule by adding a Section C., which addresses repairs to surface impoundments as follows:

> C. Additional condition for surface impoundments. Each draft and final hazardous waste facility permit issued by the agency for a surface impoundment must contain the following condition: The permittee shall not commence treatment, storage, or disposal of hazardous waste in a surface impoundment which has been repaired under 6 MCAR §4.9317 F.4. until:
>
> 1. the permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and by a registered professional engineer stating that the surface impoundment has been repaired in compliance with the conditions of the permit; and
>
> 2. the director has inspected the repaired surface impoundment and has provided the permittee with a letter stating that, based on information available to the director, the surface impoundment appears to have been repaired in compliance with the conditions of the permit.

6. 6 MCAR §4.4224 B., Modification of permits; revocation and reissuance of permits; additional justification or modification of permits or revocation and reissuance of permits.

This rule sets forth the conditions under which the Director may commence proceedings to modify a permit or to revoke and reissue a permit. Three revisions to this rule are reasonable and necessary, as discussed below.

Section B.1. refers to modifications to the closure plan as required by 6 MCAR §4.9298 D. or 4.9300 C. However, 6 MCAR §4.9300 C. addresses the post-closure plan, while 6 MCAR §4.9298 D. refers to the closure plan. Accordingly, the Agency finds it necessary and reasonable to amend Section B.1. to refer to both closure plans and post-closure plans in order to be consistent with the two cross-references. The rule is hereby amended as follows:

1. the director discovers that modification of a closure plan or post-closure plan is required by 6 MCAR §4.9298 D. or 4.9300 C.;

6 MCAR §4.4224 B. is cross-referenced in 6 MCAR §4.4221 J. regarding permit modification for a new thermal treatment unit during phase four to change the operating conditions in the final permit if necessary, based on the trial burn results. However, there is no provision in 6 MCAR §4.4224 B. to indicate that this is a justification for permit modification. 6 MCAR §4.4221 J. also cross-references 6 MCAR §4.4224 D. regarding minor modifications and 6 MCAR §4.4224 D.6. sets forth the justification

for the minor modification. However, since the necessary modifications may not be minor in nature, it is necessary to include a provision in 6 MCAR §4.4224 B. to address such modifications. Therefore, the Agency finds it necessary and reasonable to add a provision 14 to this rule, which addresses modifications based on trial burn results, as follow:

> 14. to change the operating requirements set in the permit to reflect the results of the trial burn.

6 MCAR §4.4224 D. sets forth the corrections and allowances which may be made to a permit without following the full procedure for permit modification, with the permittee's consent. The cross-reference to the permit modification procedures which need not be followed in the rule as proposed is "6 MCAR §§4.4010 - 4.4019." This cross-reference is too inclusive and should be limited to 6 MCAR §§4.4010 - 4.4013. Since the justifications given in 6 MCAR §4.4224 D. are stated to be in addition to those provided in 6 MCAR §4.4019 C., those two rules should contain the same cross references, namely 6 MCAR §§4.4010 - 4.4013. Therefore the Agency hereby amends Section D. of the rule as follows:

> Minor modifications of permits. In addition to the corrections or allowances listed in 6 MCAR §4.4019 B. and C., if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in 6 MCAR §§4.4010 - ~~4.4019~~ 4.4013:

8. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the

amendments to the rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely and adequate notice of the intent to adopt amendments to the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed rule amendments are supported by the data and views submitted to the Agency within the comment period and do not result in a substantial change in the proposed rule amendments.

MINNESOTA POLLUTION CONTROL AGENCY

Cynthia C Jepsen

CYNTHIA JEPSEN
Chairperson

for Sandra S. Gardebring

SANDRA S. GARDEBRING
Executive Director

Dated: February 28, 1984

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Cynthia Jepsen, do hereby certify that I am a member and the Chairperson of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 26th day of March, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

WHEREAS, the Minnesota Pollution Control Agency on February 28, 1984, adopted rules relating to Hazardous Waste Facility Permits, 6 MCAR §§4.4201 - 4.4224; and

WHEREAS, the Attorney General pursuant to Minn. Stat. §14.26 (Supp. 1983) has reviewed those rules as to form and legality and has approved the rules on the condition that the Agency amend 6 MCAR §4.4221 G. to clarify the circumstances upon which the Director would grant extensions to the time requirements set forth in the rule;

NOW, THEREFORE, BE IT RESOLVED, that the Agency hereby approves and adopts the following amendment to 6 MCAR §4.4221 G.:

> Submission of certification, results, and data. The owner or operator shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the analyses and determinations required by F. along with all underlying data of the results. The owner or operator shall make these submissions within 90 days after the completion of the trial burn, or later if approved by the director upon a finding by the director that good cause exists for granting a time extension.

BE IT FURTHER RESOLVED, that prior to publishing the rules in the State Register the Director is authorized to make any form changes in the rules that the Revisor of Statutes

requires the Agency to make in order to obtain the Revisor's Certificate as required in Minn. Stat. §14.08 (Supp. 1983).

BE IT FURTHER RESOLVED, that the Agency adopts the attached Order Adopting Amendment to 6 MCAR §4.4221 G.

BE IT FURTHER RESOLVED, that the Chairperson and the Director are authorized to sign the Order on behalf of the Agency.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of March, 1984.

Cynthia C Jepsen
CYNTHIA JEPSEN
Chairperson

Attest by one other Agency member

Minnesota Pollution Control Agency

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

ORDER ADOPTING AMENDMENT TO 6 MCAR §4.4221 G.

The above-entitled rule proposals were adopted by the Minnesota Pollution Control Agency (Agency) on February 28, 1984, and were submitted to the Attorney General for review as to form and legality on February 29, 1984. On March 15, 1984, the Attorney General approved the rules on the condition that the Agency amend 6 MCAR §4.4221 G. to clarify the circumstances upon which the Director would grant extensions to the time requirement set forth in the rule.

NOW, THEREFORE, IT IS ORDERED, this 27th day of March, 1984, that 6 MCAR §4.4221 G. is amended as follows:

> Submission of certification, results, and data. The owner or operator shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the analyses and determinations required by F. along with all underlying data of the results. The owner or operator shall make these submissions within 90 days after the completion of the trial burn, or later if approved by the director <u>upon a finding by the director that good cause exists for granting a time extension</u>.

Cynthia C Jepsen

CYNTHIA JEPSEN
Chairperson

Sandra S Gardebring

SANDRA S. GARDEBRING
Executive Director

CERTIFICATE OF AGENCY'S RESOLUTION ADOPTING
AMENDING, AND REPEALING RULES

I, Cynthia Jepsen, do hereby certify that I am a member and the Chairperson of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called an held on the 28th day of February, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Minnesota Pollution Control Agency (Agency) hereby approves and adopts the following new rules as attached to this resolution:

1. 6 MCAR §§4.4001 - 4.4021, Permits;

2. 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits;

3. 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits; and

5. 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

BE IT FURTHER RESOLVED, that the Agency hereby approves and adopts the attached amendments of Minn. Rule APC 19, to be recodified as 6 MCAR §§4.311 - 4.4321, Indirect Source Permits.

BE IT FURTHER RESOLVED, that the Agency hereby repeals Minn. Rule MPCA 5, Minn. Rule WPC 36, Minn. Rule APC 3, and 6 MCAR §§4.9006 and 4.9007.

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency

to make in order to obtain the Revisor's Certificate as required in Minn. Stat. §14.08 (Supp. 1983).

BE IT FURTHER RESOLVED, that the Agency adopts the attached Findings of Fact and Conclusions and the attached Order Adopting, Amending, and Repealing Rules.

BE IT FURTHER RESOLVED, that the Chairperson and the Executive Director are hereby authorized to execute the above-named documents on behalf of the Agency.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of February, 1984.

Cynthia C Jepsen

CYNTHIA JEPSEN
Chairperson

Frank A Ahlberg

Attest by one other Agency member

Ashland

Ashland Petroleum Company

DIVISION OF ASHLAND OIL, INC.

P.O. BOX 391 • ASHLAND, KENTUCKY 41114 • (606) 329-3333

MICHAEL J. DUFFY
Manager Environmental & Health Affairs
(606) 329-4457

January 12, 1984

RECEIVED
JAN 20 1984
M.P.C.A.
Water Quality Div.

Mr. Perry Beaton
Minnesota Pollution Control Agency
1935 West County Road - B2
Roseville, MN 55113

Dear Mr. Beaton,

Ashland Oil certainly appreciates the opportunity to review the facility permit rules that the Minnesota Pollution Control Agency proposed in the state register on Monday, December 19, 1983. On November 2, Ashland participated in a meeting with other industry representatives and agency personnel to discuss these proposed rules. Subsequent to that meeting Jocelyn F. Olsen, Special Assistant to the Attorney General, wrote a letter to G. Robert Johnson of Popham, Haik, Schnobrich, Kaufman and Doty, which included, as an attachment, a memo from J. M. Heffern proposing changes to several of the proposed rules. Ashland supports the changes identified in the memo from Mr. Heffern. The concerns that Ashland has in some cases are satisfied by the Heffern memo and in other cases the Heffern memo was determined to be insufficient correction of the problems that were identified. The comments below identify those areas which are satisfied by Mr. Heffern's memo and those areas which are not.

6MCAR Section 4.4017C. The term "guideline" as it is used in this section is unclear. Guidelines have one regulatory meaning when used for effluent guidelines in waste water regulations and another regulatory meaning when used as air or waste management guidelines. If the state means effluent guidelines it should specifically state that in the regulations. Ashland maintains that guidelines are not necessarily appropriate or applicable issues for permit modification in air or waste management matters. The correction provided in Mr. Heffern's memo is supported by Ashland as it would correct this specific problem.

A broader and more general concern of Ashland is the concept of the state delegating its authority to the federal government in this section. The adoption by the federal government of a standard or limitation is not necessarily sufficient grounds for modification, revocation or reissuance of a state issued permit. The state has the authority and is required to review the federal regulations for consistency with state statute and state regulations. For the state to neglect or ignore this authority would be improper, unwise and not justifiable in Minnesota statutes.

6MCAR Section 4.4017G. This section allows a permit to be modified when it is transferred due to the change of ownership of a facility. A change in ownership, by itself, should not trigger any permit modification other than the administrative items that deal specifically with the ownership and operation of a facility. Further the use of the term "and" in section G is unclear as to whether it applies to only G and H or whether it applies to A thru H.

6MCAR Section 4.4019B. This section, as proposed, requires a binding written agreement covering allocation of liabilities between the existing permitee and the proposed transferee. This should apply only to sanitary or hazardous waste landfill permits and not to air and waste water permits. The correction proposed in Mr. Heffern's memo corrects this problem and Ashland supports this correction.

6MCAR Section 4.4015B.2. This section is unclear. The modification included in Mr. Heffern's memo clarifies this section and Ashland supports those clarifications.

Ashland submits these comments in hopes that they will be helpful in allowing the state to develop sound regulations which will satisfy the difficult job of regulating the industrial community in a manner which is both sufficient to prevent environmental problems, yet not so restrictive as to be a burden or restraint to environmentally acceptable industry in the State of Minnesota.

If you have any questions concerning these comments, please contact this office.

Very truly yours,

Michael J. Duffy

MJD/rk

Minnesota Department of Transportation

Transportation Building, St. Paul, MN 55155

Phone 297-7528

January 20, 1984

Mr. Perry Beaton
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

RECEIVED
JAN 20 1984
M.P.C.A.
Water Quality Div.

APC-19 (Indirect Source Permit)
6MCAR § 4.4311 (Proposed Codification)
Proposed Rule Changes
Mn/DOT Comments

Dear Mr. Beaton:

We have reviewed the above and would like to offer suggestions for the proposed rule changes.

1. Exemption of highway projects from the Assessment process. Shortly after APC-19 (Indirect Source Permit) was adopted we asked for and received a clarification of your Agency's intent regarding the Assessment process for highways. Your January 3, 1975 letter stated that your intent was to require indirect source permits for highways only when the project exceeded the limits of (proposed codified section) 4.4313 and that no permit or assessment would be required for highways not exceeding these limits.

   It is our desire that this intent be stated in the Rules to avoid unnecessary concern or expense of a potential applicant. This change could be stated in 4.4314 or other readily recognizable section.

2. 4.4320 A.3. This section on special permit conditions has been modified from "... traffic flow characteristics published by the EPA ..." to "... traffic flow characteristics determined by the director to be appropriate ..." to prevent violations of CO standards.

   It appears to us that while your agency is responsible for attaining/maintaining the standards, the transportation authority is responsible for any modifications in traffic flow characteristics to accomplish this goal. There may be several traffic flow characteristics which would result in preventing

violations of the standards. We suggest that the wording be changed to "... traffic flow characteristics determined by the owner or operator, in consultation with the director, to be appropriate ...".

Thank you for this opportunity to submit these comments. I would be happy to meet with you regarding these proposed regulations.

Sincerely,

Leonard G. Eilts

Leonard G. Eilts
Director
Office of Environmental Services

cc: Commissioner R. P. Braun
F. C. Marshall
E. Ofstead
T. Scherkenback (MPCA)

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
1135 U. S. POST OFFICE & CUSTOM HOUSE
ST. PAUL, MINNESOTA 55101

REPLY TO
ATTENTION OF:

January 19, 1984

Construction-Operations
Regulatory Functions

RECEIVED
JAN 20 1984
M.P.C.A.
Water Quality Div.

Mr. Perry Beaton
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Dear Mr. Beaton:

This is in response to your agency's proposed rules for 6 MCAR Section 4.4001-4.4021, published in the State Register dated December 19, 1983.

I direct my comments to 6 MCAR Section 4.4010(D)(7), which requires a 30-day comment period for your agency's public notices.

The Corps of Engineers routinely issues 30-day public notices for permit applications under Section 404 of the Clean Water Act. However, in accordance with the President's Task Force recommendations to reduce the regulatory burden, provide better service and operate efficiently, we issue some 15-day and 21-day notices. These notices are for only those projects identified to be minor in nature and, based on past experience, noncontroversial. Flexibility is essential to make this a viable, responsive program. MPCA's certification under Section 401 of the Clean Water Act has dovetailed quite well with our procedures. Certification within the abbreviated time frame has been done efficiently, and time extensions are provided when unexpected controversy or unforeseen concerns arise.

I urge you to exempt your agency's Section 401 review from the 30-day public notices requirement.

Sincerely,

Edward G. Rapp
Colonel, Corps of Engineers
District Engineer

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT Division of Air Quality
Minesota Pollution Control Agency

Office Memorandum

TO: Comment File, Agency Permit Rules DATE: 10/20/83

FROM: Richard J. Sandberg
Rule Review Coordinator
Division of Air Quality PHONE:

SUBJECT: Change in Minor Modification Rule 6 MCAR §4.4321

The Minnesota Pollution Control Agency (Agency) has proposed amendments to Minn. Rule APC 19, Indirect Source Permits, to be recodified as 6 MCAR §4.4311 - 4.4321. The proposed 6 MCAR §4.4321, "Minor modification of permit" allows a modification to be made to an indirect source permit without following the procedures of 6 MCAR §§4.4010 - 4.4019 if the Director finds that the modification would not result in an increase in carbon monoxide of greater than one part per million (ppm) or a violation of the carbon monoxide standard established in 6 MCAR §4.0001 and that the modification would not subject the permittee to the requirement to obtain a permit modification as set forth in 6 MCAR §4.4313.

The Agency has determined that this rule as proposed does not completely address the ambient carbon monoxide standard because the standards are based on two averaging periods. The first is an eight-hour average for the 9 parts ppm standard and the second is a one-hour average for the 30 ppm standard. The Agency originally proposed one ppm as a threshold level, relating to the 8-hour standard. This value was selected because it represents a number slightly greater than the smallest change in ambient carbon monoxide levels that can be detected with properly operating carbon monoxide monitors but it is still a small fraction (one-ninth) of the allowable concentration.

To address both averaging periods of the ambient carbon monoxide standard the Agency has determined that a threshold level for the one-hour averaging period also needs to be included in the rule. Therefore the Agency proposes to add to the rule a provision for a 3 ppm theshold level with respect to the one-hour standard. This 3 ppm value is in approximately the same proportion to the 30 ppm standard as the one ppm is to the 9 ppm standard.

The Agency also proposes to delete the portion of the rule which requires the Director to find that the modification would not subject the permittee to the requirement to obtain a permit

modification as set forth in 6 MCAR §4.4313. This portion of the rule creates an anomaly in the rule because it would only allow the simplified modification procedure for a change which does not subject the permittee to the requirement to obtain a permit modification. Therefore it is reasonable to delete this portion of the rule.

The Agency proposes that the rule be amended as follow:

> Minor modification of permit. In addition to the corrections or allowances listed in 6 MCAR §4.4019 C., the director upon obtaining the consent of the permittee may modify an indirect source permit without following the procedure in 6 MCAR §§4.4010-4.4019 if the director determines that the modification would not result in an increase in carbon monoxide of greater than one part per million with respect to the eight hour carbon monoxide standard, and that the modification would not result in an increase in carbon monoxide of greater than three parts per million with respect to the one hour carbon monoxide standard, and that the modification would not result in ~~or~~ a violation of the carbon monoxide standard established in 6 MCAR §4.0001 ~~and that the modification would not subject the permittee to the requirement to obtain a permit modification as set forth in 6 MCAR §4.4313~~.

These reasonableness of the rule as modified is discussed in the Statement of Need and Reasonableness.

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT MN POLLUTION CONTROL AGENCY **Office Memorandum**

TO: Permit Rule Comment File DATE: JAN 18 1984

FROM: Jay M. Heffern PHONE:
Deputy Executive Director

SUBJECT: PROPOSED AGENCY RULES 6 MCAR § 4.4107 C.5. and 4.4110 A.

The Agency has proposed to adopt rules to replace existing Minnesota Rule WPC 36, regulation for administration of the National Pollutant Discharge Elimination System (NPDES) and State Disposal System permit program. The new rules will be codified is 6 MCAR § 4.4101 - 4.4111 relating to NPDES permits.

Agency staff review of the proposed rules has identified the need to correct typographical errors in 6 MCAR § 4.4107 C. and 6 MCAR 4.4110 A.

6 MCAR § 4.4107 C.5. should be corrected to replace periods with commas as follows:

The applicant shall analyze, using a screening procedure not calibrated with analytical standards for 2,3,7, 8 - tetrachlorodibenzo-p-dixoin if:

a. the applicant uses or manufacturers 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,3,5 TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloroproprionate (Erbon); 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothicate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

b. the applicant knows or has reason to believe that 2,3,7,8 tetrachlorodibenzo-p-dioxin is or may be present in an effluent.

6 MCAR § 4.4110A. The first line should be revised to read: National Pollutant Discharge Elimination System permits.

The Agency staff proposes that this proposed rule be amended is indicated above to correct typographical errors.

JMH:nmp

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO: Permit Rules Comment File

DATE: 1/20/84

FROM: Jay M. Heffern
Deputy Executive Director

PHONE:

SUBJECT: Proposed Modifications to Rules

The proposed permit rules of the Minnesota Pollution Control Agency were published in the State Register on December 19, 1983. The review of the published rules has revealed the need for the following minor changes to the rules:

4.4013 B., Public informational meeting.

This rule as published in the State Register needs the addition of the word "hearing" after the phrase "contested case." The word was unintentionally omitted from the final version of the rules. The rule should read as follows:

> If the agency finds that the holding of a contested case hearing is not justified under A., the agency shall nevertheless hold a public informational meeting if the agency determines that a public informational meeting would help clarify or resolve issues regarding the terms of the draft permit.

4.4015 C.6. (general conditions).

The second sentence of this rule contains a misspelled word. The word "auxilliary" should be changed to "auxiliary."

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

Minnesota Pollution Control Agency

TO:

Permit Rules Comment File

DATE:

12/6/83

FROM:

Jay M. Heffern
Deputy Executive Director

PHONE:

SUBJECT:

Proposed Agency Rules 6 MCAR §§4.4004 B., 4.4015 B.2., 4.4017 C. and 4.4019 B.

The Agency has proposed to adopt rules to replace existing Minn. Rule MPCA 5, Permits. The new rules will be codified as 6 MCAR §4.4001 - 4.4021, Permits.

Agency staff review of the proposed rules has identified the need for change in the portions of the rules discussed below.

6 MCAR §4.4004 B., Application deadline for modification or revocation and reissuance of existing permits.

This rule contains a reference to federal "guidelines." The Agency's intent in this rule was to refer to federal effluent guidelines, which are actually promulgated as regulations by the U.S. Environmental Protection Agency. Therefore the Agency staff proposes that this proposed rule be amended to make this intent clear, as follows:

> Modification or revocation and reissuance of existing permits. If a permit has been issued by the agency, the person holding the permit may file with the agency, at any time, a written application for modification of the permit or for revocation and reissuance of the permit; except that if the reason for the application is the adoption by a federal agency of a new or amended pollution standard, limitation, or effluent guideline the permittee shall file an application within the time for filing specified by the federal agency as a part of the notice of adoption published in the Federal Register.

6 MCAR §4.4015 B.2., Special conditions: requirements for monitoring and testing and reporting of monitoring and testing results.

The Agency has received a comment from interested persons requesting the following amendment to this rule:

> Requirements for monitoring and testing and reporting of monitoring and testing results. Monitoring and testing requirements must specify the type, interval, and frequency of monitoring and testing activities that are sufficient to yield ~~data~~ representative data ~~of the pollutant or situation monitored or tested~~ to determine whether there is compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. As appropriate, the permit must contain requirements for the proper use, maintenance, and installation of monitoring and testing equipment or methods. The permit must require the permittee to keep accurate records of monitoring and testing activities and to submit to the director periodic reports of monitoring results required by the permit and, as requested by the director, the results of other monitoring and testing undertaken by the permittee that are related to compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. Reporting of montitoring results must contain the certification in 6 MCAR §4.4007.

The persons making the comment believe that this new language clarifies the purpose of the monitoring and testing requirements to be included in the permit. The Agency staff has no objection to making this clarification.

6 MCAR §4.4017 C., Justification to commence modification of permit or revocation and reissuance of permit.

Like 6 MCAR §4.4004 B., this rule contains a reference to federal guidelines, which is intended by the Agency to refer to effluent guidelines (see discussion above). Therefore the Agency staff proposes to make the following amendment to 6 MCAR §4.4017 C., which allows the Agency Director to commence proceedings to modify a permit or to revoke and reissue a permit where:

> C. the agency or the federal government promulgates a new or amended pollution standard, limitation, or effluent guideline that is applicable to the permitted facility or activity;

6 MCAR §4.4019 B., Modification solely as to ownership or control.

This rule allows for the modification of a permit without following the procedures of 6 MCAR §§4.4010 - 4.4019 if the only change in the permit is the ownership or control of the permitted

facility or activity and if the Agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities betweeen the permittee and the proposed transferee.

The Agency has received a comment in opposition to the requirement for a binding written agreement. The Agency staff has reexamined this rule and agrees that there does not need to be a binding written agreement for facilities where the pollution stops as soon as the facility is closed or the activity is stopped. However, for sanitary landfills and hazardous waste facilities, closure of the facility will not necessarily end the pollution problem, and therefore such an agreement is desirable. In addition, for the hazardous waste program, federal rules require that the Agency include this requirement in this rule.

The Agency staff proposes to amend this rule to require a binding written agreement only for solid and hazardous waste facilities, as follows:

> Modification solely as to ownership or control. Upon obtaining the consent of the permittee, the agency ~~may~~ shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR §4.4010-4.4013 if the agency finds that no other change in the permit is necessary. ~~and if~~ If the permit is a permit described in 6 MCAR §4.4002 A. or B., the agency must also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agency for consideration by the agenda. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification.

SF-00005-03

STATE OF MINNESOTA

DEPARTMENT Minnesota Pollution Control Agency

Office Memorandum

TO: Agency Permit Rule Comment File

DATE: 11/9/83

FROM: Jay M. Heffern
Deputy Executive Director

PHONE:

SUBJECT: Proposed Agency Rule 6 MCAR §4.4014

The Agency has proposed to adopt rules to replace existing Minn. Rule MPCA 5, Permits. The new rules, 6 MCAR §§4.4001 - 4.4021, Permits, contain a section dealing with final determinations on permit proceedings.

As proposed, the rule provides that the Agency shall issue, reissue, revoke and reissue, or modify a permit if the Agency determines that the proposed permittee or permittees will comply or will undertake a schedule of compliance to achieve compliance with "all applicable state and federal pollution control statutes and rules." The Agency has identified a potential problem with this language and is proposing a modification to the rule to address this problem.

The problem identified by the Agency is that under the language of the proposed rule, a person could make a claim that the Agency should not issue a permit if the proposed permittee would not comply with a statute or rule administered by another State agency or a rule of a federal agency other than the U. S. Environmental Protection Agency (EPA). The Agency did not intend by this rule to become the enforcement agency for state and federal rules other than those it is required by law to administer. Therefore, the Agency proposes to modify the rule to make it clear that the Agency will limit its examination to the permittee's compliance with those statutes and rules administered by the Agency and to the conditions which are in the permit.

The addition of a reference to permit conditions allows the Agency to remove the reference to federal statutes and rules, because the Agency has the opportunity to put into the permit any conditions which are necessary to require compliance with those federal rules which are administered by the Agency under a delegation from EPA.

The Agency proposes to modify 6 MCAR §4.4014 A., B.1., and B.2. as follows (the provisions of the remainder of the rule are not affected):

6 MCAR §4.4014 Final determination.

A. Agency action. Except as provided in B., the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state ~~and federal~~ pollution control statutes administered by the agency, ~~and~~ agency rules, and conditions of the permit and that all applicable requirements of Minnesota Statutues, chapter 116D and the rules promulgated thereunder have been fulfilled.

B. Agency findings. The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

1. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state ~~and federal~~ pollution control statutes administered by the agency, ~~and~~ agency rules, or conditions of the permit;

2. that there exists at the facility to be permitted unresolved noncompliance with applicable state ~~and federal~~ pollution control statutes administered by the agency, ~~and~~ agency rules, or conditions of the permit, and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

SF-00005-03

STATE OF MINNESOTA

DEPARTMENT POLLUTION CONTROL AGENCY

Office Memorandum

TO: Permit Rules Comment File

DATE: 1/20/84

FROM: Jay M. Heffern
Deputy Executive Director

PHONE: 612/296-7303

SUBJECT: PROPOSED MINNESOTA POLLUTION CONTROL AGENCY RULES 6 MCAR §§4.4203 B.7., 4.4221 C.1. AND F.9., 4.4223 AND 4.4224 B. AND D.

The Minnesota Pollution Control Agency (Agency) has proposed to adopt rules to replace existing rules 6 MCAR §§4.9006 and 4.9007. The new rules will be codified as 6 MCAR §§4.4201-4.4224, Hazardous waste facility permits.

Agency staff review of the proposed rules has identified the need for change in the portions of the rules discussed below.

6 MCAR §4.4203 B.7. Permit requirements; exclusions.

This rule sets forth the activities which require a hazardous waste permit and the conditions under which a person is excluded from having to obtain a hazardous waste facility permit. 6 MCAR §4.4203 B.7. refers to reuse/recycle facilities regulated under 6 MCAR §4.9129. 6 MCAR §4.9129 B.1. has been amended and the provisions have been renumbered so that the cross-reference needs to be corrected to be consistent. Therefore, the Agency staff proposes that this proposed rule be amended by correcting the cross-reference as follows:

7. The ownership or operation of a facility that is used to manage hazardous waste described in 6 MCAR §4.9129 B.1. or 2. that is to be beneficially used, reused, recycled, or reclaimed, unless 6 MCAR §4.9129 B.1.~~i.~~ j. provides otherwise.

6 MCAR §4.4221 C.1. Hazardous waste thermal treatment facility permits; trial burn plan.

This rule sets forth the information which must be contained in the trial burn plan for a hazardous waste thermal treatment unit. 6 MCAR §4.4221 C.1. refers to the analytical techniques to be used when analyzing wastes to be treated, and references a United States Environmental Protection Agency document on waste evaluation methods. This document SW-846 is referenced in 6 MCAR §4.9102 G. However, it has been brought to Agency staff attention that this document has been revised and updated. Agency staff will be amending 6 MCAR §4.9102 to include the revisions and updated document. To assure that the correct document is specified the reference to SW-846 is being changed so that it is cross-referenced to 6 MCAR §4.9102. This change will also make this rule

consistent with 6 MCAR §4.4214 C. which cross-references 6 MCAR §4.9102 with regard to SW-846. Therefore, the Agency staff proposes that this proposed rule be amended by changing the document reference as follows:

1. the results of an analysis of each waste or mixture of wastes to be burned, that uses the analytical techniques set forth in ~~Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods, publication number~~ the United States Environmental Protection Agency document SW-846 as referenced in 6 MCAR §4.9102, ~~1980, of the Office of Solid Waste, United States Environmental Protection Agency~~ or that uses analytical techniques found by the director to be equivalent to them. This analysis must include:

6 MCAR §4.4214 C.6.a. Part B information and special procedural requirements for thermal treatment facilities.

This rule sets forth the information which must be submitted in the permit application for a thermal treatment unit. Section C. specifies the information requirements for units which are utilizing comparative data in lieu of trial burn results in the permit application. The data requirements are based on the technical standards for thermal treatment units found in 6 MCAR §4.9321. One of the monitoring requirements is continuous monitoring of carbon monoxide, oxygen, and carbon dioxide. Accordingly, 6 MCAR §4.4214 C.6.a. should refer to expected levels of carbon monoxide, oxygen and carbon dioxide in the stack exhaust gas rather than just a carbon monoxide level. Therefore, the Agency staff proposes that the proposed rule be amended to make the rules consistent, as follows:

a. expected carbon monoxide, oxygen, and carbon dioxide levels in the stack exhaust gas;

6 MCAR §4.4221 F.9. Hazardous waste thermal treatment facility permits; conduct of trial burn.

This rule sets forth the analyses and determinations which must be performed during or after a trial burn. They are based on the technical standards for thermal treatment units found in 6 MCAR §4.9321. One of the monitoring requirements in 6 MCAR §4.9321 G.1.b. is continuous monitoring of carbon monoxide, oxygen, and carbon dioxide. Accordingly 6 MCAR §4.4221 F.9. should refer to a continuous measurement of carbon monoxide, oxygen, and carbon dioxide rather than just carbon monoxide. Therefore, the Agency staff proposes that this proposed rule be amended to make the rules consistent, as follows:

9. a continuous measurement of carbon monoxide, oxygen, and carbon dioxide in the exhaust gas; and

6 MCAR §4.4223 Terms and conditions of hazardous waste facility permits.

This rule specifies the conditions which must be contained in a hazardous waste permit. 6 MCAR §4.4223 B.3. sets forth the procedure to be followed by the permittee and director regarding certification prior to operations commencing at a new or modified facility. This procedure is consistent with the requirements given in 6 MCAR §§4.9100-4.9560 regarding new or modified facilities. However, the Agency has received a comment from an interested person requesting that the same procedure be used with regard to repairs done on surface impoundments. The technical rules require surface impoundment repairs as well as facility construction or modification to be certified. Agency staff agree that repairs to surface impoundments should be certified and inspected the same as general facility construction or modification. Therefore, Agency staff proposes that this proposed rule be amended by the addition of a Section C. which addresses repairs to surface impoundments as follows:

C. Additional condition for surface impoundments. Each draft and final hazardous waste facility permit issued by the agency for a surface impoundment must contain the following condition: The permittee shall not commence treatment, storage or disposal of hazardous waste in a surface impoundment which has been repaired pursuant to 6 MCAR §4.9317 F.4. until:

1. the permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and by a registered professional engineer stating that the surface impoundment has been repaired in compliance with the conditions of the permit; and

2. the director has inspected the repaired surface impoundment and has provided the permittee with a letter stating that, based on information available to the director, the surface impoundment appears to have been repaired in compliance with the conditions of the permit.

6 MCAR §4.4224 B. Modification of permits; revocation and reissuance of permits; additional justification for modification of permits or revocation and reissuance of permits.

This rule sets forth the conditions under which the director may commence proceedings to modify a permit or to revoke and reissue a permit. In this rule there are three revisions Agency staff are proposing to make.

6 MCAR §4.4224 B.1. refers to modifications to the closure plan as required by 6 MCAR §4.9298 D. or 4.9300 C. However, 6 MCAR §4.9300 C. addresses the post-closure plan while 6 MCAR §4.9298 D. refers to the closure plan. Accordingly, 6 MCAR §4.4224 B.1. should refer to both closure plans and post-closure plans to be consistent with the two cross-references. Therefore, Agency staff proposes that this proposed rule be amended to make the rules consistent, as follows:

1. the director discovers that modification of a closure plan or post-closure plan is required by 6 MCAR §4.9298 D. or 4.9300 C.;

6 MCAR §4.4224 B. is cross-referenced in 6 MCAR §4.4221 J. regarding permit modification for a new thermal treatment unit during phase four to change the operating conditions in the final permit if necessary, based on the trial burn results. However, there is no provision in 6 MCAR §4.4224 B. to indicate that this is a justification for permit modification. 6 MCAR §4.4221 J. also cross-references 6 MCAR § 4.4224 D. regarding minor modifications and 6 MCAR §4.4224 D.6. sets forth the justification for the minor modification. However, since the necessary modifications may not be minor in nature, it is necessary to include a provision in 6 MCAR §4.4224 B. to address such modifications. Therefore, Agency staff propose that this proposed rule be amended by the addition of a provision 14. which addresses modifications based on trial burn results, as follows:

14. to change the operating requirements set in the permit to reflect the results of the trial burn.

6 MCAR §4.4224 D. sets forth the corrections and allowances which may be made to a permit without following the full procedure for permit modification provided the permittee consents. The cross-reference to the permit modification procedures which need not be followed is 6 MCAR §§4.4010-4.4019. This cross-reference is too inclusive and should be limited to 6 MCAR §§4.4010-4.4013. Since the justifications given in 6 MCAR §4.4224 D., are in addition to those in 6 MCAR §4.4019 C., the procedures for minor modifications should be the same. 6 MCAR §4.4019 C. exempts minor modifications from 6 MCAR §§4.4010-4.4013, which is the correct cross-reference. Therefore, Agency staff propose that this proposed rule be amended by the correction of a cross-reference to be consistent with another rule, as follows:

D. Minor modifications of permits. In addition to the corrections or allowances listed in 6 MCAR §4.4019 B. and C., if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in 6 MCAR §§4.4010-~~4.4019~~ 4.4013:

JMH/KAR:rw

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT POLLUTION CONTROL AGENCY

Office Memorandum

TO: Permit Rules Comment File

DATE: 1-30-84

FROM: Jay M. Heffern
Deputy Executive Director

PHONE: 612/296-7303

SUBJECT: PROPOSED MINNESOTA POLLUTION CONTROL AGENCY RULE 6 MCAR §4.4010 C.

The Minnesota Pollution Control Agency (MPCA) has proposed to adopt rules to replace existing Minnesota Rule MPCA 5, Permits. The new rules will be codified as 6 MCAR §§4.4001-4.4021, Permits.

The MPCA received a comment from Lillian Bagus of the United States Environmental Protection Agency (EPA) on January 19, 1984 during a telephone conversation with Richard A. Svanda of the MPCA. She indicated that the proposed rules do not clearly state that a fact sheet, which has been prepared with a draft permit, will be sent to the applicant and on request to any other person. Federal Regulation 40 CFR §124.8 contains such a requirement regarding fact sheets, and is applicable to State programs for RCRA and NPDES under 40 CFR §§271.14 and 123.25. It is the MPCA's intent to adopt rules which will qualify the State to administer both the NPDES and RCRA Hazardous Waste Programs in lieu of EPA. When the rules were drafted, MPCA staff intended that the rules contain the EPA provisions necessary for the programs to qualify for equivalency. Therefore, the MPCA staff proposes that this proposed rule be amended to include the distribution requirement for fact sheets, as follows:

> C. Fact sheet. The director shall prepare a fact sheet for each draft permit described in 6 MCAR §4.4108 B. for each draft permit proposed to be issued under 6 MCAR §§4.4021 and 4.4217 A., and for each draft permit that the director finds is the subject of widespread public interest or involves issues of major importance to the agency or to the public. The director shall send a copy of this fact sheet to the applicant and upon request to any other person. The fact sheet must set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The fact sheet must include, if applicable:

JMH:dd

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:
5AR

JAN 2 1 1984

RECEIVED
JAN 20 1984
MPCA
ATTORNEY GENERAL

J. Michael Valentine, Director
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road, B-2
Roseville, Minnesota 55113

Dear Mr. Valentine:

This letter is in reference to your draft submittal in which the Minnesota Pollution Control Agency (MPCA) is developing a standard permitting procedure. U.S. Environmental Protection Agency (USEPA) has reviewed 6 MCAR §§4.4001-4.4021, Permits; 6 MCAR §§4.4301-4.4305, Air Emission Facility Permits; 6 MCAR §§4.4311-4.4321, Indirect Sources; and the Statement of Need and Reasonableness and has the following comments.

(1) 40 C.F.R. 51.18(h)(1) provides that prior to approval or disapproval of the construction or modification of a facility the State must provide an opportunity for public comment. This requirement applies to constructions and modifications that will result in violations of the control strategy or will interfere with attainment or maintenance of a National Ambient Air Quality Standard (NAAQS). At a minimum, this must include sources subject to Prevention of Significant Deterioration (PSD) and offset requirements, i.e. major modifications and major stationary sources. 6 MCAR §4.4002 exempts construction or modification of a facility with a potential controlled net increase of a single pollutant of less than 100 tons per year from requirements for the preparation and distribution of public notice and the opportunity for submission of comments. The provision for opportunity to comment does not apply to facilities with a potential controlled net increase of a single pollutant of 100 to 250 tons per year. "Potential controlled net increase" is not defined. USEPA cannot approve this provision unless MPCA demonstrates that notice and opportunity for public comment are provided concerning all sources subject to PSD and offset requirements.

(2) 40 C.F.R. 51.18(h)(2)(i) require that the opportunity for public comment includes availability for public inspection of the information submitted by the source and the State's analysis of the effect on air quality. 40 C.F.R. 51.18(h)(4) requires that a copy of the notice be sent to USEPA. 6 MCAR §4.4010 D and E, regarding content and distribution of the public notice, do not include the required provisions.

(3) Section 110(a)(2)(K) of the Clean Air Act provides that a State Implementation Plan (SIP) must require the owner or operator of a stationary source to pay the permitting authority as a condition of any permit required under the Act the reasonable cost of reviewing, and acting upon, the permit application. 6 MCAR §§4.4001-4.4021, 4.4301-4.4305 does not require the owner or operator of the facility to pay any permit fee.

(4) 40 C.F.R. 51.18(b) requires that a State must be able to prevent the construction of a new source or modification if the proposed construction would violate a control strategy or interfere with the attainment or maintenance of national standards. 6 MCAR §4.4014 B.1. as proposed seems to accomplish this. However, if the Agency removes the reference to the Federal statutes and only a reference to the State statutes remain, this is no assurance that compliance with a NAAQS is a criteria for permit approval.

(5) The requirement that a modification, which involves a change in pollution control equipment, must receive a permit is present in APC-3(e). This specific type of modification seems to be exempted from the proposed rules.

(6) On page 35 of the statement of need and reasonableness, MPCA states that during the public comment period it will propose to modify the rule which sets forth the basis upon which the Agency will make a final determination on a permit, by deleting the provision that a permit will be issued if the facility complies with applicable federal statutes. MPCA also proposes deletion of the provision that noncompliance with federal statutes constitutes justification for refusal to issue a permit. This proposed modification is particularly important because Minnesota's proposed lead SIP does not provide for the review of new lead sources. On December 29, 1983, USEPA proposed to approve the State's new source review program for lead conditioned on a demonstration by the State APC-3 include authority to review installation permit applications against the NAAQS for lead. The proposed modification nullifies the new source review program for lead.

If you have any comments regarding these comments, please contact Catherine Fox at 312-886-6849 or Ron Van Mersbergen at 312-886-6056.

Sincerely yours,

Steve Rothblatt, Chief
Air and Radiation Branch

cc: Rich Sandberg



Minnesota Pollution Control Agency

February 14, 1984

Mr. Leonard G. Eilts, Director
Office of Environmental Services
Minnesota Department of Transportation
704 Transportation Building
St. Paul, Minnesota 55155

Dear Mr. Eilts:

We wish to express our appreciation for the time which your staff spent in reviewing the proposed amendments to APC 19 and for the comments which were submitted to the Minnesota Pollution Control Agency (MPCA).

In response to the first comment in your letter concerning the application of the assessment procedure required under 6 MCAR §4.4315, which would establish the requirement for a permit, the Agency staff has chosen to leave the rule as proposed.

The staff acknowledges the clarification of intent regarding the assessment process for highways set forth in the letter from Grant Merrit, Executive Director, Minnesota Pollution Control Agency, dated January 3, 1975. The Agency staff has gained additional experience and expertise in reviewing indirect sources since that time and has found the assessment procedure for highway projects necessary in order to evaluate the impact on roadways connecting to a proposed project.

This action will not result in a large number of assessments being required of smaller highway projects because of the definition of "highway project" used in the rule. Of those projects which must undergo the assessment, few will be required to obtain a permit. During the history of this rule only one highway project which was processed under the assessment procedure required a permit.

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In response to your second comment on 6 MCAR §4.4320 A.3., Permit Conditions, the Agency staff proposes to modify the proposed rule amendment to clarify the intent of the rule. The Agency staff did not intend to place on the director the responsibility for establishing traffic flow characteristics applicable to a proposed project. In actuality, the applicant will propose the traffic flow characteristics which will prevent violations of carbon monoxide ambient air quality standards, and the Director will fashion permit conditions to assure implementation of the designated traffic flow characteristics. The Agency staff has proposed to modify 6 MCAR §4.4320 as follows:

> 3. binding commitments by the owner or operator to construct, modify, or operate the indirect source ~~in a manner necessary~~ to achieve the traffic flow characteristics ~~determined by the director to be appropriate~~ necessary to prevent violations of carbon monoxide ambient air quality standards.

The proposed rules with modifications recommended by the staff in response to comments received will be presented to the Agency Board for adoption at the February 28, 1984, Board meeting. The rule will then be reviewed by the Attorney General as to form and legality, filed with the Secretary to State, and published in the State Register.

If you have any questions, please contact Richard J. Sandberg, Minnesota Pollution Control Agency, Division of Air Quality, 1935 West County Road B-2, Roseville, Minnesota 55113, telephone number 612/296-7316.

Sincerely,

Jay Heffern

Jay M. Heffern
Deputy Executive Director

JMH:jew

Minnesota Pollution Control Agency

February 15, 1984

Mr. Michael J. Duffy Manager
Environmental and Health Affairs
Ashland Petroleum Company
P. O. Box 3091
Ashland, Kentucky 41114

Dear Mr. Duffy:

This letter is in response to your comment letter dated January 12, 1984, regarding the Minnesota Pollution Control Agency's (MPCA) proposed permit rules.

We understand that your concerns have been primarily addressed by my memo to the permit rule comment file dated November 14, 1983, which you previously received a copy of. Our intent is to recommend that the proposed changes in the November 14 memo be adopted into the final permit rules.

In the last paragraph on the first page of your letter you express some additional concern that the state may be delegating its authority to the federal government in Section 4.4017 C. by making changes in federal effluent guidelines, one of the criteria justifying modification of a permit. The NPDES permit program is a federal program which has been delegated from the Environmental Protection Agency (EPA) to certain states including Minnesota. With this delegation is a requirement that state issued NPDES Permits conform to certain nationwide requirements for best available technology for waste treatment. These technology based requirements are mandated by the Clean Water Act, for certain categories of industry. The MPCA very carefully reviews proposed effluent guidelines to insure that they are consistent with the state program. In most cases in Minnesota, the wastewater effluent requirements for industries are based on state water quality standards which are stricter than federal technology based efflent guidelines. In general we do not believe that the application of nationwide effluent guidelines has proven to be a problem in Minnesota.

Sincerely,

Jay M. Heffern
Deputy Executive Director

JMH/DAH:lh

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Minnesota Pollution Control Agency

February 15, 1984

Colonel Edward G. Rapp
District Engineer
U.S. Army Corps of Engineers
St. Paul District
1135 U.S. Post Office and Custom House
St. Paul, Minnesota 55101

Dear Colonel Rapp:

This letter is in response to your comments on the Minnesota Pollution Control Agency (MPCA) proposed permit rules which were published in the State Register on December 19, 1983. You commented that a provision should be made in the rules for less than 30 day notice for State Disposal System Permits which contain Section 401 Certifications in order to make the notice consistent with notices for Corps permits.

The MPCA is still in the process of determining its procedures for Section 401 Certification. As we proceed further with this process, we will take into account your comments and keep you advised on our progress.

Thank you for your response to the Agency's public notice on the proposed permit rules. Should you have any further questions, please do not hesitate to contact me or Mr. Curtis Sparks at (612) 296-7221.

Sincerely,

Jay Heffern

Jay M. Heffern
Deputy Executive Director

JMH/CJS:tj

Phone:_____
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Minnesota Pollution Control Agency

February 15, 1984

Mr. Steve Rothblatt, Chief
Air and Radiation Branch
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Dear Mr. Rothblatt:

The Minnesota Pollution Control Agency staff wishes to express its appreciation for the comments which your staff submitted during the public comment period on the Agency's proposed rules 6 MCAR §§4.4001 - 4.4021, Permits; 6 MCAR §§4.4301 - 4.43-5, Air Emission Facility Permits; and 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits. The Agency staff hereby submits its responses to your comments.

1. Comments related to final determinations on permits. As proposed, 6 MCAR §4.4014 B.1. provides that failure to comply with state and federal pollution control statutes and rules constitutes justification for denial of a permit. At page 35 of the Statement of Need and Reasonableness the staff indicated that it was proposing a change in that rule so that denial of a permit would be based upon a violation of state (not federal) pollution control statutes "administered by the agency," agency (not federal) rules, or the "conditions of the permit." As explained in the Statement of Need and Reasonableness, the addition of the words "administered by the agency" was proposed so that the Agency would avoid claims that the Agency should deny permits on the grounds that the statutes and rules administered by other state agencies would be violated. The staff believed that adding the words "or conditions of the permit" made the references to federal statutes and rules unnecessary because compliance with federal requirements could be specified as conditions of the permit, and thus noncompliance with federal rules could, in that manner, be grounds for denial of a permit.

In your comments you have expressed concern with this change, on two grounds. First, you state that the new language may not assure compliance with National Ambient Air Quality Standards.

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Second, you state that the new language nullifies the Agency's recently delegated new source review program for lead.

Although the Agency staff believes that compliance with federal requirements could be accomplished under the proposed language at page 5 of the Statement of Need and Reasonableness, the staff has no objection to returning to the rules, the references to federal pollution control statutes and rules, so long as those references are limited to those "administered by the agency." Therefore, the Agency staff will be recommending to the Agency that 6 MCAR §4.4014 A., B.1., and B.2. as originally proposed be modified as follows:

A. Agency action. Except as provided in B., the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and conditions of the permit and that all applicable requirements of Minnesota Statutes, chapter 116D and the rules promulgated thereunder have been fulfilled.

B. Agency findings. The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance or to revoke a permit without reissuance:

1. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit;

2. that there exists at the facility to be permitted unresolved noncompliance with applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit, and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

We believe this change will address your concern.

2. Comments related to federal requirements for public notice and opportunity for comment. In your comments you express a concern that the rules do not reflect some federal requirements concerning the public noticing of certain permits issued pursuant to federal programs. The Agency made commitments to comply with

these requirements in accepting the delegation of authority for New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and for implementing the Prevention of Significant Deterioration program.

In the staff's view, the Agency's obligation to comply with these federal requirements are not affected by the proposed rules. A review of the rule which presently applies to air emission facility permits, Minn. Rule APC 3, shows that these federal requirements were not reflected in that rule either, and yet the Agency has for the past six years fulfilled the requirements of federal regulations with respect to these programs. Therefore, the staff does not feel that any change needs to be made to the rules in this regard. However, the staff can assure EPA that it will continue to meet its obligations under those programs.

3. Comment relating to permit fees. In your comments you note that the proposed rules do not require the payment of a permit fee for sources of air pollution. Until 1983, the Agency did not have the statutory authority to require the payment of permit fees. However, the legislature in 1983 enacted a statute giving the Agency the authority to collect fees to cover the cost of permitting activities. The Agency staff is currently in the process of investigating methodologies which could be implemented to exercise this authority.

4. Comment relating to modifications of control equipment. In your comments you state that a modification of control equipment for a facility seems to be exempt from the requirement to obtain a permit modification. However, 6 MCAR §4.4303 A. specifically requires a permit for modification of "control equipment."

The proposed rules with modifications recommended by the staff in response to comments received will be presented to the Agency Board for adoption at the February 28, 1984, Board meeting. The rule will then be reviewed by the Attorney Genreal as to form and legality, filed with the Secretary of State, and published in the State Register.

If you have any questions, please contact Richard J. Sandberg, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota (612) 296-7316.

Sincerely,

Jay M. Heffern
Deputy Executive Director

JMH/mpg

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

STATEMENT OF COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jocelyn F. Olson, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

Dated: February 28, 1984

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

AFFIDAVIT CONCERNING SUBMITTAL OF RULES TO ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jay M. Heffern, being duly sworn on oath deposes and says:

1. That he is the Deputy Executive Director of the Minnesota Pollution Control Agency (Agency).

2. That the Agency's Notice of Intent to Adopt Amendments to Rules Without a Public Hearing as mailed on December 15, 1983, and as published in the State Register (8 S.R. 1419, December 19, 1983, informed the public of the opportunity to request to be advised of the date the rules are to submitted to the Attorney General for review.

2. That no person requested to be notified of the date that the Agency submits the rules to the Attorney General for review.

Jay M. Heffern
Deputy Executive Director

Subscribed and sworn to before me this 23rd day of February, 1984.

Notary Public

MARYANNE GIBBONS
NOTARY PUBLIC MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26 1988

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Construction Permits

ORDER ADOPTING, AMENDING, AND REPEALING RULES

Notice of the Minnesota Pollution Control Agency's intent to adopt amendments to the above-entitled rules without a public hearing was published in the State Register on December 19, 1983, and was sent by United States mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §14.14 (1982) on December 15, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, after receiving no requests for public hearing within the 30-day comment period, after reviewing and considering the comments, and after determining the need for and reasonableness of the above-captioned rules, rule amendment, and repeals,

NOW, THEREFORE, IT IS ORDERED, with respect to the following attached rules:

1. That 6 MCAR §§4.4001 - 4.4021, Permits, is adopted;

2. That 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits, is adopted;

3. That 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits, is adopted

4. That Minn. Rule APC 19, Indirect Sources, is amended and recodified as 6 MCAR §§4.4311 - 4.4321.

5. That 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits, is adopted.

6. That Minn. Rule MPCA 5, Minn. Rule WPC 36, Minn. Rule APC 3, and 6 MCAR §§4.9006 and 4.9007 are repealed.

The above listed rules are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116.07, subd. 4 (1982).

Dated this 28th day of February, 1983.

Cynthia C Jepsen

CYNTHIA JEPSEN
Chairperson

for Sandra S. Gardebring

SANDRA S. GARDEBRING
Executive Director

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

ORDER FOR NOTICE OF INTENT TO ADOPT AMENDMENTS TO RULES WITHOUT A PUBLIC HEARING

It is hereby ordered this 5th day of December, 1983, that Notice of Intent to Adopt Amendments to Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and be published in the State Register.

for Jay M. Heffern

SANDRA S. GARDEBRING
Executive Director

Marty Casserly
AG - Admin.

MINNESOTA POLLUTION CONTROL AGENCY

Agenda Item Control Sheet

AGENDA # 20

MEETING DATE: March 27, 1984

APPEARANCE REQUESTED - Yes: _____ No: X
SCHEDULED TIME: _____

PREPARED BY: Karen Ryss, Jocelyn Olson

DATE PREPARED: March 16, 1984
DATE MAILED : March 16, 1984

SUBJECT: Request for Approval of Amendment to 6 MCAR §4.4221 G. of the Hazardous Waste Facility Permit Rules

LOCATION: Roseville (City) Ramsey (County)

TYPE OF ACTION:

Permit	____	Request for hearing	____	New	____
Stipulation	____	Request for legal action	____	Modification	____
Contract	____	Variance request	____	Extension	____
Policy	____	Rulemaking	X	Revocation	____
Information	____	Administrative order	____	Other	____

RECOMMENDED ACTION:

Issuance	____	Approval	X	No action needed	____
Denial	____	Authorization	____		

ISSUE STATEMENT:

The Attorney General has reviewed for form and legality the Agency's permit rules which were adopted, amended, and repealed by the Agency on February 28, 1984, and has approved the rules on the condition that the Agency amend 6 MCAR §4.9221 G. of the Hazardous Waste Facility Permit Rules to clarify the circumstances upon which the Director would grant extensions to the time requirement set forth in the rule. The staff recommends that the Agency approve a clarifying amendment to the rule to satisfy the condition established by the Attorney General for approval of the rules.

ATTACHMENTS:

1. Order Adopting Amendments to 6 MCAR §4.4221 G.
2. _____
3. _____
4. _____
5. _____

MINNESOTA POLLUTION CONTROL AGENCY
Administration

Request for Approval of Amendment to 6 MCAR §4.4221 G.
of the Hazardous Waste Facility Permit Rules

March 27, 1984

ISSUE STATEMENT

The Attorney General has reviewed for form and legality the Agency's permit rules which were adopted, amended, and repealed by the Agency on February 28, 1984, and has approved the rules on the condition that the Agency amend 6 MCAR §4.4221 G. of the Hazardous Waste Facility Permit Rules to clarify the circumstances upon which the Director would grant extensions to the time requirement set forth in the rule. The staff recommends that the Agency approve a clarifying amendment to the rule to satisfy the condition established by the Attorney General for approval of the rules.

1. Background

On February 28, 1984, the Agency adopted rules related to the Agency's permit programs. One of these rules was 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits. On February 29, 1984, the Agency submitted the rules to the Attorney General for review as to form and legality, in accordance with Minn. Stat. §14.26 (Supp. 1983).

On March 15, 1984, the Attorney General approved the rules as adopted on the condition that the Agency amend 6 MCAR §4.4221 G. to clarify the circumstances upon which the Director would grant extensions to the time requirement set forth in the rule for the submission of information relating to trial burns of hazardous waste.

II. Discussion

6 MCAR §4.4221 G. as adopted provides:

Submission of certification, results, and data. The

> owner or operator shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the analyses and determinations required by F. along with all underlying data of the results. The owner or operator shall make these submissions within 90 days after the completion of the trial burn, or later if approved by the director.

(Emphasis supplied.) The Attorney General, by conditioning his approval of the rules, is requiring the Agency to amend this rule to clarify underlined portion; that is, to add language which would notify the public under what circumstances the Director would approve a time extension. This rule could be clarified by amending the last sentence as follows:

> The owner or operator shall make these submissions within 90 days after the completion of the trial burn, or later if approved by the director upon a finding by the director that good cause exists for granting a time extension.

Because this is a clarifying amendment, it would not be a substantial change in the rule.

III. Recommendation

The staff recommends that the Agency approve and adopt the attached Suggested Staff Resolution adopting a clarifying amendment to 6 MCAR §4.4221 G.

SUGGESTED STAFF RESOLUTION

WHEREAS, the Minnesota Pollution Control Agency on February 28, 1984, adopted rules relating to Hazardous Waste Facility Permits, 6 MCAR §§4.4201 - 4.4224; and

WHEREAS, the Attorney General pursuant to Minn. Stat. §14.26 (Supp. 1983) has reviewed those rules as to form and legality and has approved the rules on the condition that the Agency amend 6 MCAR §4.4221 G. to clarify the circumstances upon which the Director would grant extensions to the time requirements set forth in the rule;

NOW, THEREFORE, BE IT RESOLVED, that the Agency hereby approves and adopts the following amendment to 6 MCAR §4.4221 G.:

> Submission of certification, results, and data. The owner or operator shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the analyses and determinations required by F. along with all underlying data of the results. The owner or operator shall make these submissions within 90 days after the completion of the trial burn, or later if approved by the director <u>upon a finding by the director that good cause exists for granting a time extension</u>.

BE IT FURTHER RESOLVED, that prior to publishing the rules in the State Register the Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's Certificate as required in Minn. Stat. §14.08 (Supp. 1983).

BE IT FURTHER RESOLVED, that the Agency adopts the attached Order Adopting Amendment to 6 MCAR §4.4221 G.

BE IT FURTHER RESOLVED, that the Chairperson and the Director are authorized to sign the Order on behalf of the Agency.

Minnesota Pollution Control Agency

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

ORDER ADOPTING AMENDMENT TO 6 MCAR §4.4221 G.

The above-entitled rule proposals were adopted by the Minnesota Pollution Control Agency (Agency) on February 28, 1984, and were submitted to the Attorney General for review as to form and legality on February 29, 1984. On March 15, 1984, the Attorney General approved the rules on the condition that the Agency amend 6 MCAR §4.4221 G. to clarify the circumstances upon which the Director would grant extensions to the time requirement set forth in the rule.

NOW, THEREFORE, IT IS ORDERED, this 27th day of March, 1984, that 6 MCAR §4.4221 G. is amended as follows:

> Submission of certification, results, and data. The owner or operator shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the analyses and determinations required by F. along with all underlying data of the results. The owner or operator shall make these submissions within 90 days after the completion of the trial burn, or later if approved by the director upon a finding by the director that good cause exists for granting a time extension.

ADMINISTRATIVE AGENCIES
ATTORNEY GENERAL
MAR 26 1984
RECEIVED

CYNTHIA JEPSEN
Chairperson

SANDRA S. GARDEBRING
Executive Director

27-556: Unnamed	1; 36	118; 119 (Plymouth, Maple Grove)	22
27-588: Unnamed	SW 2	118 (Plymouth)	22
27-598: Unnamed	5	118 (Plymouth)	22
27-608: Unnamed	NW 20	118 (Plymouth)	22
27-622: Unnamed	14	118 (Plymouth)	22
*27-1104: Unnamed	9	120 (Dayton)	22
*27-1105: Unnamed	9, 10	120 (Dayton)	22
*27-1106: Unnamed	SE 31	117 (Edina)	21

*Petitioned to be added

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 15.0424 and 15.0425 (1980).

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minn. Stat. § 105.42, subd. 1 (1980). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minn. Stat. § 105.391, subds. 10 and 12 (1980).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles
DNR—Division of Waters
Third Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101
Telephone: 612/297-2835

March 29, 1982

Joseph N. Alexander, Commissioner
Department of Natural Resources

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Relating to Permits Issued by the Minnesota Pollution Control Agency

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is conducting a review of its rules relating to permits, including the procedures for issuing agency permits, and is considering the adoption of rules which would replace the following existing agency rules:

1. Minn. Rule MPCA 5, Permits.

2. Minn. Rule APC 3, Permits.

3. Minn. Rule APC 19, Indirect Source Permits.

4. Minn. Rule WPC 36, Regulations for Administration of the National Pollutant Discharge Elimination System (NPDES) and State Disposal System Permit Program.

5. 6 MCAR § 4.9006, Hazardous Waste Facility Permit Program.

All interested or affected persons or groups may submit data or views on the proposed rules. Statements of information and comment may be made orally or in writing.

Comments and information concerning the proposed rules which will set forth generally applicable permitting procedures and concerning the rules applicable to NPDES permits should be directed to:

Perry Beaton
Assistant Division Director
Division of Water Quality
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113
Telephone: (612) 296-7354

Comments and information concerning the proposed rules applicable to hazardous waste facility permits should be directed to:

Richard Svanda
Assistant Division Director
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113
Telephone: (612) 296-2732

Comments and information concerning the proposed rules applicable to air emission facilities and control equipment and the rules relating to indirect source permits should be directed to:

Tim K. Scherkenbach
Assistant Division Director
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113
Telephone: (612) 296-7340

All written material received by the agency will become part of the record of any proceeding commenced by the agency to promulgate the rules.

Department of Public Welfare Services for the Blind

Notice of Intent to Solicit Outside Opinions Concerning Rehabilitation Programs for Blind and Visually Handicapped Persons

Notice is hereby given that the Minnesota Department of Public Welfare is considering adoption of a proposal rule, 12 MCAR 2.176 Rehabilitation Services for Blind and Visually Handicapped Persons.

Authority for the rule is contained in Minnesota Statute § 248.07.

This rule, when developed, will govern the provision of direct rehabilitative services to blind and visually handicapped persons, including basic eligibility, the development of the formal rehabilitation plan, financial need eligibility, training, medical services, legal blindness, the provision of tools and equipment and program definitions. The Business Enterprise Program is governed by rule 12 MCAR § 2.079 and will not be covered by this action.

The purpose of this notice is to provide the opportunities for the widest possible input from all interested organizations and individuals on the proposed rule. All persons and individuals are requested to participate. Statements of information, suggestions or comments may be made orally or in writing.

After the comment period the rule will be drafted and made available for further reference before public hearing. Notice of public hearing will be made available to all interested persons and organizations.

Other information or comments may be addressed to:

Karl W. Nitardy
Administrative Deputy
State Services for the Blind and Visually Handicapped
1745 University Avenue
St. Paul, MN 55104

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

AFFIDAVIT CONCERNING COMMENTS RECEIVED PURSUANT TO NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jay M. Heffern, being duly sworn on oath deposes and says:

1. That he is the Deputy Executive Director of the Minnesota Pollution Control Agency (Agency).

2. That on April 5, 1982, the Agency published a Notice of Intent to Solicit Outside Opinion (6 S.R. 1700) concerning the above-captioned rules.

3. That the Agency did not receive any written comments in response to the above-described notice.

Jay M. Heffern
Deputy Executive Director

Subscribed and sworn to before me this 23rd day of February, 1984.

Maryanne Gibbons
Notary Public

MARYANNE GIBBONS
NOTARY PUBLIC MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Cynthia Jepsen, do hereby certify that I am a member and the Chairperson of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called andheld on the 27th day of September, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby finds that the attached proposed rules relating to Agency permits are noncontroversial in nature.

BE IT FUTHER RESOLVED, that the Executive Director of the Minnesota Pollution Control Agency is hereby granted the authority and directed to sign an Order of the Agency directing that Notice be given of the Agency's intent to do the following:

1. Adopt 6 MCAR §§4.4001 - 4.4021, Permits.

2. Adopt 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits

3. Adopt 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits.

4. Amend Minn. Rule APC 19, Indirect Sources, to be recodified as 6 MCAR §§4.4311 - 4.4321.

5. Adopt 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

6. Repeal Minn. Rule MPCA 5, Minn. Rule WPC 36, Minn. Rule APC 3, and 6 MCAR §§4.9006 and 4.9007.

The Executive Director is granted the authority and directed

to sign the Notice thereof, and to perform any acts incidental thereto.

BE IT FURTHER RESOLVED that 6 MCAR §4.4002 D., E., and H. as they appear in the attached draft rules shall be amended so that the phrase "the time for submission is" shall be replaced by the following phrase: "the time period referenced in those rules shall be."

BE IT FURTHER RESOLVED that 6 MCAR §4.4002 I. as it appears in the attach draft rules shall be amended so that the phrase "the time for making application is" shall be replaced by the following phrase: "the time period referenced in that rule shall be."

Prior to publishing the proposed rules in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required in Minn. Stat. §14.07, subd. 2 (1982), and to make any corrections in the rules with respect to cross-referencing of other rules.

In the event a public hearing becomes necessary, the Executive Director is hereby granted the authority and directed to call a hearing for the purpose of adopting, amending, or repealing the rules as set forth above, and to perform any and all acts incidental thereto, including but not limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of September, 1983.

Cynthia C Jepsen
CYNTHIA JEPSEN
Chairperson

Duane A Dokkenes
Attest by one other Agency member

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Penny Nicklen, being duly sworn, deposes and says:

That on the 15 day of Dec, 1983, at the City of Roseville, County of Ramsey, State of Minnesota, s/he served the attached Notice of Intent to Adopt Amendments to Rules Without a Public Hearing by depositing in the United States mail for first class mailing at said City of Roseville, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Pollution Control Agency for the purpose of receiving notice of the proposed adoption of rules by the Pollution Control Agency.

Penny Nicklen

Subscribed and sworn to before me this 15th day of December 1983.

Charlene G. Hughes
Notary Public

CHARLENE G. HUGHES
NOTARY PUBLIC—MINNESOTA
WRIGHT COUNTY
MY COMMISSION EXPIRES JUNE 14, 1984

Minnesota Pollution Control Agency

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

NOTICE OF INTENT TO ADOPT AMENDMENTS TO RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends, without a public hearing, to do the following:

1. Adopt 6 MCAR §§4.4001 - 4.4021, Permits.

2. Adopt 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits.

3. Adopt 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits.

4. Amend Minn. Rule APC 19, Indirect Sources, to be recodified as 6 MCAR §§4.4311 - 4.4321.

5. Adopt 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

6. Repeal Minn. Rule MPCA 5, Minn. Rule WPC 36, Minn. Rule APC 3, and 6 MCAR §§4.9006 and 4.9007.

The Agency has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§14.21 - 14.28 (1982).

The proposed rules, rule amendment, and repeals are authorized by Minn. Stat. §116.07, subd. 4 (1982). The rules which are proposed to be adopted will replace the rules which are proposed to be repealed. The following describes the general nature of the rules which are proposed to be adopted or amended:

1. Permits: This rule sets forth the standard Agency permitting procedure and applies to the types of agency permits listed in the "Applicability" section of the rule.

2. National Pollutant Elimination Discharge System Permits: This rule is supplemental to the general permit rule and contains specific requirments for National Pollutant Discharge Elimination System Permits.

3. Hazardous Waste Facility Permits: This rule is supplemental to the general permit rule and contains specific requirements for hazardous waste facility permits.

4. Air Emission Facility Permits: This rule is supplemental to the general permit rule and contains specific requirements for air emission facility permits.

5. Indirect Source Permits: This rule is supplemental to the general permit rule and contains specific requirements for indirect sources of air pollutants. This rule is not new, but is an amendment of the existing Minn. Rule APC 19.

One free copy of the rules is available on request from the Agency. Please contact the person whose name and address appears below.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available and may be obtained by contacting:

Perry Beaton
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7354

Interested persons have until January 20, 1984, to submit comments on the proposed amendments. The proposed amendments may be modified if the data and views submitted to the Agency warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the comment period, a public hearing will not be held. In the event that a public

hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §14.11 - 14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Perry Beaton, at the Agency address previously stated (telephone: (612) 296-7354), no later than January 20, 1984. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the amendments by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be sent to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as adopted, should submit a written statement of such request to Perry Beaton at the address previously stated.

You are hereby advised, pursuant to Minn. Laws 1983, ch. 188, "Small business considerations in rulemaking," that the proposed rule amendments may have an impact on some small businesses in Minnesota. This rule will make agency permit requirements more uniform, which will benefit small businesses needing agency permits. The rules relating to hazardous waste facility permits and NPDES permits specifically incorporates federal requirements, which may affect small businesses. The rules relating to air emission facilities and NPDES permits contain some new exemptions which may be beneficial to small businesses. More detailed information concerning the nature of the impact of these changes upon small businesses is set forth in the Agency's Statement of Need and Reasonableness.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. §10A.01, subd. 11 (1982) as any individual:

> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250 not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

for Jay M. Heffern

SANDRA S. GARDEBRING
Executive Director

Dated: December 15, 1983

MAILING LIST
INTER OFFICE

DEPT OF EDUCATION
ATTN FREDRIK M CHRISTIANSEN
RM 911 CAPITOL SQ BLDG
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN KENT E EKLUND
180 CEDAR ST
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN RICHARD C BUSKE
180 CEDAR ST
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN CHARLES SCHAFFER
180 CEDAR ST
ST PAUL MN 55101

WATER RESOURCES BOARD
555 WABASHA RM 206
ST. PAUL MN 55102

LEGISLATIVE COMM TO
REVIEW ADMIN RULES
ATTN KATHLEEN BUREK
RM 430
STATE OFFICE BLDG

MN DEPT ECONOMIC SECURITY
ATTN F JAMES RYBAK PHD
690 AM CE 150 E KELLOGG
ST PAUL MN 55101

OFF OF LEGISLATIVE AUDITOR
ATTN ALLAN BAUMGARTEN
PROGRAM EVALUATION SPEC
122 VETERANS SERV BLDG
ST PAUL MN 55155

LEGISLATIVE COMM ON
WASTE MANAGEMENT
ATTN SUE ROBERTSON
B-46
STATE CAPITOL

ATTORNEY GENERAL'S OFFICE
ANTITRUST DIVISION
2ND FLOOR FORD BLDG
117 UNIVERSITY AVE

DEPT OF AGRICULTURE
AGRONOMY SERVICES
ATTN GARY BRAUN
90 W PLATO BLVD
ST PAUL MN 55107

MEEB CENTRAL OFFICE
ATTN RAY QUINN
BOX 5 CENTENNIAL BLDG
ST PAUL MN

SENATE COUNCIL OFFICE
ATTN ALAN WILLIAMS
RM 480
STATE OFFICE BLDG
ST PAUL MN 55155

BRD OF ARCH ENG LAND SURV
AND LANDSCAPE ARCHITECTURE
ATTN LOWELL E TORSETH
500 METRO SQUARE
ST PAUL MN 55101

MN DEPT OF HEALTH
ATTN JAMES WITKOWSKI
717 Delaware St. SE
MPLS MN 55440

~~SCIENCE & TECH OFFICE~~
~~ATTN JOHN MALINKA~~
~~RM 49 STATE OFFICE BLDG~~
~~ST PAUL MN 55155~~

METROPOLITAN COUNCIL
ATTN JOHN T HOEFT
300 METRO SQ BLDG
7TH ST & ROBERT ST
ST PAUL MN 55101

PRESS/MN GOVT REPORT
ATTN JEAN DAWSON
RM B12 CAPITOL BLDG
ST PAUL MN 55155

Jack Ditmore
State Planning Agency
Environmental Division
100 Capitol Square Bldg.
550 Cedar Street

LAKE SUPERIOR
INDUSTRIAL BUREAU
828 FIRST NATIONAL BANK
DULUTH MN 55802 1

N S P LAW DEPT
ATTN JOSEPH D BIZZANO JR
414 NICOLLET MALL
MPLS MN 55401 1

NORTHERN STATES POWER CO
ATTN G V WELK MANAGER
REG COMPLIANCE AND SERV
414 NICOLLET MALL
MPLS MN 55401 1

MN MULTI HOUSING ASSOC
ATTN JOHN G HORNER
3100 W LAKE ST
MPLS MN 55416 1

HOLMES & GRAVEN
ATTN LARRY M WERTHEIM
470 PILLSBURY CENTER
MINNEAPOLIS MN 55402 1

POTLATCH CORPORATION
ATTN MR ARCHIE D CHELSETH
BOX 510
CLOQUET MN 55720 1

ANOKA CO COMM HEALTH &
SOCIAL SERV DEPT
ATTN GERTRUDE M JAMES
COURTHOUSE 4TH FL
ANOKA MN 55303 1

FEDERAL STATE REPORTS INC
ATTN STATE REG DIV
5203 LEESBURG PIKE
SUITE 1201
FALLS CHURCH VA 22041 1

LAKE MINNETONKA CONS DIST
402 E LAKE ST
WAYZATA MN 55391 1

arbara L. Hughes P
anaging Director
m. Lung Ass'n Ramsey Cty
14 Portland Ave.

U OF M PHYSICAL PLANT DEPT
ATTN ROBERT SILVAGNI
200 SHOPS BLDG
319 15TH AVE SE
MPLS MN 55455 1

GENERAL MILLS INC
ATTN J W HAUN
P O BOX 1113
MPLS MN 55440 1

HESSIAN MCKASY & SODERBERG
ATTN MR JOHN A KNAPP
1500 MIDWEST PLAZA BLDG
MPLS MN 55402 1

MN ASSOC HEALTH CARE FAC
ATTN RICK CARTER
2850 METRO DRIVE SUITE 429
MPLS MN 55420 1

PETERSEN, KNUTSON
FLYNN & HETLAND
345 CEDAR BLDG.
SUITE 800
ST. PAUL, MN 55101 1

JONES HAUGH & SMITH INC
515 SOUTH WASHINGTON
ALBERT LEA MN 56007 1

WILLIAM MITCHELL COLLEGE
OF LAW
ATTN PROF MARCIA GELPE
875 SUMMIT AVE
ST PAUL MN 55102 1

COLOR-AD PACKAGING INC
ATTN MICHAEL S KECKEISEN
3600 ALABAMA AVE
MPLS MN 55416 1

THE SHERWIN-WILLIAMS CO
ATTN D A COHAGAN
101 PROSPECT AVE NW
CLEVELAND OH 44115 1

CONWED
ATTN K J POWELL
444 CEDAR STREET
P O BOX 43237

MN RETAIL MERCHANTS ASSO
ATTN JOHN E VAN DOORN
180 METRO SQUARE BLDG
ST PAUL MN 55101

IOWA DEPT ENVIRON QUALITY
ATTN STEVEN N WILLIAMS
HENRY A WALLACE BLDG
DES MOINES IA 50319 1

MPIRG
ATTN KENNETH PETERSON
2412 UNIVERSITY AVE SE
MPLS MN 55414 1

MPIRG
ATTN JAMES MILLER
2412 UNIVERSITY AVE SE
MPLS MN 55414 1

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AUSTIN MN 55912 1

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St. Paul, MN 55101

Tom Rees
22300 Penn Avenue
Lakeville, MN 55044

Kevin Proesholdt
MN Audubon Council
Suite O, Boyd Place
2929 4th Ave. S.
Minneapolis, MN 55408

Barbara Lukerman
2211 Folwell St.
St. Paul, MN 55103

John Kearney
N. Amer. Water Office
1519 A East Franklin AVE
Minneapolis, MN 55404

Dr. Warren Lawson
5133 Mirror Lakes Dr
Edina MN 55436

Bill Clausen
4511 Pillsbury Ave.
Minneapolis, MN 55400

James Corbett
703 S. 10th St.
Minneapolis, MN 55404

Al Baldus
Cenex
Box 43089
St. Paul, MN 55164

Doug Proehl
R.F.D. 2
Winthrop, MN 55396

BETSY KIMBALL
LEGAL ASSISTANT
GOODWIN, PROCTER & HOAR
28 STATE STREET
BOSTON MA 02109

Dr. Bob Koob
1219 4th Ave. S.
Moorhead, MN 56560

Jim Jaska
Honeywell Inc-Defense
Sys. Div. MN 11-1734
600 2nd St. NE
Hopkins, MN 55343

~~Phil Duff~~
Red Wing Rep. Eagle
P.

MPCA HEARING NOTIFICATION
MAILING LIST
AIR QUALITY REQUESTS

NSP
ATTN ED SCHENTZEL
REGULATORY LIAISON
414 NICOLLET MALL
MPLS MN 55401 AQ

DAIRYLAND POWER COOP
ATTN ERIC HENNEN
PO BOX 817
2615 EAST AVE SO
LA CROSSE WI 54601 AQ

METRO AIRPORTS COMM
ATTN DIR OF OPERATIONS
5040 28TH AVE S
MPLS MN 55450 AQ

KIBCOR ENGINEERING CO
ATTN BERNARD TRENDA
3424 WOODDALE AVE
MPLS MN 55416 AQ

WINONA DAILY NEWS
ATTN DON STUART
101 N FRANKLIN
WINONA MN 55987 OLMSTED WINONA COUNTIES

IOWA DEPT ENVIR QUALITY
ATTN CHARLES MILLER
9TH & GRAND
DE MOINES IA 50316 AQ

~~NVB ENGINEERING~~
~~ATTN THOMAS STERN~~
~~176 OLSON MEM HWY~~
~~GOLDEN VALLEY MN 55422~~ AQ

NTERN MINERAL & CHEM CORP
NVIR & SAFETY OPERATIONS
21 E HAWLEY ST
UNDELEIN IL 60060 AQ

W PULP & PAPER
TTN HEIDI SCHULTZ
55 116TH AVE NE SUITE 266
ELLEVUE WA 98004 AQ

CORBIN S KIDDER
442 SUMMIT AVE APT #2
ST PAUL MN 55102 AQ

BARBARA KNAPP
9508 BRUNSWICK CIRCLE
BLOOMINGTON MN 55438
AQ & ACID RAIN

VAN HOVEN CO INC
ATTN ED VAN HOVEN JR
BOX 56
SO ST PAUL MN 55075 AQ

NATIONAL RENDERERS ASSO INC
ATTN WILLIAM H PROKOP
2250 EAST DEVON AVE
DES PLAINES IL 60018 AQ

ADH & SEALANT COUNCIL
1600 N WILSON BLVD
SUITE 910
ARLINGTON VA 22209 AQ

Lea Foushee
No. American Water Off.
1519 A E. Franklin Ave.
Minneapolis, MN 55404 AQ

SHELLEY MOORE
CITIZENS FOR A BETTER ENV.
536 W. WISC. AVE. #507
MILWAUKEE, WI 53203 A

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. §14.14 (1982), that their names be placed on file with the Minnesota Pollution Control Agency (Agency) for the purpose of receiving notice of the proposed adoption of rules by the Agency is accurate and complete as of 2:00 P.m., this 15TH day of DECEMBER, 1983.

LaRaine Bengtson

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: SANDRA S. GARDEBRING
Executive Director
Polution Control Agency
Attn: JOCELYN F. OLSON
Special Assistant Attorney General

DATE: 3/15/84

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3 etc.

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. Please 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 stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC:sa

Our File No. 1013

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-1-84
DATE FOR REVIEW 3-9-84
DATE DUE 3-15-84

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 3-~~26~~15 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved ~~3-26~~ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 3-26-84 Revisor approved 3.1.84 disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 2.28.84 Date

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency contains sm. biz statement.

✓ Affidavit of Mailing Notice or rulemaking
12.15.83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.19.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption
✓ + Erratum Notice 1.16.84

N/A Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A 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

N/A Notice of Submission to the Attorney General

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

February 29, 1984

Mr. Mike Miles
Office of the Attorney General
Administration Building
St. Paul, Minnesota 55155

Re: Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4305 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

Dear Mr. Miles:

On February 28, 1984, the Minnesota Pollution Control Agency adopted a resolution taking the following actions:

1. Adoption of 6 MCAR §§4.4001 - 4.4021, Permits.

2. Adoption of 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits.

3. Adoption of 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits.

4. Amendment of Minn. Rule APC 19, Indirect Sources, to be recodified as 6 MCAR §§4.4311 - 4.4321.

5. Adoption of 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

6. Repeal of Minn. Rule MPCA 5, Minn. Rule WPC 36, Minn. Rule APC 3, and 6 MCAR §§4.9006 and 4.9007.

Enclosed for your review are the following:

1. Rules as adopted (original and three copies).

2. Order Adopting, Amending, and Repealing Rules.

3. Certificate of Agency's Resolution Adopting Rules.

4. Notice of Intent to Solicit Outside Opinion (6 S.R. 1699, April 5, 1982).

5. Affidavit Concerning Comments Received Pursuant to Notice of Intent to Solicit Outside Opinion

6. Order for Notice of Intent to Adopt Amendments to Rules Without a Public Hearing.

7. Certificate of Agency's Authorizing Resolution.

8. A copy of Volume 8, Number 25 of the State Register (December 19, 1984), including the Notice of Intent to Adopt Rules Without a Public Hearing and Rules as Proposed (8 S.R. 1419).

9. Errata (8 S.R. 1696, January 16, 1984).

10. Comments received during the comment period.

11. Affidavit of Mailing, Notice of Intent to Adopt Amendments to Rules Without a Public Hearing as mailed, and mailing list.

12. Certificate concerning mailing list.

13. Findings of Fact and Conclusions.

14. Statement of Need and Reasonableness.

15. Statement of Compliance with Rulemaking Procedures.

16. Affidavit Concerning Submittal of Rules to Attorney General.

Very truly yours,

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

Rules as Proposed (all new material)

6 MCAR S 4.4301 Scope.

Rules 6 MCAR SS 4.4301-4.4305 apply to the issuance of air emission facility permits and supplement the agency permit rules in 6 MCAR SS 4.4001-4.4021.

6 MCAR S 4.4302 Definitions.

The definitions in 6 MCAR SS 4.4001 and in 4.0001-4.0041 (APC 1 to 41) apply to the terms in 6 MCAR SS 4.4301-4.4305.

6 MCAR S 4.4303 Permit requirement.

A. Permit required. Except as provided in B., no person may construct, modify, reconstruct, or operate an emission facility or control equipment without obtaining an air emission facility permit from the agency.

B. Exemptions. A person who constructs, modifies, reconstructs, or operates an emission facility that meets one or more of the following exclusions need not obtain an air emission facility permit from the agency:

1. a total emission facility with potential emissions of a single criteria pollutant of less than 25 tons per year, except:

a. a facility subject to Minnesota Rule APC 9, Control of Odors in the Ambient Air;

b. a facility subject to federal new source performance standards; and

c. a total emission facility with potential lead emissions of at least 1,000 pounds per year;

2. a fuel burning facility with heat inputs less than the following:

a. natural gas, 50 million BTU/hr.;

b. distillate oil, 10 million BTU/hr.;

c. wood alone, 5 million BTU/hr.;

d. residual oil, 5 million BTU/hr.; and

e. coal, coke, and other solid fuels, 1 million BTU/hr.;

3. a sand and gravel operation that produces less than

APPROVED IN THE
REVISOR OF STATUTES

150,000 tons of product per year;

4. a pressurized storage tank for anhydrous ammonia, liquid petroleum gas (LPG), liquid natural gas (LNG), or natural gas;

5. a facility that uses less than 10,000 gallons of solvent borne coating per year;

6. a storage tank for petroleum liquid with a capacity of less than 40,000 gallons;

7. a dry bulk agricultural commodity facility with an annual commodity throughput of less than 45,000 tons;

8. an incinerator with a maximum refuse burning capacity of less than 1,000 pounds per hour, unless thermally treating hazardous waste; and

9. a concrete batching facility that produces less than 200,000 cubic yards of concrete per year.

6 MCAR S 4.4304 Permit application.

In addition to the information required by 6 MCAR S 4.4005, a person who requests an emission facility permit shall submit the following information to the director:

A. the characteristics of the exhaust gas stream, before and after the emission control equipment, including emission rates, concentrations, volumetric flow rates, and temperature;

B. the physical characteristics of particulate emissions;

C. the type and design specifications of the control equipment; and

D. the location and elevation of the emission point and the relation of the emission point to nearby structures, window openings, and other information necessary to appraise the possible effects of the exhaust gas stream.

6 MCAR S 4.4305 Special conditions for air emission facility permits.

In addition to the special conditions in 6 MCAR S 4.4015 B. and if applicable to the circumstances, an air emission facility permit may contain special conditions including but not limited to the following:

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

A. standards of performance for air pollutants from an emission facility;

B. operational requirements for situations where a standard of performance is not applicable or the operational requirements are necessary to achieve compliance with a standard of performance;

C. testing and reporting requirements to ensure compliance with standards of performance; and

D. notification and reporting requirements for shutdowns and breakdowns.

Repealer. APC 3 of the Pollution Control Agency rules is repealed.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD378

Agency: Pollution Control Agency

Division: Air Quality Division

Agency Contact: Richard Sandberg

Rule Numbers: 6 MCAR SS 4.4301-4.4305

Title: Proposed Rules Governing Air Emission Facility Permits

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Maryanne V. Hruby
Assistant Revisor
Phone: 297-2948
Date: November 30, 1983

Pollution Control Agency

Adopted Rules Relating to Air Emission Facility Permits

Rules as Adopted

6 MCAR S 4.4301 Scope.

Rules 6 MCAR SS 4.4301-4.4305 apply to the issuance of air emission facility permits and supplement the agency permit rules in 6 MCAR SS 4.4001-4.4021.

6 MCAR S 4.4302 Definitions.

The definitions in 6 MCAR SS 4.4001 and in 4.0001-4.0041 (APC 1 to 41) apply to the terms in 6 MCAR SS 4.4301-4.4305.

6 MCAR S 4.4303 Permit requirement.

A. Permit required. Except as provided in B., no person may construct, modify, reconstruct, or operate an emission facility or control equipment without obtaining an air emission facility permit from the agency.

B. Exemptions. A person who constructs, modifies, reconstructs, or operates an emission facility that meets one or more of the following exclusions need not obtain an air emission facility permit from the agency:

1. a total emission facility with potential emissions of a single criteria pollutant of less than 25 tons per year, except:

a. a facility subject to Minnesota Rule APC 9, Control of Odors in the Ambient Air;

b. a facility subject to federal new source performance standards; and

c. a total emission facility with potential lead emissions of at least 1,000 pounds per year;

2. a fuel burning facility with heat inputs less than the following:

a. natural gas, 50 million BTU/hr.;

b. distillate oil, 10 million BTU/hr.;

c. wood alone, 5 million BTU/hr.;

d. residual oil, 5 million BTU/hr.; and

e. coal, coke, and other solid fuels, 1 million BTU/hr.;

3. a sand and gravel operation that produces less than 150,000 tons of product per year;

4. a pressurized storage tank for anhydrous ammonia, liquid petroleum gas (LPG), liquid natural gas (LNG), or natural gas;

5. a facility that uses less than 10,000 gallons of solvent borne coating per year;

6. a storage tank for petroleum liquid with a capacity of less than 40,000 gallons;

7. a dry bulk agricultural commodity facility with an annual commodity throughput of less than 45,000 tons;

8. an incinerator with a maximum refuse burning capacity of less than 1,000 pounds per hour, unless thermally treating hazardous waste; and

9. a concrete batching facility that produces less than 200,000 cubic yards of concrete per year.

6 MCAR S 4.4304 Permit application.

In addition to the information required by 6 MCAR S 4.4005, a person who requests an emission facility permit shall submit the following information to the director:

A. the characteristics of the exhaust gas stream, before and after the emission control equipment, including emission rates, concentrations, volumetric flow rates, and temperature;

B. the physical characteristics of particulate emissions;

C. the type and design specifications of the control equipment; and

D. the location and elevation of the emission point and the relation of the emission point to nearby structures, window openings, and other information necessary to appraise the possible effects of the exhaust gas stream.

6 MCAR S 4.4305 Special conditions for air emission facility permits.

In addition to the special conditions in 6 MCAR S 4.4015 B. and if applicable to the circumstances, an air emission facility permit may contain special conditions (including but not limited to the following:)

A. standards of performance for air pollutants from an emission facility;

B. operational requirements for situations where a standard of performance is not applicable or the operational requirements are necessary to achieve compliance with a standard of performance;

C. testing and reporting requirements to ensure compliance with standards of performance; and

D. notification and reporting requirements for shutdowns and breakdowns.

Repealer. APC 3 of the Pollution Control Agency rules is repealed.

2:05 PM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 26 1984
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
March 15 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

AG copy

Pollution Control Agency

Adopted Rules Relating to Hazardous Waste Facility Permits

Rules as Adopted

6 MCAR S 4.4201 Scope.

Rules 6 MCAR SS 4.4001-4.4021 and 4.4201-4.4224 govern the application procedures, the issuance, and the conditions of hazardous waste facility permits. Rules 6 MCAR SS 4.3001-4.3011, 4.4001-4.4021, and 4.4201-4.4224 shall be construed to complement each other.

6 MCAR S 4.4202 Definitions.

The definitions in 6 MCAR SS 4.4001, 4.9100, and 4.9380 B. apply to the terms used in 6 MCAR SS 4.4201-4.4224.

6 MCAR S 4.4203 Permit requirements.

A. Permit required. Except as provided in B., no person may do any of the following without obtaining a hazardous waste facility permit from the agency:

1. treat, store, or dispose of hazardous waste;

2. establish, construct, operate, or close a hazardous waste facility;

3. make an expansion, a production increase, or a process modification that results in new or increased capabilities of a permitted hazardous waste facility; or

4. operate a permitted hazardous waste facility or part of a facility that has been changed, added to, or extended, or that has new or increased capabilities.

B. Exclusions. A person who conducts any of the following activities is not required to obtain a hazardous waste facility permit for that activity:

1. The accumulation by generators of hazardous waste on site for fewer than 90 days as provided in 6 MCAR S 4.9216.

2. The disposal by farmers of hazardous wastes that have been generated by their own use of pesticides as provided in 6 MCAR S 4.9222.

3. The ownership or operation of a totally enclosed treatment facility as defined in 6 MCAR S 4.9100.

4. The storage by transporters of manifested shipments of hazardous waste in containers that meet the requirements of 6 MCAR S 4.9214 A. at a transfer facility for a period of ten days or fewer as provided in 6 MCAR S 4.9253.

5. An activity conducted to immediately contain or treat a spill or an imminent and substantial threat of a spill of hazardous waste or a material that, when spilled, becomes a hazardous waste. This exclusion does not apply to a person who treats, stores, or disposes of the spilled material or spill residue or debris after the immediate response activities have been completed.

6. The addition of absorbent material to hazardous waste in a container, or the addition of hazardous waste to absorbent material in a container, if the addition occurs at the time waste is first placed in the container, and if the addition is accomplished in accordance with 6 MCAR SS 4.9283 B. and 4.9315 B. and C.

7. The ownership or operation of a facility that is used to manage hazardous waste described in 6 MCAR S 4.9129 B.1. or 2. that is to be beneficially used, reused, recycled, or reclaimed, unless 6 MCAR S 4.9129 B.1.~~i.~~j. provides otherwise.

8. To the extent provided by 6 MCAR S 4.9129 B.3., 4., or 5., the ownership or operation of a facility that beneficially uses, reuses, recycles, or reclaims hazardous waste.

9. The management of hazardous waste as provided in 6 MCAR SS 4.9128 C.12.; 4.9130 A.; 4.9134 E.3. and 5.; 4.9209; or 4.9210 B.

C. Permits by rule. The owner or operator of the following facilities shall be deemed to have obtained a hazardous waste facility permit without making application for it unless the director finds that the following conditions are not met:

1. Barges or vessels operating in Minnesota that are intended to be operated elsewhere as ocean disposal facilities, if the owner or operator:

a. has obtained a permit for ocean disposal under Code of Federal Regulations, title 40, part 220;

b. complies with the conditions of the permit for ocean disposal; and

c. complies with 6 MCAR SS 4.9281 B.; 4.9292; 4.9293; 4.9294 A., B., and C.1.-3.; and 4.9296 A., B., and C.

2. Publicly owned treatment works that accept hazardous waste for treatment, if the owner or operator:

a. has obtained a National Pollutant Discharge Elimination System permit, a state disposal system permit, or both, from the agency;

b. complies with the conditions of the National Pollutant Discharge Elimination System permit or the state disposal system permit;

c. complies with 6 MCAR SS 4.9281 B.; 4.9292; 4.9293; 4.9294 A., B., and C.1.-3.; and 4.9296 A., B., and C.; and

d. accepts a waste that meets all applicable federal, Minnesota, and local pretreatment requirements for that waste if it were to be discharged into the publicly owned treatment works through a sewer, pipe, or other conveyance.

3. Elementary neutralization, pretreatment, or wastewater treatment units, provided that:

a. the unit does not receive hazardous waste from generators other than the owner or operator of the unit;

b. the owner or operator complies with the requirements of 6 MCAR SS 4.9480-4.9481; and

c. the owner or operator's eligibility to be permitted under this rule has not been terminated under D.

4. That portion of a combustion waste facility that is used to manage hazardous wastes produced in conjunction with the combustion of fossil fuels, if:

a. the wastes are generated on-site;

b. the wastes traditionally have been and actually are mixed with and co-disposed or co-treated with fly ash, bottom ash, boiler slag, or flue gas emission control wastes resulting from coal combustion;

c. the wastes are necessarily associated with the production of energy, such as boiler cleaning solutions, boiler blowdown, demineralizer regenerant, pyrites, and cooling tower blowdown;

d. the owner or operator complies with the requirements of 6 MCAR SS 4.9480-4.9481; and

e. the owner or operator's eligibility to be permitted under this rule has not been terminated under D.

D. Termination of eligibility for permit by rule. The eligibility of an owner or operator of an elementary neutralization unit, a pretreatment unit, a wastewater treatment unit, or a combustion waste facility to be permitted under this rule is subject to termination by the agency after notice and opportunity for a contested case hearing or a public informational meeting if the agency makes any of the findings set forth in 1.-4. An owner or operator whose eligibility to be permitted under this rule has been terminated shall apply for and obtain an individual permit under these rules. The following findings constitute justification for the director to commence proceedings to terminate eligibility:

1. that any applicable conditions set forth in C.3. or 4. are not met;

2. that the owner or operator has violated a requirement of 6 MCAR SS 4.9480-4.9481;

3. that the owner or operator is conducting other activities that are required to be covered by a hazardous waste facility permit; or

4. that under the circumstances, in order to protect human health or the environment, the permitted facility should be subject to the requirements of 6 MCAR SS 4.9281-4.9322.

6 MCAR S 4.4204 Hazardous waste facility permit application.

A. Form. The application for a hazardous waste facility permit consists of Part A and Part B. The information requirements of Part A are set forth in 6 MCAR S 4.4206. The information requirements of Part B are set forth in 6 MCAR SS 4.4207-4.4215. A person who submits Part B of the application

shall submit the information required by 6 MCAR S 4.4207 and shall also submit any information required by 6 MCAR SS 4.4208-4.4215 that is applicable to the facility which is the subject of the application.

B. Timing of application. Deadlines for the submission of a permit application for existing and new hazardous waste facilities and for reissuance of existing permits are as follows:

1. The owner or operator of an existing hazardous waste facility shall submit Part A of the application to the director on or before the 90th day after the effective date of 6 MCAR SS 4.4201-4.4224. An owner or operator who has already submitted Part A of the application to the Environmental Protection Agency need not submit Part A of the application to the director if the information submitted to the Environmental Protection Agency is complete with respect to all portions of the facility and all wastes stored, treated, or disposed of at the facility that are subject to regulation under 6 MCAR SS 4.9100-4.9560. If the information submitted to the Environmental Protection Agency is not complete, the owner or operator shall submit an amended Part A of the application to the director on or before the 90th day after the effective date of this rule. The owner or operator may submit Part B of the application at any time except that upon the request of the director the owner or operator shall submit Part B of the application not later than six months after the date of receipt of the director's request. A later date for submission of Part B for a thermal treatment facility may be made under 6 MCAR S 4.4221 K.

2. If a person proposes to construct a new hazardous waste facility, the person shall submit Part A and Part B of the application at least 180 days before the planned date of the commencement of facility construction.

3. Rule 6 MCAR S 4.4004 C. governs the application for the reissuance of existing permits except as provided in this rule. When the director receives a written request that shows good cause for an extension of time to file the application for permit reissuance, the director shall grant the extension if the

final date for filing the application does not extend beyond the expiration date of the permit. The application must contain Part B of the application, completed to show all information that is new or different from that contained in previously submitted applications.

C. Updating permit applications. An owner or operator of an existing hazardous waste facility who has submitted Part A of the application but has not yet submitted Part B of the application shall submit to the director an amended Part A of the application under the following circumstances:

1. if the submission of an amended application is necessary to comply with 6 MCAR S 4.4216 E.; or

2. if 6 MCAR SS 4.9128-4.9137 is amended to list or designate as hazardous a waste being treated, disposed of, or stored by the owner or operator which was not listed or designated as hazardous at the time the original Part A was submitted.

The owner or operator shall file the amended Part A not later than 90 days after the effective date of the amendment to 6 MCAR SS 4.9128-4.9137. An owner or operator who fails to submit an amended Part A when required to do so shall not receive interim status for any wastes not covered by a submitted Part A application.

6 MCAR S 4.4205 Certification of permit applications and reports.

A person who signs a permit application or any portion of it or any report required by a permit to be submitted to the director or to the agency shall make the certification required by 6 MCAR S 4.4007 and shall make the following additional certification: "I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." Technical documents, such as design drawings and specifications and engineering studies required to be submitted as part of a permit application or by permit conditions, must be certified by a registered professional engineer.

6 MCAR S 4.4206 Contents of Part A of application.

Part A of the application must contain the following information:

A. the information set forth in 6 MCAR S 4.4005;

B. on the topographic map submitted under 6 MCAR S 4.4005, an identification of all wells, springs, and surface water bodies listed in public records or otherwise known to the applicant to exist within one-quarter mile of the property boundaries of the hazardous waste facility;

C. the name, mailing address, and exact location of the hazardous waste facility, including the latitude and longitude of the location;

D. an identification by use of up to four standard industrial classification codes that best reflect the principal products or services provided by the applicant;

E. a list of the wastes designated under 6 MCAR SS 4.9128-4.9137 as hazardous to be treated, stored, or disposed of by the applicant and an estimate of the quantity of each hazardous waste to be treated, stored, or disposed of annually by the applicant;

F. a description of the processes to be used for treating, storing, or disposing of hazardous waste, and the design capacity of the facility;

G. whether the faciliy is new or existing and whether the application is an initial or amended application;

H. if the facility is an existing facility, a scale drawing of the facility showing the location of all past, present, and proposed future treatment, storage, and disposal areas;

I. if the facility is an existing facility, photographs of the facility clearly showing all existing structures; existing treatment, storage, and disposal areas; and sites of proposed future treatment, storage, and disposal areas; and

J. a statement as to which, if any, of the following permits the applicant has applied for or received that pertains to the facility or a portion of the facility that is the subject of the application:

1. a hazardous waste facility permit required by 6 MCAR S 4.4203, other than the permit that is the subject of the current application, or a hazardous waste facility permit issued by the United States Environmental Protection Agency;

2. a National Pollutant Discharge Elimination System permit required by 6 MCAR S 4.4104;

3. an air emission facility permit required by 6 MCAR S 4.4303; or

4. a dredge or fill permit issued under section 404 of the Clean Water Act, United States Code, title 33, section 1344.

6 MCAR S 4.4207 General information requirements for Part B of application.

Part B of the application must contain the following information:

A. A general description of the facility, unless an accurate and complete Part A of the application has been submitted.

B. Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses must contain all information that is necessary in order to treat, store, or dispose of the wastes properly in accordance with 6 MCAR SS 4.9280-4.9322.

C. A copy of the waste analysis plan required by 6 MCAR S 4.9284 B.

D. A description of the security procedures and equipment required by 6 MCAR S 4.9281 D. or a justification as to why these security procedures are unnecessary at the facility.

E. A copy of the inspection schedule required by 6 MCAR S 4.9281 E.2., including, if applicable, the information set forth in 6 MCAR SS 4.9315 E.; 4.9316 D.; 4.9317 E.; 4.9318 E. and F.; 4.9319 D.; 4.9320 E.; and 4.9321 G.

F. A description of procedures, structures, or equipment used at the facility as required to comply with 6 MCAR SS 4.9286 and 4.9287. If the applicant is requesting a waiver of any of the requirements of 6 MCAR S 4.9286, the applicant shall include a justification for the request.

G. A copy of the contingency plan required by 6 MCAR S

4.9288, including, if applicable, the specific information set forth in 6 MCAR S 4.9317 F.

H. A description of procedures, structures, or equipment used at the facility to:

1. prevent hazards in unloading operations, such as ramps or special forklifts;

2. prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, such as berms, dikes, or trenches;

3. prevent contamination of water supplies;

4. mitigate effects of equipment failure and power outages; and

5. prevent undue exposure of personnel to hazardous waste, such as protective clothing.

I. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with 6 MCAR S 4.9283 and documentation of the applicant's compliance with 6 MCAR S 4.9283 C.

J. A description of the traffic patterns and traffic control at the facility, including a drawing showing traffic lanes, location of traffic control signals, turns across traffic lanes, and location of stacking lanes; estimated traffic volume at the facility; types of vehicles expected to use the facility; and a description of access road surfacing and load bearing capacity.

K. An outline of both introductory and continuing training programs to be conducted by the applicant that are designed in accordance with 6 MCAR S 4.9282 to prepare persons to operate or maintain the hazardous waste facility in a safe manner and a description of how training will be designed in accordance with 6 MCAR S 4.9282 C. to meet actual job tasks.

L. A copy of the closure plan and, where applicable, the post-closure plan required by 6 MCAR SS 4.9298 and 4.9300, including, if applicable, the specific information set forth in 6 MCAR SS 4.9315 I.; 4.9316 F.; 4.9317 G.; 4.9318 G.; 4.9319 H.; 4.9320 G.; and 4.9321 H.

M. For existing disposal facilities, documentation that a notice has been placed in the deed or appropriate alternative instruments as required by 6 MCAR S 4.9303.

N. The most recent closure cost estimate for the facility prepared in accordance with 6 MCAR S 4.9305 and a copy of the financial assurance mechanism adopted in compliance with 6 MCAR S 4.9306.

O. If applicable, the most recent post-closure cost estimate for the facility prepared in accordance with 6 MCAR S 4.9307 and a copy of the financial assurance mechanism adopted in compliance with 6 MCAR S 4.9308.

P. If applicable, the most recent corrective action cost estimate for the facility prepared in accordance with 6 MCAR S 4.9309 and a copy of the financial assurance mechanism adopted in compliance with 6 MCAR S 4.9310.

Q. If applicable, a copy of the insurance policy or other documentation showing compliance with the requirements of 6 MCAR S 4.9312. For a new facility, the application must contain documentation showing the amount of insurance that meets the specifications of 6 MCAR S 4.9312 A. and if applicable 6 MCAR S 4.9312 B., that the applicant plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. If the applicant desires to request a variance from the insurance requirements under 6 MCAR S 4.9312 C., the applicant shall include all information required by 6 MCAR S 4.9312 C. in support of this request.

R. A topographic map showing the facility and the area surrounding the facility for a distance of at least 1,000 feet, using a scale of either 2.5 centimeters equal to not more than 61 meters or one inch equal to not more than 200 feet. The map must include contours having intervals sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. The map must clearly show the following:

1. date the map was prepared;

2. map scale;

3. 100-year floodplain area;

4. surface waters, including intermittent streams;

5. wetlands;

6. shorelands;

7. zoning of surrounding lands and uses of surrounding lands, including residential, commercial, agricultural, and recreational;

8. wind rose, including windspeed and direction;

9. arrows indicating map directions;

10. legal boundaries of the hazardous waste facility site;

11. county, township, and municipal boundaries;

12. township, range, and section numbers;

13. boundaries of parks and wildlife refuges;

14. location of fences, gates, and other access control measures;

15. wells, both on-site and off-site;

16. all structures and buildings, and roads on the hazardous waste facility site, including those used in treatment, storage, or disposal operations; runoff control systems; access and internal roads; storm, sanitary, and process sewerage systems; loading and unloading areas; and fire control systems;

17. barriers for drainage or flood control; and

18. location of operational units within the hazardous waste facility site, areas where hazardous waste is, or will be, treated, stored, or disposed of, including equipment cleanup areas.

S. A statement as to whether the hazardous waste facility is located within a 100-year floodplain, an identification of the source of the data used to make this determination, and copy of the relevant Federal Insurance Administration flood map or other map used to make the determination, and any calculations done to make the determination. If the hazardous waste facility is located within a 100-year floodplain, the applicant shall furnish the following information:

1. any known special flooding factors, such as wave

action, which must be considered in designing, constructing, operating, or maintaining the facility to prevent washout from a 100-year flood;

2. engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a result of a 100-year flood;

3. structural or other engineering studies showing the design of operational units, such as tanks or incinerators;

4. structural or other engineering studies showing the design of flood protection devices at the facility, such as floodwalls or dikes, and an explanation as to how these devices will prevent washout;

5. if flood protection devices are not proposed to be utilized at the facility, the applicant shall provide, in lieu of the information set forth in 2.-4., a detailed description of procedures which the applicant will follow to remove hazardous waste to safety before the facility is flooded, including:

a. the timing of the removal relative to flood levels, showing that removal can be completed before floodwaters reach the facility;

b. a description of the facility or facilities to which the hazardous waste will be moved and a demonstration that these facilities will be eligible to receive hazardous waste in accordance with these rules and 6 MCAR SS 4.9280-4.9481;

c. the planned procedures, equipment, and personnel to be used and the methods that will be implemented to ensure that these resources will be available when needed; and

d. a description of the potential for accidental discharges of hazardous waste during the movement of such waste;

6. if the permit application relates to an existing facility and the applicant is not in compliance with 6 MCAR S 4.9285 A. at the time of the application, the applicant shall provide a plan showing how the facility will be brought into compliance with 6 MCAR S 4.9285 A. and a proposed schedule for the implementation of this plan.

T. Any additional geologic and other location information

required to demonstrate compliance with 6 MCAR S 4.9285 B.

U. Any additional information that the director determines is relevant to a decision on permit issuance, including but not limited to plans, specifications, and waste analyses that are necessary to determine whether the facility will meet all applicable Minnesota and federal statutes and rules.

6 MCAR S 4.4208 Part B information requirements for facilities that store containers of hazardous waste.

Except as otherwise provided in 6 MCAR S 4.9315 A., if the applicant proposes to store containers of hazardous waste, the applicant shall furnish the following information in addition to the information required by 6 MCAR S 4.4207:

A. A description of the proposed area where the containers will be stored demonstrating that the area complies with 6 MCAR S 4.9315 F. At a minimum, the description must include:

1. basic design parameters, dimensions, and construction materials;

2. the manner in which the design promotes drainage or prevents contact between hazardous waste containers and standing liquids;

3. the capacity of the containment system in terms of the number and volume of containers to be stored;

4. provisions for preventing or managing run-on; and

5. the manner in which accumulated liquids can be removed to prevent overflow and can be analyzed to determine proper management of the removed liquids.

B. Information on the type of containers to be used and waste types stored in each type of container, including information on size, capacity, construction material of containers, compatibility of waste with the container, and the number and volume of containers to be stored.

C. An operations manual that describes operational and maintenance procedures to be used at the facility to ensure proper management of hazardous waste containers.

D. For storage areas for containers holding wastes that do not contain free liquids, a demonstration of compliance with 6

MCAR S 4.9315 F.4., including:

1. test procedures and results or other documentation or information to show that the wastes do not contain free liquids, and

2. a description of how the storage area is designed or operated to drain and remove liquids or how contact between containers and standing liquids is prevented.

E. For any ignitable, reactive, or incompatible wastes, sketches, drawings, or data that demonstrate compliance with 6 MCAR S 4.9315 G. and H., if applicable.

F. For incompatible wastes, a description of the procedures to be used to ensure compliance with 6 MCAR SS 4.9315 H. and 4.9283.

6 MCAR S 4.4209 Part B information requirements for storage or treatment tanks.

Except as otherwise provided in 6 MCAR S 4.9316 A., if the applicant proposes to use tanks to store or treat hazardous waste, the applicant shall furnish the information designated in A. and B. in addition to the information required by 6 MCAR S 4.4207:

A. A description of the design and operation procedures of the tank that demonstrate compliance with the requirements of 6 MCAR S 4.9316 B., C., G., and H. This description must include:

1. references to design standards or other available information used, or to be used, in the design and construction of the tank;

2. a description of the design specifications, including identification of construction materials and lining materials and any pertinent characteristics of these materials, such as corrosion or erosion resistance;

3. a description of design specifications and operational procedures that demonstrate compliance with 6 MCAR S 4.9316 B.3. for underground tanks;

4. tank dimensions, capacity, and shell thickness;

5. a diagram of piping, instrumentation, and process flow;

6. a description of feed systems, safety cutoff and

bypass systems, and pressure controls, such as vents;

7. a description of waste types and volumes to be stored in each tank; and

8. a description of operational procedures that demonstrate compliance with the requirements of 6 MCAR SS 4.9283 and 4.9316 G. and H. regarding the procedures for handling ignitable, reactive, or incompatible wastes.

B. A description of the system to be used to contain the tank and any spills or releases of hazardous waste from the tank, demonstrating compliance with 6 MCAR S 4.9316 E., including at a minimum the following:

1. basic design parameters, dimensions, and construction materials;

2. the manner in which the design promotes drainage or prevents contact between the tank and standing liquids;

3. the capacity of the system in terms of number and volume of tanks to be held;

4. provisions for preventing or managing run-on; and

5. the manner in which accumulated liquids can be removed to prevent overflow and can be analyzed to determine proper management of the removed liquids.

6 MCAR S 4.4210 Part B information requirements for surface impoundments.

Except as otherwise provided in 6 MCAR S 4.9317 A., if the applicant proposes to store, treat, or dispose of hazardous waste in surface impoundment facilities, the applicant shall submit detailed plans and specifications accompanied by an engineering report which collectively includes the following information in addition to the information required by 6 MCAR S 4.4207:

A. A list of the hazardous wastes placed or to be placed in each surface impoundment.

B. Geologic and hydrogeologic information necessary to demonstrate compliance with 6 MCAR S 4.9317 B.

C. Detailed plans and an engineering report that describes how the surface impoundment is or will be designed, constructed,

operated, and maintained to meet the requirements of 6 MCAR S 4.9317 C. This submission must address the following items as specified in 6 MCAR S 4.9317 C.: the double liner system and leak detection, collection, and removal system; prevention of overtopping; and structural integrity of dikes.

D. A description of how each surface impoundment, including the double liner, leak detection, collection and removal, and cover systems and appurtenances for control of overtopping, will be inspected in order to meet the requirements of 6 MCAR S 4.9317 E.1. and 2. This information must be included in the inspection plan submitted under 6 MCAR S 4.4207 E.

E. A certification by a registered professional engineer that attests to the structural integrity of each dike, as required under 6 MCAR S 4.9317 E.3. For new units, the owner or operator shall submit a statement by a qualified engineer that he or she will provide this certification upon completion of construction in accordance with the plans and specifications as required under 6 MCAR S 4.9317 E.3.

F. A certification by a registered professional engineer that attests that the uppermost liner and leak detection, collection, and removal system is intact and remains at design specifications, as required under 6 MCAR S 4.9317 E.4. For new units, the owner or operator shall submit a statement by a qualified engineer that he or she will provide this certification upon completion of construction in accordance with the plans and specifications as required under 6 MCAR S 4.9317 E.4.

G. A description of the procedure to be used for removing a surface impoundment from service as required under 6 MCAR S 4.9317 F.2. and 3. This information must be included in the contingency plan submitted under 6 MCAR S 4.4207 G.

H. A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under 6 MCAR S 4.9317 G.1.a. For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report to

demonstrate compliance with 6 MCAR S 4.9317 G.1.b. and 2. This information must be included in the closure plan and, where applicable, in the post-closure plan submitted under 6 MCAR S 4.4207 L.

I. If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of compliance with 6 MCAR S 4.9317 H.

J. If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of compliance with 6 MCAR S 4.9317 I.

6 MCAR S 4.4211 Part B information requirements for waste piles.

Except as otherwise provided by 6 MCAR S 4.9318 A., if the applicant proposes to store or treat hazardous waste in waste piles, the applicant shall furnish the information required by A.-K. in addition to the information required by 6 MCAR S 4.4207:

A. A list of hazardous wastes placed or to be placed in each waste pile.

B. If an exemption is sought to 6 MCAR SS 4.9318 B.1. and 2. and C. and 4.9297 as provided by 6 MCAR S 4.9318 A., an explanation of compliance with 6 MCAR S 4.9318 A.1.-4.

C. Geologic and hydrogeologic information necessary to demonstrate compliance with 6 MCAR S 4.9318 B.

D. Detailed plans and an engineering report describing how the pile is or will be designed, constructed, operated, and maintained to meet the requirements of 6 MCAR S 4.9318 C. This submission must address the following items as specified in 6 MCAR S 4.9318 C.:

1. the liner system, leachate collection and removal system, and if applicable, the leak detection, collection, and removal system;

2. control of run-on;

3. control of run-off;

4. management of collection and holding units associated with run-on and run-off control systems;

5. control of wind dispersal of particulate matter, if applicable; and

6. treatment and disposal of collected runoff and leachate.

E. If an exemption from 6 MCAR S 4.9297 K.5. is sought as provided by 6 MCAR S 4.9318 D., detailed plans and an engineering report that describes compliance with 6 MCAR S 4.9318 D.1.

F. If an exemption from 6 MCAR S 4.9297 is sought as provided by 6 MCAR S 4.9318 E., detailed plans and an engineering report that describes compliance with 6 MCAR S 4.9318 E.1.

G. A description of how each waste pile, including the liner system and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of 6 MCAR S 4.9318 F. This information must be included in the inspection plan submitted under 6 MCAR S 4.4207 E. If an exemption is sought to 6 MCAR S 4.9297 under 6 MCAR S 4.9318 E., describe in the inspection plan how the inspection requirements comply with 6 MCAR S 4.9318 E.1.b.

H. If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals.

I. If ignitable or reactive wastes are to be placed in a waste pile, an explanation of compliance with the requirements of 6 MCAR S 4.9318 H.

J. If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of compliance with 6 MCAR S 4.9318 I.

K. A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under 6 MCAR S 4.9318 G.1. For any waste not to be removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing compliance with 6 MCAR S 4.9320 G.1. and 2. This information must be included in the closure plan and, where applicable, the post-closure plan submitted under 6 MCAR S 4.4207 L.

6 MCAR S 4.4212 Part B information requirements for land treatment.

Except as otherwise provided by 6 MCAR S 4.9319 A., if the applicant proposes to use land treatment to dispose of hazardous waste, the applicant shall furnish the information designated in A.-H. in addition to the information required by 6 MCAR S 4.4207:

A. A description of plans to conduct a treatment demonstration as required under 6 MCAR S 4.9319 C. The description must include the following information:

1. the wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

2. the data sources to be used to make the demonstration, such as literature, laboratory data, field data, or operating data;

3. any specific laboratory or field test that will be conducted, including the type of test such as column leaching or degradation; materials and methods, including analytical procedures; expected time for completion; and characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, dimensions, climatic conditions, and operating practices; and

4. statistical methods for interpreting results.

B. A description of a land treatment program as required under 6 MCAR S 4.9319 B. This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items:

1. the wastes to be land treated;

2. design measures and operating practices necessary to maximize treatment in accordance with 6 MCAR S 4.9319 D.1. including waste application method and rate, measures to control soil pH, enhancement of microbial or chemical reactions, and control of moisture content;

3. provisions for unsaturated zone monitoring, including:

a. sampling equipment, procedures, and frequency;

b. procedures for selecting sampling locations;

c. analytical procedures;

d. chain of custody control;

e. procedures for establishing background values;

f. statistical methods for interpreting results; and

g. the justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for this selection in 6 MCAR S 4.9319 F.1.;

4. a list of hazardous constituents and their concentrations that are reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to 6 MCAR S 4.9284; and

5. the proposed dimensions of the treatment zone.

C. A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of 6 MCAR S 4.9319 D. This submission must address the following items:

1. control of run-on;

2. collection and control of run-off;

3. minimization of run-off of hazardous constituents from the treatment zone;

4. management of collection and holding facilities associated with run-on and run-off control systems;

5. treatment and disposal of run-off collected in the run-off control system;

6. control of wind dispersal; and

7. periodic inspection of the unit. This information must be included in the inspection plan submitted under 6 MCAR S 4.4207 E.

D. If food chain crops might be grown in or on the treatment zone of the land treatment unit, a description of how the demonstrations required under 6 MCAR S 4.9319 E. will be conducted including:

1. characteristics of the food chain crop for which the demonstrations will be made;

2. characteristics of the waste, treatment zone, and

waste application method and rate to be used in the demonstrations;

3. procedures for crop growth, sample collection, sample analysis, and data evaluation;

4. characteristics of the comparison crop including the location and conditions under which it was or will be grown;

5. description of the soil core and soil pore liquid sampling and analysis procedures; and

6. statistical methods for interpreting results.

E. If food chain crops are to be grown after closure, a description of compliance with the requirements of 6 MCAR S 4.9319 E.

F. A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining this cover during the post-closure care period as required under 6 MCAR S 4.9319 H.1.h. and 3.b. This information must be included in the closure plan and, where applicable, in the post-closure care plan submitted under 6 MCAR S 4.4207 L.

G. If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of compliance with the requirements of 6 MCAR S 4.9319 I.

H. If incompatible wastes or incompatible wastes and materials will be placed in or on the same treatment zone, an explanation of compliance with 6 MCAR S 4.9319 J.

6 MCAR S 4.4213 Part B information requirements for landfills.

Except as otherwise provided by 6 MCAR S 4.9320 A., if the applicant proposes to dispose of hazardous waste in a landfill, the applicant shall furnish the information designated in A.-I. in addition to the information required by 6 MCAR S 4.4207:

A. A list of the hazardous wastes placed or to be placed in each landfill or landfill cell.

B. Geologic and hydrogeologic information necessary to demonstrate compliance with 6 MCAR S 4.9320 B.

C. Detailed plans and an engineering report describing how the landfill is or will be designed, constructed, operated, and maintained to comply with the requirements of 6 MCAR S 4.9320

C. This submission must address the following items as specified in 6 MCAR S 4.9320 C.:

1. the double liner system, leak detection, collection, and removal system, and leachate collection and removal system;

2. control of run-on;

3. control of run-off;

4. management of collection and holding facilities associated with run-on and run-off control systems;

5. control of wind dispersal of particulate matter, where applicable;

6. the phased development plan in accordance with the requirements of 6 MCAR S 4.9320 C.7.; and

7. treatment and disposal of collected run-off and leachate.

D. A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of 6 MCAR S 4.9320 E. This information must be included in the inspection plan submitted under 6 MCAR S 4.4207 E.

E. Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with 6 MCAR S 4.9320 G.1. and a description of how each landfill will be maintained and monitored after closure in accordance with 6 MCAR S 4.9320 G.2. This information must be included in the closure and post-closure plans submitted under 6 MCAR S 4.4207 L.

F. If ignitable or reactive wastes will be landfilled, an explanation of compliance with the requirements of 6 MCAR S 4.9320 H.

G. If incompatible wastes or incompatible wastes and materials will be landfilled, an explanation of compliance with 6 MCAR S 4.9320 I.

H. If liquid waste or waste containing free liquids is to be landfilled, an explanation of compliance with the requirements of 6 MCAR S 4.9320 J.

I. If containers of hazardous waste are to be landfilled, an

explanation of compliance with the requirements of 6 MCAR S 4.9320 K. or L., as applicable.

6 MCAR S 4.4214 Part B information and special procedural requirements for thermal treatment facilities.

Except as provided in 6 MCAR S 4.9321 A., if the applicant proposes to treat or dispose of hazardous waste by using thermal treatment, the applicant shall fulfill the requirements of A., B., or C. as follows in addition to the information requirements of 6 MCAR S 4.4207, and the director shall fulfill the requirements of D. as follows:

A. If the applicant is seeking the exemption provided by 6 MCAR S 4.9321 A.2. or 3. relating to ignitable, corrosive, or reactive wastes, the applicant shall submit documentation showing that the waste includes none or insignificant concentrations of the hazardous constituents listed in 6 MCAR S 4.9137, and one of the following:

1. that the waste is listed as a hazardous waste in 6 MCAR S 4.9134 only because it is ignitable according to Hazard Code I, because it is corrosive according to Hazard Code C, or because it is both ignitable and corrosive;

2. that the waste is listed as a hazardous waste in 6 MCAR S 4.9134 only because it is reactive for characteristics other than those listed in 6 MCAR S 4.9132 E.1.d. and e., and will not be treated when other hazardous wastes are present in the combustion zone;

3. that the waste has been tested for the characteristics of hazardous waste set forth in 6 MCAR S 4.9132 and that its only hazardous characteristic is ignitability, corrosivity, or both; or

4. that the waste has been tested for the characteristics of hazardous waste set forth in 6 MCAR S 4.9132 and that its only hazardous characteristic is reactivity as described by 6 MCAR S 4.9132 E.1.a., b., c., f., g., or h., and will not be treated when other hazardous wastes are present in the combustion zone.

B. The applicant shall submit results of a trial burn

conducted in accordance with 6 MCAR S 4.4221, including all the determinations required by 6 MCAR S 4.4221 F.

C. The applicant shall perform an analysis of each waste or mixture of waste to be treated by using the analytical techniques set forth in the Environmental Protection Agency document SW 846 as referenced in 6 MCAR S 4.9102, or by using techniques found by the director to be equivalent to them. The applicant shall submit all of the following information:

1. The results of each waste analysis performed, including:

a. the heat value of the waste in the form and composition in which it will be burned;

b. a description of the form and composition of the waste and, if applicable, viscosity of the waste;

c. any hazardous organic constituents listed in 6 MCAR S 4.9137 that are reasonably expected to be found in the waste;

d. all waste constituents listed in 6 MCAR S 4.9137 for which no analysis was done and an explanation of why this analysis was not done;

e. an approximate quantification of the hazardous constituents identified in the waste, within the precision specified by Environmental Protection Agency document SW 846;

f. a quantification of those hazardous constituents in the waste that may be designated as principal organic hazardous constituents based on data submitted from other trial or operational burns which demonstrated compliance with the performance standards set forth in 6 MCAR S 4.9321 D.; and

g. waste analysis data sufficient to allow the director to specify as permit principal organic hazardous constituents those constituents for which destruction and removal efficiencies will be required.

2. A detailed engineering description of the thermal treatment unit, including:

a. the manufacturer's name and model number;

b. the type of thermal treatment unit;

c. the linear dimensions of the thermal treatment

unit, including the cross sectional area of the combustion chamber;

d. a description of the auxiliary fuel system, including type and feed rate;

e. the capacity of the prime mover;

f. a description of any automatic waste feed cutoff system;

g. nozzle and burner design;

h. construction materials; and

i. location and description of temperature, pressure, and flow indicating devices and control devices.

3. A detailed engineering description of air pollution control equipment and stack gas monitoring and pollution control monitoring systems, including:

a. manufacturer's name and model numbers;

b. physical dimensions; and

c. if applicable, specifications as to air flow, pressure drop, discharge, voltage, and water flow.

4. A description and comparison of the waste to be burned with waste for which data has been obtained from previous operational or trial burns, including the data listed in 1., and a comparison of the principal organic hazardous constituents found in the wastes being compared.

5. A description and comparison of the design and operating conditions of the proposed thermal treatment unit with the design and operating conditions of the thermal treatment unit used in the previous operational or trial burn. For the previous operational or trial burn, the applicant shall submit a description of the results of such previously conducted operational or trial burn, including:

a. sampling and analysis techniques used to calculate compliance with the performance standards set forth in 6 MCAR S 4.9321 D.;

b. monitoring methods and results for temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the

precision and accuracy of this measurement;

c. identification of any hazardous combustion by-products detected; and

d. the certification and results required by 6 MCAR S 4.4221 G.

6. A description of the operating procedures proposed by the applicant, (in sufficient detail to allow the director) to determine whether the proposed thermal treatment unit will meet the performance and operating standards of 6 MCAR S 4.9321 D. and F., including:

a. expected carbon monoxide ~~level~~, oxygen, and carbon dioxide levels in the stack exhaust gas;

b. waste feed rate;

c. combustion zone temperature;

d. indication of combustion gas velocity;

e. stack gas volumes, flow rate, and temperature;

f. computed residence time for waste in the combustion zone;

g. expected hydrochloric acid removal efficiency;

h. expected fugitive emissions and control procedures; and

i. proposed waste feed cutoff limits based on the identified significant operating parameters.

7. Estimated emissions, in tons per year, of particulates and sulfur dioxide.

8. Any other additional information that the director determines is (relevant) to a decision to permit issuance.

D. Review of Part B application for thermal treatment facilities.

If the applicant has proceeded under A. or B., the director shall review the Part B application for completeness in accordance with 6 MCAR S 4.4009.

If the applicant has proceeded under C., the director shall review the Part B application for completeness. The director shall find the application complete if the director finds:

1. that the applicant has submitted all the information

required by C.;

2. that the wastes compared under C. are substantially similar;

3. that the thermal treatment units compared under C. are substantially similar; and

4. that the data from other trial burns is adequate to enable the director to specify under 6 MCAR S 4.9321 F. the operating conditions that will ensure that the performance standards in 6 MCAR S 4.9321 D. will be met by the proposed thermal treatment unit.

6 MCAR S 4.4215 Additional Part B information requirements for surface impoundments, waste piles, land treatment units, and landfills.

A. Groundwater protection. The additional information designated in 1.-7. regarding protection of groundwater is required from owners or operators of hazardous waste surface impoundments, waste piles, land treatment units, and landfills, except as otherwise provided in 6 MCAR S 4.9297 A.2., and must be submitted with Part B of the permit application. The following information is in addition to the information requirements of 6 MCAR SS 4.4207, 4.4210, 4.4211, 4.4212, and 4.4213:

1. A summary of the groundwater monitoring data obtained during the interim status period under 6 MCAR SS 4.9397 and 4.9398, if applicable.

2. Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow directions and rates, and the basis for the identification, such as the information being obtained from hydrogeologic investigations of the facility area.

3. On the topographic map required under 6 MCAR S 4.4207 R., a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under 6 MCAR S 4.9297 H., the proposed location of groundwater monitoring wells as required under 6 MCAR S 4.9297 J. and, to the extent possible, the information required in 2.

4. A description of any plume of contamination that has entered the groundwater from a regulated unit at the time that the application is submitted that:

a. delineates the extent of the plume on the topographic map required under 6 MCAR S 4.4207 R.; and

b. identifies the concentration of each constituent listed in 6 MCAR S 4.9137 throughout the plume or identifies the maximum concentrations of each such constituent in the plume. The director may require this information on additional constituents if waste managed at the facility has met the characteristic of toxicity as defined in 6 MCAR S 4.9132 F.

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5. Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of 6 MCAR S 4.9297 J.

6. Sufficient information, supporting data, and analyses to establish a detection monitoring program that meets the requirements of 6 MCAR S 4.9297 K., including:

a. a proposed list of monitoring parameters that complies with the requirements of 6 MCAR S 4.9297 K.1. or 5., whichever is applicable;

b. a proposed groundwater monitoring system;

c. background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

d. a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

7. Sufficient information, supporting data, and analyses to establish a compliance monitoring program that meets the requirements of 6 MCAR S 4.9297 L., including:

a. a description of the wastes previously handled at the facility, if applicable;

b. if the presence of hazardous constituents has been detected in the groundwater at the point of compliance at the time of permit application, a characterization of the contaminated groundwater including concentrations of hazardous

constituents;

c. a list of hazardous constituents for which compliance monitoring will be undertaken in accordance with 6 MCAR S 4.9297 J. and L.;

d. proposed concentration limits for each hazardous constituent, based on the criteria set forth in 6 MCAR S 4.9297 F., including a justification for establishing alternate concentration limits in accordance with 6 MCAR S 4.9297 G.;

e. detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of 6 MCAR S 4.9297 J.; and

f. a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

B. Corrective action program. The owner or operator of a hazardous waste surface impoundment, waste pile, land treatment unit, or landfill shall submit to the director with Part B of the permit application sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of 6 MCAR S 4.9297 M. The submittal must demonstrate that corrective action is feasible if the groundwater protection standard is exceeded. To demonstrate compliance with 6 MCAR S 4.9297 M., the owner or operator shall address the following items:

1. a characterization of any contaminated groundwater, including concentrations of hazardous constituents;

2. the concentration limit for each hazardous constituent as set forth in 6 MCAR S 4.9297 F. and G.;

3. detailed plans and an engineering report describing the corrective action to be taken;

4. a description of how the groundwater monitoring program will assess the adequacy of the corrective action;

5. an estimate of the time which may be necessary to complete corrective action; and

6. an estimate of the cost for completing such corrective action.

6 MCAR S 4.4216 Interim status.

A. Qualifying for interim status. Except as provided in B., during the period after the submission of Part A of a hazardous waste facility permit application to the Environmental Protection Agency or to the director and prior to a final determination by the agency on the permit application, the owner or operator of an existing hazardous waste facility shall be considered to be in compliance with the requirement to obtain a permit if the director finds that the Environmental Protection Agency has granted the owner or operator interim status or if the director finds:

1. that the owner or operator has submitted a complete Part A of the hazardous waste facility permit application to the Environmental Protection Agency or to the director; and

2. that the owner or operator is in compliance with 6 MCAR SS 4.9380-4.9422.

B. Failure to obtain interim status from EPA. Notwithstanding the provisions of A., an owner or operator of a hazardous waste facility who, prior to the effective date of 6 MCAR SS 4.4201-4.4224, was required to apply for and obtain interim status from the Environmental Protection Agency but who failed to obtain this interim status is not eligible to obtain interim status from the agency for that facility.

C. Notification of failure to qualify for interim status. If the director determines that an owner or operator of an existing hazardous waste facility does not qualify for interim status under A., the director shall notify the owner or operator in writing of the failure to qualify for interim status and the reason for the failure. The notification must also include a statement that the owner or operator is subject to agency remedies for violation of agency rules, including the requirement of 6 MCAR S 4.4203 to obtain a permit.

D. Prohibitions. During the interim status period, an owner or operator shall not:

1. treat, store, or dispose of a hazardous waste not specified in Part A of the application;

2. employ processes not specified in Part A of the permit application;

3. exceed the design capacities specified in Part A of the application; or

4. alter a hazardous waste facility in a manner that amounts to a reconstruction of the facility. For the purpose of this rule, reconstruction occurs when the capital investment in the modification of the facility exceeds 50 percent of the capital cost of a comparable new hazardous waste facility.

E. Changes during interim status. An owner or operator who has interim status may conduct the following activities as prescribed:

1. The owner or operator may treat, store, or dispose of hazardous wastes not previously specified in Part A of the application if the owner or operator submits a revised Part A of the permit application prior to the commencement of the treatment, storage, or disposal.

2. The owner or operator may increase the design capacity of the facility if, prior to the implementation of the increase, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the change, and if the director approves the increase in writing. The director shall approve the change if the director finds that there is a lack of available treatment, storage, or disposal capacity at other permitted hazardous waste facilities.

3. The owner or operator may add new processes or change the processes for the treatment, storage, or disposal of hazardous waste if, prior to the implementation of the addition or change, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the addition, and if the director approves the addition or change in writing. The director shall approve the addition or change if the director finds that:

a. the addition or change is necessary to prevent a threat to human health or the environment as a result of an emergency situation; or

b. the addition or change is necessary for the owner or operator to comply with federal, Minnesota, or local requirements, including the interim status standards set forth in 6 MCAR SS 4.9380-4.9422.

4. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A of the permit application not later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the former owner or operator shall comply with the requirements of 6 MCAR SS 4.9405-4.9413 that relate to financial requirements, until the new owner or operator has provided to the director a demonstration of compliance with 6 MCAR SS 4.9405-4.9413. All other interim status duties must be transferred immediately upon the change of ownership or operational control of the facility. If the director finds that the new owner or operator has complied with 6 MCAR SS 4.9405-4.9413, the director shall notify the former owner or operator in writing that the required demonstration by the new owner or operator has been made.

F. Compliance with interim status standards. During the interim status period the owner or operator shall comply with the interim status standards set forth in 6 MCAR SS 4.9380-4.9422.

G. Termination of interim status. Interim status terminates automatically when the agency has taken final administrative action on the permit application. The following constitute justification for the director to commence proceedings to terminate interim status:

1. the director finds that the applicant has failed to furnish a full and complete Part B of the permit application within the time allowed by 6 MCAR S 4.4204 B.1.; or

2. the director finds that the owner or operator is in violation of any of the requirements of 6 MCAR SS 4.9380-4.9422.

6 MCAR S 4.4217 Preliminary determination, draft permit, and public comments.

The provisions of 6 MCAR SS 4.4010 and 4.4011 are

applicable to the public notice of draft permits and preliminary determinations, the use of fact sheets concerning hazardous waste facilities, and public comments, except as specifically otherwise provided as follows:

A. The director shall prepare a fact sheet for each draft permit which relates to a hazardous waste facility that the director finds to be major based on a review of the potential impacts of the facility on the environment.

B. Notwithstanding the provisions of 6 MCAR S 4.4010 D., the public notice period concerning a complete permit application and the director's preliminary determination as to whether the permit should be issued or denied shall be 45 days.

C. In addition to the requirements of 6 MCAR S 4.4010, the director shall mail a copy of the public notice and, if a fact sheet is prepared, a copy of the fact sheet to the persons described in 1.-5. as follows. The director shall also mail a copy of the permit application and the draft permit to the applicant and to the persons described in 3., 4., and 5. as follows:

1. to the governing body of each county and city or township that has jurisdiction over the area where the facility is located or proposed to be located;

2. to each state agency that has authority under state law with respect to the construction or operation of the facility which is the subject of the permit application;

3. to all federal and state agencies that have jurisdiction over fish, shellfish, and wildlife resources in the area where the facility is located or proposed to be located;

4. to the state advisory council on historic preservation, to state historic preservation officers, and any other government official, including officials in other states, whom the director determines may have an interest in the permit application; and

5. to the Environmental Protection Agency and any other federal agency that has issued or is required to issue a permit in connection with the facility which is the subject of the

permit application.

D. In addition to the requirements of 6 MCAR S 4.4010 E., the director shall publish notice of the permit application in a major daily or weekly local newspaper that has general circulation in the geographical area in which the proposed hazardous waste facility is located and shall broadcast this notice over at least one local radio station.

E. Prior to final agency action on a permit application, the director or the agency shall respond to comments received during the public comment period or during any public informational meeting or contested case hearing held on the matter. This response shall state what action, if any, the director or the agency will take as a result of the comments. Responses to comments must be available to the public.

6 MCAR S 4.4218 Public informational meetings and contested case hearings.

A. Requests. A request for a public informational meeting or a contested case hearing on the application must be made in writing during the public comment period provided in 6 MCAR S 4.4217 B. and must contain the information specified in 6 MCAR S 4.4011 C. The agency shall grant or deny a request for a contested hearing in accordance with 6 MCAR S 4.4013. If the request is for a public informational meeting or if a request for a contested case hearing is denied, the agency shall hold a public informational meeting.

B. Preparation of public notice. If a contested case hearing or public informational meeting is to be held, the director shall prepare a public notice in accordance with 6 MCAR S 4.4012 or 4.4013. The public notice must continue for at least 30 days before the public informational meeting or contested case hearing.

C. Mailing of public notice. The director shall comply with the requirements of 6 MCAR S 4.4012 D. or 4.4013 D., whichever is applicable, and shall also mail a copy of the public notice to the following:

1. to the governing body of each county and city or

township that has jurisdiction over the area where the facility is located or proposed to be located;

2. to each state agency that has authority under Minnesota laws with respect to the construction or operation of the facility which is the subject of the public informational meeting or contested case hearing;

3. to all federal and state agencies that have jurisdiction over fish, shellfish, and wildlife resources in the area where the facility is located or proposed to be located;

4. to the state advisory council on historic preservation, the state historic preservation officers, and any other government official, including officials in other states, whom the director determines may have an interest in the permit application;

5. to the Environmental Protection Agency and any other federal agency that has issued or is required to issue a permit in connection with the facility which is the subject of the public informational meeting or contested case hearing; and

6. to all persons who have registered their names on the mailing list established under 6 MCAR S 4.4020.

D. Distribution of public notice. The director shall comply with the requirements of 6 MCAR S 4.4012 D. or 4.4013 D., whichever is applicable, and shall also publish notice of the public informational meeting or contested case hearing in a daily or weekly major newspaper that has general circulation in the geographical area in which the facility is located or proposed to be located and shall broadcast this notice over at least one local radio station.

6 MCAR S 4.4219 Final determination.

A. In general. Except as provided in B. or C., the agency shall issue all hazardous waste facility permits in accordance with 6 MCAR S 4.4014.

B. Draft permit for new hazardous waste thermal treatment facility. For a draft permit that concerns a new hazardous waste thermal treatment facility prepared under 6 MCAR S 4.4221, the agency shall issue a hazardous waste facility permit

authorizing construction and operation of the proposed facility, requiring the permittee to conduct trial burns, and requiring submission of the results of the trial burns if the agency finds that the proposed facility is likely to qualify for a permit authorizing the operation of the facility under appropriate operating conditions as required by 6 MCAR S 4.9321 F. and as necessary for the permittee to comply with the performance standards set forth in 6 MCAR S 4.9321 D. This permit is subject to modification of the operating conditions to reflect the results of the trial burn and to ensure compliance with the standards set forth in 6 MCAR S 4.9321.

C. Draft short-term demonstration or two-phase permit for land treatment facility. For a draft short-term demonstration or two-phase permit concerning a new hazardous waste land treatment facility prepared under 6 MCAR S 4.4222, the agency shall issue a hazardous waste facility permit authorizing the treatment demonstration and requiring submission of the results of the demonstration if the agency finds that the proposed facility is likely to qualify for a permit authorizing the operation of the facility under appropriate operating conditions as required by 6 MCAR S 4.9319 D. and as necessary for the permittee to comply with the groundwater protection standards of 6 MCAR S 4.9297 and the performance standards set forth in 6 MCAR S 4.9319. This two-phase permit is subject to modification of the operating conditions to reflect the results of the treatment demonstration and to ensure compliance with the standards set forth in 6 MCAR SS 4.9297 and 4.9319.

6 MCAR S 4.4220 Emergency permits.

A. Issuance. Notwithstanding any other provision of 6 MCAR SS 4.4201-4.4224 or 4.4001-4.4021, if the director finds that there is an imminent and substantial danger to human health or the environment, the director may issue a temporary emergency permit to the owner or operator of a facility to allow treatment, storage, or disposal of a hazardous waste which the owner or operator is not otherwise permitted to treat, store, or dispose. This permit is contingent upon the approval of the

agency.

B. Oral or written permission. The emergency permit must be issued in writing, except that emergency permission to treat, store, or dispose of the hazardous waste may be given orally if circumstances warrant. If oral permission is given, the director shall, within five days after the date of giving of permission, issue a written permit.

C. Duration. The emergency permit may not exceed 90 days in duration.

D. Specifications. The emergency permit must clearly specify the hazardous waste to be received and the manner and location of its treatment, storage, or disposal.

E. Termination. The emergency permit is subject to termination at any time if the director determines that termination is appropriate to protect human health or the environment.

F. Requirements. The emergency permit must incorporate, to the extent possible under the circumstances, all applicable requirements of 6 MCAR SS 4.4201-4.4224, 4.9281-4.9322, and 4.9480-4.9481.

G. Notification to public. At the time the director issues an emergency permit the director shall also notify the public of the emergency issuance of the permit. This notification must include:

1. the address and telephone number of the main agency office and the applicable regional office and the name of a person who may be contacted for additional information;

2. the name and location of the permitted hazardous waste facility;

3. a brief description of the wastes involved;

4. a brief description of the action authorized and the reasons for authorizing it; and

5. the duration of the emergency permit.

H. Agency approval. The director shall present the permit to the agency for approval at its next meeting. If no final action is taken by the agency at this meeting, the permit

continues in effect until its expiration date or until the agency takes final action, whichever occurs first.

6 MCAR S 4.4221 Hazardous waste thermal treatment facility permits.

A. Phase one requirements. In the permit for a new hazardous waste thermal treatment facility, for the purpose of determining operational readiness following completion of physical construction, the director shall establish permit conditions, including but not limited to, allowable waste feeds and operating conditions. These permit conditions are effective for the minimum time required to bring the thermal treatment facility to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The director may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to 6 MCAR S 4.4224 D.8.

Applicants shall submit to the director a statement, with Part B of the permit application, that suggests the conditions necessary to operate in compliance with the performance standards of 6 MCAR S 4.9321 D. during this period. This statement must include restrictions on waste constituents, waste feed rates, and the operating parameters identified in 6 MCAR S 4.9321 F.

The director shall review this statement and other relevant information submitted with Part B of the permit application, and shall specify requirements for this period that are sufficient to meet the performance standards of 6 MCAR S 4.9321 D.

B. Phase two requirements. In the permit for a new hazardous waste thermal treatment facility, for the purposes of determining the feasibility of compliance with the performance standards of 6 MCAR S 4.9321 D. and of determining the adequate operating conditions under 6 MCAR S 4.9321 F., the director shall establish permit conditions to be effective during the trial burn.

C. Trial burn plan. An applicant shall submit to the director a trial burn plan with Part B of the permit application. The trial burn plan must include the following information:

1. the results of an analysis of each waste or mixture of wastes to be burned, that uses the analytical techniques set forth in ~~Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods, publication number SW 846, 1980, of the Office of Solid Waste,~~ the United States Environmental Protection Agency document SW-846 as referenced in 6 MCAR S 4.9102 or that uses analytical techniques found by the director to be equivalent to them. This analysis must include:

a. the heat value of the waste in the form and composition in which it will be burned;

b. a description of the physical form of the waste and, if applicable, viscosity of the waste;

c. an identification of any hazardous organic constituents listed in 6 MCAR S 4.9137 that are reasonably expected to be found in the waste;

d. an identification of all waste constituents listed in 6 MCAR S 4.9137 for which no analysis was done and an explanation of why this analysis was not done; and

e. an approximate quantification of the hazardous constituents identified in the waste, within the precision specified by Environmental Protection Agency document SW 846;

2. a detailed engineering description of the thermal treatment unit for which the permit is sought, including:

a. manufacturer's name and model number;

b. type of thermal treatment unit;

c. linear dimensions of the thermal treatment unit, including the cross sectional area of the combustion chamber;

d. a description of the auxiliary fuel system, including type and feed rate;

e. the capacity of the prime mover;

f. a description of any automatic waste feed cutoff system;

g. nozzle and burner design;

h. construction materials; and

i. location and description of temperature, pressure, and flow indicating devices and control devices;

3. a detailed engineering description of air pollution control equipment and stack gas monitoring equipment and pollution control monitoring systems, including:

a. manufacturer's name and model numbers;

b. physical dimensions; and

c. where applicable, control specifications as to air flow, pressure drop, discharge, voltage requirements, and water flow;

4. a detailed description of sampling and monitoring procedures, including sampling and monitoring locations, the equipment to be used, frequency of sampling and monitoring, and planned procedures for sample analysis;

5. a detailed test schedule for each waste for which the trial burn is planned, including date, duration, quantity of waste to be burned, and other factors relevant to the agency's decision under E.;

6. a detailed test protocol, including, for each waste identified, the ranges of temperatures, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the thermal treatment unit;

7. a description of, and planned operating conditions for, emission control equipment that will be used;

8. procedures for rapidly stopping waste feed, for shutting down the thermal treatment unit, and for controlling emissions in the event of an equipment malfunction; and

9. other information as the director finds is reasonably necessary to determine whether to approve the trial burn plan in light of the purposes of B. and the criteria in E.

D. Review of trial burn plan. The director shall review the trial burn plan for completeness. If the director finds that the trial burn plan is incomplete or otherwise deficient, the

director shall promptly advise the owner or operator of the incompleteness or deficiency. The director shall suspend further processing of the trial burn plan until the owner or operator has supplied the necessary information or otherwise corrected the deficiency.

The director shall designate as trial principal organic hazardous constituents those constituents for which destruction and removal efficiencies must be calculated during the trial burn. The director's designations shall be based on the waste analysis data submitted by the owner or operator, the director's estimate of the difficulty of thermally treating the hazardous constituents to be burned, and the concentration or mass of hazardous constituents in the proposed waste feed. In addition, if the waste analysis indicates that the waste feed contains wastes that are listed in 6 MCAR S 4.9134, then in making principal organic hazardous constituents determinations the director shall consider the hazardous organic waste constituents identified in 6 MCAR S 4.9136 that formed the basis of this listing.

E. Approval of trial burn plan. The agency shall approve a trial burn plan if the agency finds that:

1. the trial burn is likely to determine whether the thermal treatment performance standards in 6 MCAR S 4.9321 D. can by met by the proposed thermal treatment facility;

2. the trial burn itself will not present an imminent hazard to human health or the environment;

3. the trial burn will aid the director in determining operating requirements to be specified under 6 MCAR S 4.9321 F.; and

4. the information sought in 1. and 3. cannot be developed through other means.

F. Conduct of trial burn. The owner or operator shall conduct the trial burn in accordance with the trial burn plan approved by the agency. The owner or operator shall perform the following analyses or make the following determinations:

1. a quantitative analysis of the trial principal organic

hazardous constituents in the waste feed to the thermal treatment unit;

2. a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial principal organic hazardous constituents, oxygen, and hydrogen chloride;

3. a quantitative analysis of the scrubber water, if any, ash residues, and other residues, for the purpose of estimating the fate of the trial principal organic hazardous constituents;

4. a computation of destruction and removal efficiency, in accordance with the formula specified in 6 MCAR S 4.9321 D.1.;

5. if the hydrogen chloride emission rate exceeds 1.8 kilograms of hydrogen chloride per hour (four pounds per hour), a computation of hydrogen chloride removal efficiency, in accordance with 6 MCAR S 4.9321 D.2.;

6. a computation of particulate emissions, in accordance with 6 MCAR S 4.9321 D.3.;

7. an identification of sources of fugitive emissions and the means of control thereof;

8. a measurement of average, maximum, and minimum temperatures of the thermal treatment zone and combustion gas velocity;

9. a continuous measurement of carbon monoxide, oxygen, and carbon dioxide in the exhaust gas; and

10. other analyses or determinations as the agency may specify as necessary to ensure that the trial burn will determine compliance with the performance standard in 6 MCAR S 4.9321 D. and to establish the operating conditions required by 6 MCAR S 4.9321 F. as necessary to meet this performance standard.

G. Submission of certification, results, and data. The owner or operator shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the analyses and determinations required by F. along with all underlying data of the results. The owner or operator shall make these submissions within 90 days after the completion of

the trial burn, or later if approved by the director.

H. Authorized signature. All submissions to the director required by this rule must be signed in accordance with 6 MCAR S 4.4006 and must contain the certification required by 6 MCAR S 4.4205.

I. Phase three requirements. To allow a new hazardous waste thermal treatment facility to operate after completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the director shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of 6 MCAR S 4.9321 F. The director may prohibit the burning of hazardous wastes in the facility during this period. These permit conditions are effective for the minimum time required to complete sample analysis, data computation, and submission of the trial burn results by the applicant, and modification of the facility permit by the agency.

An applicant shall submit to the director a statement with Part B of the permit application that identifies the conditions necessary to operate in compliance with the performance standards of 6 MCAR S 4.9321 D. during this period. This statement must include restrictions on waste constituents, waste feed rates, and the operating parameters identified in 6 MCAR S 4.9321 F.

The director shall review this statement and other relevant information submitted with part B of the permit application and shall specify requirements for this period most likely to meet the performance standards of 6 MCAR S 4.9321 D.

J. Phase four requirements. To allow a new hazardous waste thermal treatment facility to operate after the director reviews the results of the trial burn conducted under phase two, based on the results of the trial burn, the director shall establish operating requirements in the final permit according to 6 MCAR S 4.9321. A permit modification, if necessary, must be completed according to 6 MCAR S 4.4224 B. or D. and a permit revocation, if necessary, must be completed according to 6 MCAR S 4.4018 C.

K. Requirements for existing hazardous waste thermal treatment facilities. To determine the feasibility of compliance with the performance standards of 6 MCAR S 4.9321 D. and to determine adequate operating conditions under 6 MCAR S 4.9321 F., the applicant for a permit for an existing hazardous waste thermal treatment facility may prepare and submit to the director a trial burn plan and perform a trial burn in accordance with C.-H. An applicant who submits trial burn plans and who receives approval before submission of a permit application shall complete the trial burn and submit the results specified in F. with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the director to establish a later date for the submission of the Part B application or trial burn results. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn must be conducted and the results must be submitted within a time period to be specified by the director.

6 MCAR S 4.4222 Land treatment demonstration permits.

A. Letters of approval. A person who desires to conduct controlled laboratory demonstrations of hazardous waste land treatment for the purpose of collecting preliminary data shall request a letter of approval from the agency.

The agency shall issue a letter of approval if the demonstration will be conducted under supervised conditions in a closed system capable of providing adequate protection to human health and the environment, and if the data obtained will not be used as the only basis for the issuance of a facility permit. The letter of approval must specify the general conditions for conducting demonstrations, the duration of approval, and the specific waste types.

The letter of approval may only provide approval for controlled laboratory demonstrations of hazardous waste treatment and does not provide exemptions from the hazardous waste management and disposal requirements of 6 MCAR SS 4.9100-

4.9560. Materials resulting from the demonstration that meet the criteria of 6 MCAR SS 4.9128-4.9137 must be managed as hazardous waste.

B. Permit requirements. An owner or operator who desires to meet the treatment demonstration requirements of 6 MCAR S 4.9319 C. and E. shall request from the agency a treatment demonstration permit. The permit may be issued either as a short-term permit covering only the demonstration, or as a two-phase facility permit covering the demonstration and the design, construction, operation, and maintenance of the land treatment unit.

No short-term permit may be issued unless the agency finds that a completed Part B application is submitted that provides sufficient information upon which to base demonstration conditions, and that sufficient evidence exists upon which to base demonstration requirements.

No two-phase facility permit may be issued unless the agency finds that a completed Part B application is submitted that provides sufficient information upon which to base demonstration and facility conditions, and that sufficient evidence is provided to indicate that the waste material can be successfully land treated.

C. Permit applications. A completed Part B application must be submitted to obtain a short-term demonstration permit (unless the director has issued a written exemption from one or more of the data requirements.

D. Two-phase permits. If the agency issues a two-phase permit, the permit must establish, as requirements in the first phase of the facility permit, conditions for conducting the demonstration. These permit conditions must include design and operating parameters, including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, effect on food chain crops, monitoring procedures, post-demonstration cleanup activities, and (other conditions that the agency finds may be necessary under 6 MCAR S 4.9319 C. and E.) The agency shall

include conditions in the second phase of the facility permit to meet all 6 MCAR S 4.9319 requirements pertaining to unit design, construction, operation, and maintenance. The agency shall establish these conditions in the second phase of the permit based upon the information contained in the Part B application.

The first phase of the permit is effective upon the date of permit issuance.

The second phase of the permit is effective as provided in F.

E. Submission of certification, determinations, and data. The owner or operator who has been issued a two-phase permit and who has completed the treatment demonstration shall submit to the director a certification, signed by a person authorized to sign a permit application or a report under 6 MCAR S 4.4006, that the demonstration has been carried out in accordance with the conditions specified in phase one of the permit for conducting these demonstrations. Within 90 days of completion of the demonstration the owner or operator shall also submit the data collected during the demonstration and a determination as to whether compliance with 6 MCAR S 4.9319 C. and E. was achieved.

F. Permit modification. If the agency determines that the results of the demonstration meet the requirements of 6 MCAR S 4.9319 C. and E., the agency shall modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with 6 MCAR S 4.9319, based upon the results of the demonstration.

If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made in accordance with 6 MCAR S 4.4224 D., the agency shall give notice of its final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit becomes effective upon the date of notice of final decision.

If modifications under 6 MCAR S 4.4017 B. are necessary,

the second phase of the permit becomes effective only after those modifications have been made.

All modifications must be conducted according to 6 MCAR S 4.4224. The second phase of the permit does not go into effect until after the requirements of 6 MCAR S 4.4224 are met and the agency has given notice of final decision.

6 MCAR S 4.4223 Terms and conditions of hazardous waste facility permits.

A. Term of permit. A hazardous waste facility permit is effective for a fixed term not to exceed five years.

B. Additional general conditions. Each draft and final hazardous waste facility permit issued by the agency must contain all of the general conditions in 6 MCAR S 4.4015 C. except the condition in 6 MCAR S 4.4015 C.11. In addition, each permit must contain the following general conditions:

1. The permittee need not comply with the conditions of this permit to the extent and for the duration this noncompliance is authorized in an emergency permit in accordance with 6 MCAR S 4.4220.

2. The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations for the active life of the facilities and, for disposal facilities, for the post-closure care period. The permittee shall also maintain an operating record in accordance with 6 MCAR S 4.9294 until closure of the facility.

3. The permittee shall not commence treatment, storage, or disposal of hazardous waste in a new hazardous waste facility or in a modified portion of an existing hazardous waste facility until:

a. the permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and by a registered professional engineer stating that the facility has been constructed or modified in compliance with the conditions of the permit; and

b. the director has inspected the new or modified facility and has provided the permittee with a letter stating

that, based on information available to the director, the facility appears to have been constructed in compliance with the conditions of the permit.

4. If the permittee discovers a release or discharge of hazardous waste which could be a danger to public drinking water supplies or threaten human health or the environment or discovers a fire or explosion at a hazardous waste facility which could threaten human health or the environment outside the facility, the permittee shall, within 24 hours of the discovery of the incident, orally notify the director of the incident and its description. Within 15 days after the incident the permittee shall submit a written report describing the incident. The oral and written descriptions of the incident shall include at a minimum:

a. the name, address, and telephone number of the owner or operator;

b. the name, address, and telephone number of the facility;

c. the date, time, and type of incident;

d. the name and quantity of materials involved;

e. the extent of injuries, if any;

f. an assessment of actual or potential hazards to the environment and human health outside the facility; and

g. the estimated quantity and disposition of recovered hazardous materials.

5. In addition to the reports required by 6 MCAR S 4.4015, the permittee shall submit the following reports in accordance with 6 MCAR SS 4.9280-4.9322:

a. If the permittee discovers a significant discrepancy in a manifest, the permittee shall attempt to reconcile the discrepancy. If the permittee is unable to reconcile the discrepancy within ten days, the permittee shall submit to the director a letter report and a copy of the manifest in accordance with 6 MCAR S 4.9293 C.1.

b. If a shipment of hazardous waste is delivered to the permittee without the required manifest or shipping paper,

the permittee shall attempt to reconcile the discrepancy. If the permittee is unable to reconcile the discrepancy, the permittee shall, prior to the acceptance of the waste, notify the director of the delivery of the waste and shall submit to the director a follow-up report within ten days of receipt of the waste, in accordance with 6 MCAR S 4.9296 C.

c. In accordance with 6 MCAR S 4.9296 B., the permittee shall submit an annual report concerning the activities at the facility during the previous calendar year.

d. If the permittee receives hazardous waste which the permittee is not authorized by the permit to manage, the permittee shall immediately notify the director of the receipt of the waste in accordance with 6 MCAR S 4.9293 C.3.

6. The permittee may allow an authorized representative to sign reports submitted in accordance with the requirements of this permit if:

a. the authorization is made in writing by persons identified in 6 MCAR S 4.4006 except that for a corporation the written authorization must be made by a principal executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a person of equivalent responsibility; and

c. the written authorization is submitted to the director.

If authorization is no longer accurate, a new authorization must be submitted to the director prior to or together with any reports or permit applications to be signed by an authorized representative.

C. Additional condition for surface impoundments. Each draft and final hazardous waste facility permit issued by the agency for a surface impoundment must contain the following condition: The permittee shall not commence treatment, storage, or disposal of hazardous waste in a surface impoundment which

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has been repaired under 6 MCAR S 4.9317 F.4. until:

1. the permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and by a registered professional engineer stating that the surface impoundment has been repaired in compliance with the conditions of the permit; and

2. the director has inspected the repaired surface impoundment and has provided the permittee with a letter stating that, based on information available to the director, the surface impoundment appears to have been repaired in compliance with the conditions of the permit.

6 MCAR S 4.4224 Modification of permits; revocation and reissuance of permits.

A. Scope. In addition to the provisions of 6 MCAR SS 4.4017, 4.4018, and 4.4019, the provisions of B., C., D., and E. are applicable to the modification, revocation, and reissuance of hazardous waste facility permits.

B. Additional justification for modification of permits or revocation and reissuance of permits. In addition to the justifications listed in 6 MCAR S 4.4017, the following constitute justification for the director to commence proceedings to modify a permit or to revoke and reissue a permit:

1. the director discovers that modification of a closure plan or post-closure plan is required by 6 MCAR S 4.9298 D. or 4.9300 C.;

2. the permittee files a request for extension of the 90- or 180-day periods set forth in 6 MCAR S 4.9299;

3. the director receives notification of expected closure under 6 MCAR S 4.9298;

4. the director finds that modification of the 30-year post-closure period is necessary as provided in 6 MCAR S 4.9301 A.;

5. the director finds that continuation of security requirements is necessary as provided by 6 MCAR S 4.9301 B.;

6. the director finds that the permittee has made the demonstration required by 6 MCAR S 4.9301 C. such that a

disturbance of the integrity of the containment system should be authorized;

7. the permittee files a request under 6 MCAR S 4.9312 C. for a variance from the required level of financial responsibility;

8. the director demonstrates under 6 MCAR S 4.9312 D. that an upward adjustment of the level of financial responsibility is required;

9. the director finds that the corrective action program specified in the permit under 6 MCAR S 4.9297 M. has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time;

10. to include a detection monitoring program that meets the requirements of 6 MCAR S 4.9297 K., when the owner or operator has been conducting a compliance monitoring program under 6 MCAR S 4.9297 L. or a corrective action program under 6 MCAR S 4.9297 M., and the compliance period ends before the end of the post-closure care period for the unit;

11. a permit requires a compliance monitoring program under 6 MCAR S 4.9297 L., but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard;

12. to include conditions applicable to units at a facility that were not previously included in the facility's permit; ~~or~~

13. a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions; or

14. to change the operating requirements set in the permit to reflect the results of the trial burn.

C. Additional justification to commence revocation without reissuance of permit. In addition to the justifications listed in 6 MCAR S 4.4018, a failure to submit an annual facility operator's fee within 180 days of the due date, as specified in the agency's hazardous waste fee rules, constitutes justification for the director to commence proceedings to revoke

a permit without reissuance.

D. Minor modifications of permits. In addition to the corrections or allowances listed in 6 MCAR S 4.4019 B. and C., if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in 6 MCAR SS ~~4.4010-4.4019~~ 4.4010-4.4013:

1. to change the list of facility emergency coordinators in the permit's contingency plan;

2. to change the list of equipment in the permit's contingency plan;

3. to change estimates of maximum inventory under 6 MCAR S 4.9298 C.2.;

4. to change the expected year of closure under 6 MCAR S 4.9298 C.4.;

5. to change schedules for final closure under 6 MCAR S 4.9298 C.4.;

6. to change the ranges of the operating requirements set in the permit to reflect the results of the trial burn provided that the change is minor;

7. to change the operating requirements set in the permit for conducting a trial burn provided that the change is minor;

8. to grant one extension of the time period for determining operational readiness of a thermal treatment unit following completion of construction, for up to 720 hours operating time for treatment of hazardous wastes;

9. to change the treatment program requirements for land treatment units under 6 MCAR S 4.9319 B. to improve treatment of hazardous constituents, provided that the change is minor;

10. to change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with 6 MCAR S 4.4222 provided that the change is minor; and

11. to allow a second treatment demonstration for land treatment to be conducted when the results of the first

demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 6 MCAR S 4.9319 C. and E.3., provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.

E. Consideration of facility siting. In making its final determination on a permit modification or permit revocation and reissuance, the agency shall not consider the suitability of the facility location unless new information indicates that a threat to human health or the environment exists which was unknown at the time the permit was issued.

Repealer. Pollution Control Agency rules 6 MCAR SS 4.9006 and 4.9007 are repealed.

the trial burn, or later if approved by the director upon a finding by the director that good cause exists for granting a time extension.

H. Authorized signature. All submissions to the director required by this rule must be signed in accordance with 6 MCAR S 4.4006 and must contain the certification required by 6 MCAR S 4.4205.

I. Phase three requirements. To allow a new hazardous waste thermal treatment facility to operate after completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the director shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of 6 MCAR S 4.9321 F. The director may prohibit the burning of hazardous wastes in the facility during this period. These permit conditions are effective for the minimum time required to complete sample analysis, data computation, and submission of the trial burn results by the applicant, and modification of the facility permit by the agency.

An applicant shall submit to the director a statement with Part B of the permit application that identifies the conditions necessary to operate in compliance with the performance standards of 6 MCAR S 4.9321 D. during this period. This statement must include restrictions on waste constituents, waste feed rates, and the operating parameters identified in 6 MCAR S 4.9321 F.

The director shall review this statement and other relevant information submitted with part B of the permit application and shall specify requirements for this period most likely to meet the performance standards of 6 MCAR S 4.9321 D.

J. Phase four requirements. To allow a new hazardous waste thermal treatment facility to operate after the director reviews the results of the trial burn conducted under phase two, based on the results of the trial burn, the director shall establish operating requirements in the final permit according to 6 MCAR S 4.9321. A permit modification, if necessary, must be completed

according to 6 MCAR S 4.4224 B. or D. and a permit revocation, if necessary, must be completed according to 6 MCAR S 4.4018 C.

K. Requirements for existing hazardous waste thermal treatment facilities. To determine the feasibility of compliance with the performance standards of 6 MCAR S 4.9321 D. and to determine adequate operating conditions under 6 MCAR S 4.9321 F., the applicant for a permit for an existing hazardous waste thermal treatment facility may prepare and submit to the director a trial burn plan and perform a trial burn in accordance with C.-H. An applicant who submits trial burn plans and who receives approval before submission of a permit application shall complete the trial burn and submit the results specified in F. with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the director to establish a later date for the submission of the Part B application or trial burn results. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn must be conducted and the results must be submitted within a time period to be specified by the director.

6 MCAR S 4.4222 Land treatment demonstration permits.

A. Letters of approval. A person who desires to conduct controlled laboratory demonstrations of hazardous waste land treatment for the purpose of collecting preliminary data shall request a letter of approval from the agency.

The agency shall issue a letter of approval if the demonstration will be conducted under supervised conditions in a closed system capable of providing adequate protection to human health and the environment, and if the data obtained will not be used as the only basis for the issuance of a facility permit. The letter of approval must specify the general conditions for conducting demonstrations, the duration of approval, and the specific waste types.

The letter of approval may only provide approval for controlled laboratory demonstrations of hazardous waste

treatment and does not provide exemptions from the hazardous waste management and disposal requirements of 6 MCAR SS 4.9100-4.9560. Materials resulting from the demonstration that meet the criteria of 6 MCAR SS 4.9128-4.9137 must be managed as hazardous waste.

B. Permit requirements. An owner or operator who desires to meet the treatment demonstration requirements of 6 MCAR S 4.9319 C. and E. shall request from the agency a treatment demonstration permit. The permit may be issued either as a short-term permit covering only the demonstration, or as a two-phase facility permit covering the demonstration and the design, construction, operation, and maintenance of the land treatment unit.

No short-term permit may be issued unless the agency finds that a completed Part B application is submitted that provides sufficient information upon which to base demonstration conditions, and that sufficient evidence exists upon which to base demonstration requirements.

No two-phase facility permit may be issued unless the agency finds that a completed Part B application is submitted that provides sufficient information upon which to base demonstration and facility conditions, and that sufficient evidence is provided to indicate that the waste material can be successfully land treated.

C. Permit applications. A completed Part B application must be submitted to obtain a short-term demonstration permit unless the director has issued a written exemption from one or more of the data requirements.

D. Two-phase permits. If the agency issues a two-phase permit, the permit must establish, as requirements in the first phase of the facility permit, conditions for conducting the demonstration. These permit conditions must include design and operating parameters, including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, effect on food chain crops, monitoring procedures, post-demonstration cleanup

activities, and other conditions that the agency finds may be necessary under 6 MCAR S 4.9319 C. and E. The agency shall include conditions in the second phase of the facility permit to meet all 6 MCAR S 4.9319 requirements pertaining to unit design, construction, operation, and maintenance. The agency shall establish these conditions in the second phase of the permit based upon the information contained in the Part B application.

The first phase of the permit is effective upon the date of permit issuance.

The second phase of the permit is effective as provided in F.

E. Submission of certification, determinations, and data. The owner or operator who has been issued a two-phase permit and who has completed the treatment demonstration shall submit to the director a certification, signed by a person authorized to sign a permit application or a report under 6 MCAR S 4.4006, that the demonstration has been carried out in accordance with the conditions specified in phase one of the permit for conducting these demonstrations. Within 90 days of completion of the demonstration the owner or operator shall also submit the data collected during the demonstration and a determination as to whether compliance with 6 MCAR S 4.9319 C. and E. was achieved.

F. Permit modification. If the agency determines that the results of the demonstration meet the requirements of 6 MCAR S 4.9319 C. and E., the agency shall modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with 6 MCAR S 4.9319, based upon the results of the demonstration.

If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made in accordance with 6 MCAR S 4.4224 D., the agency shall give notice of its final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit becomes

effective upon the date of notice of final decision.

If modifications under 6 MCAR S 4.4017 B. are necessary, the second phase of the permit becomes effective only after those modifications have been made.

All modifications must be conducted according to 6 MCAR S 4.4224. The second phase of the permit does not go into effect until after the requirements of 6 MCAR S 4.4224 are met and the agency has given notice of final decision.

6 MCAR S 4.4223 Terms and conditions of hazardous waste facility permits.

A. Term of permit. A hazardous waste facility permit is effective for a fixed term not to exceed five years.

B. Additional general conditions. Each draft and final hazardous waste facility permit issued by the agency must contain all of the general conditions in 6 MCAR S 4.4015 C. except the condition in 6 MCAR S 4.4015 C.11. In addition, each permit must contain the following general conditions:

1. The permittee need not comply with the conditions of this permit to the extent and for the duration this noncompliance is authorized in an emergency permit in accordance with 6 MCAR S 4.4220.

2. The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations for the active life of the facilities and, for disposal facilities, for the post-closure care period. The permittee shall also maintain an operating record in accordance with 6 MCAR S 4.9294 until closure of the facility.

3. The permittee shall not commence treatment, storage, or disposal of hazardous waste in a new hazardous waste facility or in a modified portion of an existing hazardous waste facility until:

a. the permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and by a registered professional engineer stating that the facility has been constructed or modified in compliance with the conditions of the permit; and

b. the director has inspected the new or modified facility and has provided the permittee with a letter stating that, based on information available to the director, the facility appears to have been constructed in compliance with the conditions of the permit.

4. If the permittee discovers a release or discharge of hazardous waste which could be a danger to public drinking water supplies or threaten human health or the environment or discovers a fire or explosion at a hazardous waste facility which could threaten human health or the environment outside the facility, the permittee shall, within 24 hours of the discovery of the incident, orally notify the director of the incident and its description. Within 15 days after the incident the permittee shall submit a written report describing the incident. The oral and written descriptions of the incident shall include at a minimum:

a. the name, address, and telephone number of the owner or operator;

b. the name, address, and telephone number of the facility;

c. the date, time, and type of incident;

d. the name and quantity of materials involved;

e. the extent of injuries, if any;

f. an assessment of actual or potential hazards to the environment and human health outside the facility; and

g. the estimated quantity and disposition of recovered hazardous materials.

5. In addition to the reports required by 6 MCAR S 4.4015, the permittee shall submit the following reports in accordance with 6 MCAR SS 4.9280-4.9322:

a. If the permittee discovers a significant discrepancy in a manifest, the permittee shall attempt to reconcile the discrepancy. If the permittee is unable to reconcile the discrepancy within ten days, the permittee shall submit to the director a letter report and a copy of the manifest in accordance with 6 MCAR S 4.9293 C.1.

b. If a shipment of hazardous waste is delivered to the permittee without the required manifest or shipping paper, the permittee shall attempt to reconcile the discrepancy. If the permittee is unable to reconcile the discrepancy, the permittee shall, prior to the acceptance of the waste, notify the director of the delivery of the waste and shall submit to the director a follow-up report within ten days of receipt of the waste, in accordance with 6 MCAR S 4.9296 C.

c. In accordance with 6 MCAR S 4.9296 B., the permittee shall submit an annual report concerning the activities at the facility during the previous calendar year.

d. If the permittee receives hazardous waste which the permittee is not authorized by the permit to manage, the permittee shall immediately notify the director of the receipt of the waste in accordance with 6 MCAR S 4.9293 C.3.

6. The permittee may allow an authorized representative to sign reports submitted in accordance with the requirements of this permit if:

a. the authorization is made in writing by persons identified in 6 MCAR S 4.4006 except that for a corporation the written authorization must be made by a principal executive officer of at least the level of vice-president;

b. the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a person of equivalent responsibility; and

c. the written authorization is submitted to the director.

If authorization is no longer accurate, a new authorization must be submitted to the director prior to or together with any reports or permit applications to be signed by an authorized representative.

C. Additional condition for surface impoundments. Each draft and final hazardous waste facility permit issued by the agency for a surface impoundment must contain the following

condition: The permittee shall not commence treatment, storage, or disposal of hazardous waste in a surface impoundment which has been repaired under 6 MCAR S 4.9317 F.4. until:

1. the permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and by a registered professional engineer stating that the surface impoundment has been repaired in compliance with the conditions of the permit; and

2. the director has inspected the repaired surface impoundment and has provided the permittee with a letter stating that, based on information available to the director, the surface impoundment appears to have been repaired in compliance with the conditions of the permit.

6 MCAR S 4.4224 Modification of permits; revocation and reissuance of permits.

A. Scope. In addition to the provisions of 6 MCAR SS 4.4017, 4.4018, and 4.4019, the provisions of B., C., D., and E. are applicable to the modification, revocation, and reissuance of hazardous waste facility permits.

B. Additional justification for modification of permits or revocation and reissuance of permits. In addition to the justifications listed in 6 MCAR S 4.4017, the following constitute justification for the director to commence proceedings to modify a permit or to revoke and reissue a permit:

1. the director discovers that modification of a closure plan or post-closure plan is required by 6 MCAR S 4.9298 D. or 4.9300 C.;

2. the permittee files a request for extension of the 90- or 180-day periods set forth in 6 MCAR S 4.9299;

3. the director receives notification of expected closure under 6 MCAR S 4.9298;

4. the director finds that modification of the 30-year post-closure period is necessary as provided in 6 MCAR S 4.9301 A.;

5. the director finds that continuation of security requirements is necessary as provided by 6 MCAR S 4.9301 B.;

6. the director finds that the permittee has made the demonstration required by 6 MCAR S 4.9301 C. such that a disturbance of the integrity of the containment system should be authorized;

7. the permittee files a request under 6 MCAR S 4.9312 C. for a variance from the required level of financial responsibility;

8. the director demonstrates under 6 MCAR S 4.9312 D. that an upward adjustment of the level of financial responsibility is required;

9. the director finds that the corrective action program specified in the permit under 6 MCAR S 4.9297 M. has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time;

10. to include a detection monitoring program that meets the requirements of 6 MCAR S 4.9297 K., when the owner or operator has been conducting a compliance monitoring program under 6 MCAR S 4.9297 L. or a corrective action program under 6 MCAR S 4.9297 M., and the compliance period ends before the end of the post-closure care period for the unit;

11. a permit requires a compliance monitoring program under 6 MCAR S 4.9297 L., but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard;

12. to include conditions applicable to units at a facility that were not previously included in the facility's permit; ~~or~~

13. a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions; or

14. to change the operating requirements set in the permit to reflect the results of the trial burn.

C. Additional justification to commence revocation without reissuance of permit. In addition to the justifications listed in 6 MCAR S 4.4018, a failure to submit an annual facility operator's fee within 180 days of the due date, as specified in

the agency's hazardous waste fee rules, constitutes justification for the director to commence proceedings to revoke a permit without reissuance.

D. Minor modifications of permits. In addition to the corrections or allowances listed in 6 MCAR S 4.4019 B. and C., if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in 6 MCAR SS ~~4.4010-4.4019~~ 4.4010-4.4013:

1. to change the list of facility emergency coordinators in the permit's contingency plan;

2. to change the list of equipment in the permit's contingency plan;

3. to change estimates of maximum inventory under 6 MCAR S 4.9298 C.2.;

4. to change the expected year of closure under 6 MCAR S 4.9298 C.4.;

5. to change schedules for final closure under 6 MCAR S 4.9298 C.4.;

6. to change the ranges of the operating requirements set in the permit to reflect the results of the trial burn provided that the change is minor;

7. to change the operating requirements set in the permit for conducting a trial burn provided that the change is minor;

8. to grant one extension of the time period for determining operational readiness of a thermal treatment unit following completion of construction, for up to 720 hours operating time for treatment of hazardous wastes;

9. to change the treatment program requirements for land treatment units under 6 MCAR S 4.9319 B. to improve treatment of hazardous constituents, provided that the change is minor;

10. to change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with 6 MCAR S 4.4222 provided that the change is minor; and

11. to allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 6 MCAR S 4.9319 C. and E.3., provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.

E. Consideration of facility siting. In making its final determination on a permit modification or permit revocation and reissuance, the agency shall not consider the suitability of the facility location unless new information indicates that a threat to human health or the environment exists which was unknown at the time the permit was issued.

Repealer. Pollution Control Agency rules 6 MCAR SS 4.9006 and 4.9007 are repealed.

2:05PM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 26 1984
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
March 15 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

AG. copy

Pollution Control Agency

Adopted Rules Relating to Indirect Source Permits

Rules as Adopted

6 MCAR S 4.4311 Scope.

Rules 6 MCAR SS 4.4001-4.4021 and 4.4311-4.4321 govern application procedures for and the issuance and conditions of indirect source permits. Rules 6 MCAR SS 4.3001-4.3011; 4.4001-4.4021 and 4.4311-4.4321 shall be construed to complement each other.

6 MCAR S 4.4312 Definitions.

A. Statutes and other rules. The definitions in Minnesota Statutes, section 116.06; 6 MCAR S 4.4001; and APC 2 apply to terms in 6 MCAR SS 4.4311-4.4321 unless the terms are defined in C.-H.

B. Scope. As used in 6 MCAR SS 4.4311-4.4321, the following terms have the meanings given them.

C. Indirect source. "Indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a state standard. Indirect sources include, but are not limited to:

1. highways and roads;
2. parking facilities;
3. retail, commercial, and industrial facilities;
4. recreation, amusement, sports, and entertainment facilities;
5. airports;
6. office and government buildings;
7. apartment and condominium buildings; and
8. education facilities.

D. Associated parking area. "Associated parking area" means a parking facility or facilities owned or operated in conjunction with an indirect source.

E. To commence construction. "To commence construction" means to engage in a continuous program of construction including site clearance, grading, dredging, or land filling specifically designed for an indirect source in preparation for the fabrication, erection, or installation of the building components of the indirect source. For the purpose of this paragraph, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be considered in determining whether a construction or modification program is continuous.

F. To commence modification. "To commence modification" means to engage in a continuous program of modification, including site clearance, grading, dredging, or land filling in preparation for a specific modification of the indirect source.

G. Highway project. "Highway project" means the development proposal of a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program.

H. Metropolitan area. "Metropolitan area" means the city limits of Duluth and all contiguous incorporated areas in Minnesota; the city limits of Moorhead and all contiguous incorporated areas in Minnesota; the city limits of St. Cloud and all contiguous incorporated areas; Rochester and all area within the boundaries of Olmsted County; and the Twin Cities metropolitan area including Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

6 MCAR S 4.4313 Permit requirement.

Except as provided in 6 MCAR SS 4.4314 and 4.4315, no person may cause or allow the construction or modification of any of the indirect sources listed in A.-D. without first obtaining a permit from the agency. If an indirect source is constructed or modified in increments that individually do not require a permit and that are not part of a program of construction or modification in planned incremental phases for

which a permit has been issued by the agency, the increments commenced after December 31, 1974, must be added together to determine the applicability of the requirement to obtain a permit.

A. Parking facilities:

1. a new parking facility, or other new indirect source with an associated parking area, which has a new parking capacity of 2,000 cars or more; or

2. a modified parking facility, or a modification or an associated parking area, which increases parking capacity by 1,000 cars or more, or which increases total parking capacity to 2,000 cars or more.

B. Highways:

1. a new highway project wholly within or partially within a metropolitan area with an anticipated average annual daily traffic volume of 20,000 or more vehicles per day within ten years of the completion of construction; or

2. a modified highway project which will increase average annual daily traffic volume by 10,000 or more vehicles per day within ten years after completion of the modification.

C. Airports: a new or modified airport construction which will result in the generation of more than 1,000,000 passengers per year on regularly scheduled air carriers and commercial charter flights within ten years after completion of construction.

D. Other sources: an indirect source for which the results of an assessment prepared under 6 MCAR S 4.4315 indicate that a permit is required.

6 MCAR S 4.4314 Exemptions.

The owner or operator of an indirect source listed in A.-F. is exempt from the requirement to obtain an indirect source permit:

A. Existing sources: indirect sources that were in operation on February 18, 1975.

B. Sources under construction: indirect sources for which construction was commenced prior to January 1, 1975.

C. Parking facilities:

1. a new parking facility, or other new indirect source with an associated parking area, which has a new parking capacity of fewer than 1,000 cars; or

2. a modified parking facility, or a modification of an associated parking area, which increases parking capacity by fewer than 500 cars, provided that the conditions of 6 MCAR S 4.4313 A.2. are not exceeded.

D. Airports: a new or modified airport construction that will result in the generation of fewer than 500,000 passengers per year on regularly scheduled air carriers and commercial charter flights within ten years after completion of construction.

E. Highways: highway projects that are wholly outside a metropolitan area.

F. Other sources: indirect sources constructed as part of the Minnesota Implementation Plan to Achieve Carbon Monoxide Ambient Air Quality Standards, specifically the parking ramps constructed by the city of Minneapolis on the fringe of the Minneapolis central business district.

6 MCAR S 4.4315 Assessment.

A. In general. For all indirect sources not described in 6 MCAR SS 4.4313 and 4.4314, the necessity for an indirect source permit shall be determined according to the air quality assessment procedure set forth in C. No person may cause or allow the construction of an indirect source for which an assessment is required until the assessment has been completed to the satisfaction of the director. If the director determines that a permit application is required, the application must be made in accordance with 6 MCAR S 4.4317.

B. Assessment information. To perform the air quality assessment the following information is required:

1. The highest existing peak daily traffic count on the busiest segment of a public road or highway located within one-fourth mile from a point on the property line of the indirect source. This segment of public road or highway shall

be referred to as the "busiest roadway."

2. The highest projected peak daily traffic attracted to the proposed indirect source construction or modification occurring at a time during the one-year period immediately following the construction or modification.

3. The highest projected peak daily traffic on the busiest roadway during the one-year period immediately following the construction or modification, not including traffic attracted to the proposed indirect source.

C. Assessment procedure. The director shall make a determination as to whether a permit is required based on the following:

1. A comparison of existing busiest roadway traffic volume to volume likely to result in a violation of the one-hour carbon monoxide standard. If 12 percent of the traffic volume determined pursuant to B.1. is greater than or equal to 2,500 vehicles per hour, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 2. must be followed.

2. A comparison of existing busiest roadway traffic volume to volume likely to result in a violation of the eight-hour carbon monoxide standard. If 60 percent of the traffic volume determined under B.1. is greater than or equal to 5,000 vehicles per eight hours, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 3. must be followed.

3. A comparison of projected busiest roadway and source-attracted traffic to volume likely to result in a violation of the one-hour carbon monoxide standard. If 12 percent of the sum of the traffic volumes determined under B.2.-3. is greater than or equal to 5,000 vehicles per hour, a permit is required and completion of the remainder of the assessment procedure is not required; if it is less, the procedure in 4. must be followed.

4. A comparison of projected busiest roadway and source-attracted traffic volumes to volume likely to result in a

violation of the eight-hour carbon monoxide standard. If 60 percent of the sum of the traffic volumes determined under B.2.-3. is greater than or equal to 7,500 vehicles per eight hours, a permit is required. If it is less, then no permit is required.

6 MCAR S 4.4316 Circumvention.

No person may circumvent the requirements of 6 MCAR SS 4.4311-4.4321 by causing or allowing a pattern of ownership or development to occur over a geographic area which, except for the pattern of ownership or development, would otherwise require an indirect source permit.

6 MCAR S 4.4317 Contents of permit application.

A. In general. A person who applies for an indirect source permit shall submit to the director the information required by 6 MCAR S 4.4005. In addition, the applicant shall submit to the director the information required by B. and, where applicable, the information required by C. and D. If approval is sought for an indirect source to be constructed in incremental phases, the applicant shall submit the information required by this rule for each phase of the construction project at the time of the initial application.

B. Information required for all indirect sources. All applicants for an indirect source permit shall submit the following:

1. a description of the proposed use of the site, including the normal hours of operation of the facility, and the general types of activities to be operated in it;

2. a site plan showing the location of associated parking areas, points of motor vehicle ingress and egress to and from the site and its associated parking areas, and the location and height of buildings on the site;

3. an identification of the principal roads, highways, and intersections that will be used by motor vehicles moving to or from the indirect source;

4. an estimate, as of the first year after the date the

indirect source will be substantially complete and operational, of the average daily traffic volumes, maximum traffic volumes for one-hour and eight-hour periods, and vehicle capacities of the principal roads, highways, and intersections identified under 3. located within one-fourth mile of all boundaries of the site;

5. availability of existing and projected mass transit to service the site;

6. any additional information or documentation that the director or agency deem necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data for carbon monoxide at the proposed site prior to construction or modification. If the director requires the applicant to perform air quality monitoring for carbon monoxide at the proposed site, the director shall not require the applicant to perform monitoring for a period of more than 14 days.

C. Information required for airports. An applicant for an indirect source permit for an airport shall submit the following:

1. an estimate of the average number and maximum number of aircraft operations per day by type of aircraft during the first, fifth, and tenth years after the date of expected completion;

2. a description of the commercial, industrial, residential, and other development that the applicant expects will occur within three miles of the perimeter of the airport within the first five and the first ten years after the date of expected completion; and

3. expected passenger loadings at the airport.

D. Information required for highway projects. An applicant for an indirect source permit for a highway project shall submit the following:

1. a description of the average and maximum traffic volumes for one-, eight-, and 24-hour time periods expected within ten years of date of expected completion;

2. an estimate of vehicle speeds for average and maximum

traffic volume conditions and the vehicle capacity of the highway project;

3. a map showing the location of the highway project, including the location of buildings along the right-of-way; and

4. a description of the general features of the highway project and associated right-of-way, including the approximate height of buildings adjacent to the highway.

6 MCAR S 4.4318 Determination of air quality impact of indirect source.

A. Concentrations of carbon monoxide. The agency shall determine, by evaluation of information submitted by the applicant, the reasonableness of anticipated concentrations of carbon monoxide at reasonable receptor or exposure sites that will be affected by the mobile source activity expected to be attracted by the indirect source. For a highway, the agency shall determine, by evaluation of information submitted by the applicant, the reasonableness of anticipated concentrations of carbon monoxide at reasonable receptor or exposure sites that will be affected by the mobile source activity expected on the highway for the ten-year period following the expected date of completion. For the purposes of this rule "reasonable receptor or exposure sites" means locations where people might reasonably be exposed to carbon monoxide for time periods corresponding to time periods referenced in Minnesota ambient air quality standards.

B. Analytic method. In estimating anticipated carbon monoxide concentrations the applicant shall use the methods set forth in Code of Federal Regulations, title 40, section 52.22 (b)(4)(ii) (1982).

6 MCAR S 4.4319 Final determination.

The agency shall issue a permit to construct or modify an indirect source if the agency determines that the indirect source will not:

A. violate a control strategy of the Minnesota Implementation Plan to Achieve National Ambient Air Quality

Standards; or

B. violate state standards for carbon monoxide in a region or portion thereof.

6 MCAR S 4.4320 Permit conditions.

A. Special conditions. An indirect source permit issued by the agency must contain conditions necessary for the permittee to achieve compliance with all applicable Minnesota or federal statutes or rules. These conditions may include, but are not limited to:

1. binding commitments to roadway improvements or additional mass transit facilities to serve the indirect source secured by the owner or operator from governmental agencies having jurisdiction over them;

2. binding commitments by the owner or operator to specific programs for mass transit and paratransit incentives for the employees and patrons of the source; and

3. binding commitments by the owner or operator to construct, modify, or operate the indirect source ~~in a manner necessary~~ to achieve the traffic flow characteristics ~~determined by the director to be appropriate~~ necessary to prevent violations of carbon monoxide ambient air quality standards.

B. General condition. An indirect source permit issued by the agency must contain the general condition that approval to construct or modify shall become invalid if construction or modification is not commenced within 24 months after receipt of the approval. The agency may extend this time period upon a satisfactory showing that an extension is justified. The applicant may apply for an extension at the time of initial application or at any time thereafter.

6 MCAR S 4.4321 Minor modification of permit.

In addition to the corrections or allowances listed in 6 MCAR S 4.4019 C., the director upon obtaining the consent of the permittee may modify an indirect source permit without following the procedures in 6 MCAR SS 4.4010-~~4.4019~~ 4.4013 if the director determines that the modification would not result in an increase

in carbon monoxide of greater than one part per million ~~or~~ with respect to the eight-hour carbon monoxide standard, and that the modification would not result in an increase in carbon monoxide of greater than three parts per million with respect to the one-hour carbon monoxide standard, and that the modification would not result in a violation of the carbon monoxide standard established in 6 MCAR S 4.0001~~, and that the modification would not subject the permittee to the requirement to obtain a permit modification set forth in 6 MCAR S 4.4313~~.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 26 1984
Joan Anderson Growe
Secretary of State
2:05 PM

APPROVED AS TO FORM AND LEGALITY
March 15 19 84
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassell
SPECIAL ASSISTANT ATTORNEY GENERAL

AG copy

Pollution Control Agency

Adopted Rules Relating to Permits

Rules as Adopted

6 MCAR S 4.4001 Definitions.

A. Scope. The definitions in 6 MCAR S 4.3002 in the agency's procedural rules apply to the terms used in 6 MCAR SS 4.4001-4.4021 unless the terms are defined as follows.

B. Draft permit. "Draft permit" means a document prepared by the director under 6 MCAR S 4.4010 that indicates the director's preliminary decision to issue, modify, revoke and reissue, or reissue a permit, and that indicates the proposed terms and conditions of the permit; or a notice prepared by the director under 6 MCAR S 4.4010 that indicates the director's preliminary decision to deny, to refuse to reissue, or to revoke a permit without reissuance.

C. Permit. "Permit" means a discharge, emission, and disposal authorization; a construction, installation, or operation authorization; and other agency authorizations designated "permit" in Minnesota Statutes, chapters 115 and 116, including Minnesota Statutes, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4a; 116.081; and 116.091. "Permit" does not include an "order," "variance," or "stipulation agreement" as defined in 6 MCAR S 4.3002 and does not include a "certification."

D. General permit. "General permit" means a permit issued under 6 MCAR S 4.4021 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

6 MCAR S 4.4002 Scope of rules.

Except as otherwise specifically provided, 6 MCAR SS 4.4001-4.4021 apply to the following:

A. An agency permit required for the storage, treatment, utilization, processing, transfer, intermediate disposal, or

final disposal of solid waste.

B. An agency permit required for the treatment, storage, or disposal of hazardous waste.

C. An agency permit required for sewage sludge landspreading facilities.

D. A letter of approval required for sewage sludge landspreading sites. Rule 6 MCAR S 4.4004 A. and C. applies to these approvals, except that the time period referenced in those rules shall be 30 days instead of 180 days. Rules 6 MCAR SS 4.4010 D. and E. and 4.4011 do not apply to these approvals.

E. An agency permit required for the construction, installation, or operation of a disposal system. Rule 6 MCAR S 4.4004 A. and C. applies to permits for sewer extensions, except that the time period referenced in those rules shall be 60 days instead of 180 days. Rules 6 MCAR SS 4.4010 D. and E., 4.4011, and 4.4015 do not apply to permits for sewer extensions.

F. An agency permit required for the discharge of a pollutant into the waters of the state from a point source.

G. An agency permit required for the construction or operation of a feedlot; however, rules 6 MCAR SS 4.4004-4.4007 do not apply to these permits. Rules 6 MCAR SS 4.4010 D. and E. and 4.4011 do not apply to animal feedlot interim permits.

H. An agency permit required for the construction or operation of a liquid storage facility. Rule 6 MCAR S 4.4004 A. and C. applies to these permits except that the time period referenced in those rules shall be 90 days instead of 180 days. Rules 6 MCAR SS 4.4010 D. and E., 4.4011, and 4.4015 do not apply to these permits.

I. An agency permit required for the construction, modification, reconstruction, or operation of an air emission facility except those activities permitted under APC 8. Rules 6 MCAR SS 4.4010 D. and E. and 4.4011 do not apply to permits for construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of less than 100 tons per year or to permits for operation of a facility with an actual emission rate of a single

criteria pollutant of less than 500 tons per year. Rule 6 MCAR S 4.4010 E.3. does not apply to permits for construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of 100 tons per year to 250 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of 500 tons per year to 5,000 tons per year. Rule 6 MCAR S 4.4004 A. applies to permits for air emission facilities, except that for a permit not subject to a Minnesota or federal public notice requirement, the time period referenced in that rule shall be 90 days.

J. An agency permit required for the construction of a facility, building, structure, or installation that attracts or may attract mobile source activity that results in emissions of an air pollutant for which there is a state standard. Rule 6 MCAR S 4.4015 A. and B. does not apply to these permits.

6 MCAR S 4.4003 Permit required.

No person required by statute or rule to obtain a permit may construct, install, modify, or operate the facility to be permitted, nor shall a person commence an activity for which a permit is required by statute or rule until the agency has issued a written permit for the facility or activity.

6 MCAR S 4.4004 Application deadlines.

A. Application for new permit. Except as otherwise required by 6 MCAR SS 4.4106 and 4.4204, a permit application for a new facility or activity may be submitted at any time. However, it is recommended that the permit application be submitted at least 180 days before the planned date of the commencement of facility construction or of the activity.

B. Modification or revocation and reissuance of existing permits. If a permit has been issued by the agency, the person holding the permit may file with the agency, at any time, a written application for modification of the permit or for revocation and reissuance of the permit; except that if the reason for the application is the adoption by a federal agency

of a new or amended pollution standard, limitation, or effluent guideline the permittee shall file an application within the time for filing specified by the federal agency as a part of the notice of adoption published in the Federal Register.

C. Reissuance of existing permits. If a permit has been issued by the agency and the person holding the permit desires to continue the permitted activity beyond the expiration date of the permit, the person shall submit a written application for permit reissuance at least 180 days before the expiration date of the existing permit.

6 MCAR S 4.4005 Written application.

A person who requests the issuance, modification, revocation and reissuance, or reissuance of a permit shall complete, sign, and submit to the director a written application. The person shall submit the written application in a form prescribed by the director. The application shall contain the items listed in A.-I. unless the director has issued a written exemption from one or more of the data requirements. After receiving a written request for an exemption from a data requirement, the director shall issue the exemption if the director finds that the data is unnecessary to determine whether the permit should be issued or denied. The application must contain:

A. the name, address, and telephone number of the owner of the facility for which the application is submitted and identification of the status of the owner as a federal, state, public, private, or other entity;

B. if the operator of the facility for which the application is submitted is different from the owner, the name, address, and telephone number of the operator and identification of the status of the operator as a federal, state, public, private, or other entity;

C. the name, address, and telephone number of the person who prepared the application;

D. a description including the location of the business, plant, system, facility, or activity for which a permit is

sought;

E. a general description of the materials handled, processed, stored, or disposed of by the applicant that are pertinent to the application; and a statement of the nature and quantity of the materials proposed to be stored, processed, discharged, emitted, or disposed of during the period of the required permit, and proposed methods for control of these materials;

F. a topographic map, or other map if a topographic map is unavailable, that shows the facility and the area surrounding the facility for a distance of at least one mile in all directions of the facility; and all structures that relate to the proposed discharge, emission, storage, processing, or disposal activity;

G. a copy of a draft or final environmental impact statement that has been prepared under the National Environmental Policy Act, United States Code, title 42, sections 4331 et seq. as amended through December 31, 1982, or a copy of an environmental assessment or environmental impact statement prepared under the rules of the Minnesota Environmental Quality Board, 6 MCAR SS 3.021 et seq.;

H. additional information determined by the director to be relevant to a decision as to permit issuance, including but not limited to plans, specifications, or other technical information that is necessary to determine whether the facility will meet all applicable Minnesota and federal statutes and rules;

I. other information relevant to the application as required by 6 MCAR SS 4.4106, 4.4206-4.4215, 4.4304, 4.4315, or 4.6105 and 4.6106.

6 MCAR S 4.4006 Signatures.

A permit application must be signed as follows:

A. for a corporation, by a principal executive officer of at least the level of vice president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for the overall operation of the facility that is the subject of the permit application;

B. for a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

C. for a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official;

D. If the operator of the facility for which the application is submitted is different from the owner, both the owner and the operator shall sign the application according to A.-C. Except in the case of a hazardous waste facility permit application, if the director finds that this requirement is impracticable under the circumstances, the director shall require the operator to sign the application according to A.-C.

6 MCAR S 4.4007 Certification.

A person who signs a permit application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete." Where applicable, the person shall also fulfill the certification requirements of 6 MCAR S 4.4205.

6 MCAR S 4.4008 Retention of records.

The applicant shall retain copies of the permit application, all data and information used by the applicant to complete the application, and additional information requested by the director during the review of the application for a period of at least three years from the date the application is signed. This period is automatically extended during the course of an unresolved enforcement action regarding the facilities or as requested by the director.

6 MCAR S 4.4009 Review of permit applications.

The director shall review all permit applications for

completeness. If the director finds that the application is incomplete or otherwise deficient, the director shall promptly advise the applicant in writing of the incompleteness or deficiency. The director shall suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

6 MCAR S 4.4010 Preliminary determination and draft permit.

A. Preliminary determination. After a permit application is complete, the director shall make a preliminary determination as to whether the permit should be issued or denied.

B. Draft permit. If the preliminary determination is to issue a permit, the director shall prepare a draft permit, including a proposed schedule of compliance if a schedule is necessary to meet all applicable standards and limitations imposed by statute or rule. If the preliminary determination is to deny the permit application, the director shall prepare a notice of intent to deny the permit. For the purposes of the procedures required in B.-E., a notice of intent to deny a permit is considered a draft permit.

C. Fact sheet. The director shall prepare a fact sheet for each draft permit described in 6 MCAR S 4.4108 B. for each draft permit proposed to be issued under 6 MCAR SS 4.4021 and 4.4217 A., and for each draft permit that the director finds is the subject of widespread public interest or involves issues of major importance to the agency or to the public. The director shall send a copy of this fact sheet to the applicant and upon request to any other person. The fact sheet must set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The fact sheet must include, if applicable:

1. a concise description of the type of facility or activity that is the subject of the permit application;

2. the type and quantity of wastes, fluids, or pollutants that are proposed to be or are being handled, processed, treated, stored, disposed of, emitted, or discharged;

3. a summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions;

4. reasons why requested variances or alternatives to required standards do or do not appear justified;

5. a concise statement regarding the requirements prescribed in Minnesota Statutes, chapter 116D that are or may be applicable to the facility or activity which is the subject of the permit application;

6. the preliminary determinations made by the director on the permit application; and

7. a description of the procedures for reaching a final decision on the draft permit, including:

a. the beginning and ending dates of the public comment period;

b. procedures for requesting a public informational meeting or contested case hearing and the nature of the two types of proceedings;

c. other procedures by which the public may participate in the agency's consideration of the permit application; and

d. the name, address, and telephone number of a person to contact for additional information or to whom comments may be submitted.

D. Public notice of permit application and preliminary determination. The director shall prepare and issue a public notice of a completed application and the director's preliminary determination as to whether the permit should be issued or denied. The public notice must include, at a minimum:

1. The address and telephone number of the main agency office and the applicable agency regional office and a statement that additional information may be obtained at these offices.

2. The name and address of the applicant, and if different, of the facility or activity that is the subject of the permit application.

3. A concise description of the facility or activity that

is the subject of the permit application.

4. A statement of the preliminary determination of the director to issue or deny the permit.

5. If the director's preliminary determination is to issue the permit, a statement of the duration of the draft permit.

6. A statement that a draft permit has been prepared and, if applicable, that a fact sheet has been prepared and that a copy of these documents will be mailed to any interested person upon the agency's receipt of a written request.

7. A statement that during the public comment period a person may submit comments to the agency on the draft permit or on the preliminary determination, a statement of the dates on which the comment period commences and terminates, and a statement of the information that the person is required by 6 MCAR S 4.4011 to include in the comments. The public comment period shall be 30 days unless a different public comment period is specifically established by another agency rule.

8. A brief description of the procedures for reaching a final decision on the permit application, including procedures for requesting a public information meeting or a contested case hearing and the nature of the two types of proceedings; and any other procedures by which the public may participate in the agency's consideration of the permit application.

E. Distribution of public notice. The director shall distribute the public notice in the following manner:

1. The director shall make a copy of the public notice available at the main agency office and at the applicable agency regional office.

2. The director shall mail a copy of the public notice to the applicant, to all persons who have registered their names and addresses on the mailing list established under 6 MCAR S 4.4020, and to any interested person upon request. If applicable, the director shall also mail copies of the public notice according to 6 MCAR S 4.4217 C.

3. The director shall circulate the public notice within

the geographical area of the facility or activity which is the subject of the permit application. The director shall designate the geographical area which shall, as a minimum, include the county in which the facility or activity is or will be located. The director shall circulate the public notice in one or more of the following ways:

a. by posting the notice in the post office, public library, or other buildings used by the general public in the designated geographical area;

b. by posting the notice at or near the entrance of the applicant's premises, if located near the facility or activity that is the subject of the permit application;

c. by publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area;

d. by publishing the notice in a manner constituting legal notice to the public; or

e. if applicable, in the manner required by 6 MCAR SS 4.4021 D. and 4.4217 D.

6 MCAR S 4.4011 Public comments.

A. Submission of written comments. During the public comment period established in the public notice, an interested person, including the applicant, may submit written comments on the application or on the draft permit. If the subject of the draft permit and public notice is the modification of a permit, these comments must be limited to the portion of the permit proposed to be modified. The person may also request that a public informational meeting or a contested case hearing be held on the application.

B. Contents of written comments. A person who submits comments under A. shall include in the comments the following:

1. a statement of the person's interest in the permit application or the draft permit;

2. a statement of the action the person wishes the agency to take, including specific references to sections of the draft permit that the person believes should be changed; and

3. the reasons supporting the person's position, stated with sufficient specificity as to allow the director to investigate the merits of the person's positions.

C. Public meeting or hearing. If a person requests a public informational meeting or contested case hearing, the comments must include the items listed in B. and a statement of the reasons the person desires the agency to hold a public informational meeting or contested case hearing and the issues that the person would like the agency to address at the public informational meeting or contested case hearing.

D. Extension of comment period. The public comment period may be extended by the director if the director finds an extension of time is necessary to facilitate additional public comment. Comments submitted in writing by interested persons or the applicant during the public comment period must be retained and considered in the formulation of final determinations concerning the permit application.

6 MCAR S 4.4012 Public informational meeting.

A. Determination of need. If the director or the agency determines that a public informational meeting would help clarify and resolve issues regarding the director's preliminary determination or the terms of the draft permit or if the director has received a request under 6 MCAR S 4.4218 A., the director shall hold a public informational meeting.

B. Location. If the requester desires, the public informational meeting must be held in the geographical area of the facility or activity which is the subject of the permit application. Otherwise, the public informational meeting must be held in a place selected by the director which is generally convenient to persons expected to attend the meeting.

C. Notice. The director shall prepare a notice of the public informational meeting. The notice must contain a reference to the public notice of the application and the draft permit, including any identification numbers on the draft permit and the dates of issuance of the public notice and the draft permit; the date, time, and location of the public informational

meeting; the information described in 6 MCAR S 4.4010 D.1.-6.; a concise description of the manner in which the public informational meeting will be conducted; and the issue or issues to be discussed.

D. Distribution of notice. The director shall publish the notice in a newspaper of general circulation in the geographical area of the facility or activity which is the subject of the permit application, and shall mail a copy of the notice to the applicant, the appropriate city and county officials, and all other persons determined by the director to have an interest in the permit application. If applicable, the director shall comply with 6 MCAR S 4.4218 C.

E. Consolidation of issues. If the director or the agency determines that no person would be adversely affected by consolidation, the director or the agency may consolidate two or more matters, issues, or related groups of permit applications for which a public informational meeting will be held.

6 MCAR S 4.4013 Contested case hearing.

A. Required hearing. The agency shall hold a contested case hearing if it finds all of the following:

1. that a person requesting the contested case hearing has raised a material issue of fact or of the application of facts to law related to the director's preliminary determination or the terms of the draft permit;

2. that the agency has jurisdiction to make determinations on the issues of fact or of the application of facts to law raised by the person requesting the contested case hearing; and

3. that there is a reasonable basis underlying issues of fact or law raised by the person that requests the contested case hearing such that the holding of a contested case hearing would aid the agency in making a final determination on the permit application.

B. Public informational meeting. If the agency finds that the holding of a contested case hearing is not justified under A., the agency shall nevertheless hold a public informational

meeting if the agency determines that a public informational meeting would help clarify or resolve issues regarding the terms of the draft permit.

C. Hearing notice and order. If the agency decides to hold a contested case hearing, the director shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

1. the information required by 9 MCAR S 2.204 of the Office of Administrative Hearings;

2. a reference to the public notice of the application and the draft permit, including any identification numbers on the draft permit, and the dates of issuance of the public notice and the draft permit;

3. identification of the existing parties and a concise description of the issues which have been raised by any party; and

4. the address of the agency office or offices where interested persons may inspect or obtain copies of the public notice of the application, the draft permit, the fact sheet, and other information relevant to the permit application and the holding of the hearing.

D. Relevant rules. The notice of hearing, distribution of the notice, and the conduct of the contested case hearing are governed by Minnesota Statutes, sections 14.57 to 14.62; the rules of the Office of Administrative Hearings, 9 MCAR SS 2.201 et seq.; and, if applicable by 6 MCAR S 4.4218 B., C., and D.

6 MCAR S 4.4014 Final determination.

A. Agency action. Except as provided in B., the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and conditions of the permit and that all applicable requirements of Minnesota Statutes, chapter 116D and the rules promulgated under

chapter 116D have been fulfilled.

B. Agency findings. The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

1. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit;

2. that there exists at the facility to be permitted unresolved noncompliance with applicable state and federal pollution control statutes and rules ~~or permit conditions~~ administered by the agency, or conditions of the permit and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

3. that the permittee has failed to disclose fully all facts relevant to the facility or activity to be permitted, or that the permittee has submitted false or misleading information to the agency or to the director;

4. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit; or

5. that all applicable requirements of Minnesota Statutes, chapter 116D and the rules promulgated under chapter 116D have not been fulfilled.

C. Contested case hearing. If a contested case hearing has been held, the agency shall comply with the procedures set forth in 6 MCAR S 4.3008 of the agency procedural rules prior to making a final determination.

6 MCAR S 4.4015 Terms and conditions of permits.

A. Term of permit. Unless specifically otherwise provided by statute or rule, an agency permit is issued for a term not to exceed five years.

B. Special conditions. Each draft and final permit must contain conditions necessary for the permittee to achieve

compliance with applicable Minnesota or federal statutes or rules. If applicable to the circumstances, the conditions must include:

1. A schedule of compliance that leads to compliance with the appropriate Minnesota or federal statute or rule. The schedule of compliance must require compliance in the shortest reasonable period of time or by a specified deadline if required by Minnesota or federal statute or rule. If appropriate, the schedule of compliance must include interim dates, which in no case may be separated by more than one year. A permit with a schedule of compliance must require the submission to the director of progress reports. The progress reports must be submitted not later than 14 days after each interim and final date of compliance regarding the permittee's compliance or noncompliance with the schedule of compliance and they must explain any instance of noncompliance and state the actions that have been taken to correct the noncompliance.

2. Requirements for monitoring and testing and reporting of monitoring and testing results. Monitoring and testing requirements must specify the type, interval, and frequency of monitoring and testing activities that are sufficient to yield ~~data~~ representative ~~of the pollutant or situation monitored or tested~~ data to determine whether there is compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. As appropriate, the permit must contain requirements for the proper use, maintenance, and installation of monitoring and testing equipment or methods. The permit must require the permittee to keep accurate records of monitoring and testing activities and to submit to the director periodic reports of monitoring results required by the permit and, as requested by the director, the results of other monitoring and testing undertaken by the permittee that are related to compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. Reporting of monitoring results must contain the certification in 6 MCAR S

4.4007.

3. A requirement that the permittee retain the following items for at least three years after which time this period must be automatically extended during the course of an unresolved enforcement action or at the request of the director:

a. copies of all reports required by the conditions of the permit;

b. calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation;

c. records of the date, exact location, and time of monitoring and testing which is related to compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules, the name of the individual who performed the sampling or measurements, the date the analysis was performed, the name of the individual who performed the analysis, the analytical techniques or methods used, and the results of the analysis; and

d. if applicable, reports required by 6 MCAR S 4.4223 B.5.

4. A requirement that all documents and reports, including monitoring reports, submitted to the agency for any reason by the permittee, are signed by the permittee or the duly authorized representative of the permittee. For hazardous waste facility permits, duly authorized representative is defined by 6 MCAR S 4.4223.

C. General conditions. Unless specifically exempted by statute or rule, each draft and final permit must include the following general conditions and the agency shall incorporate these conditions into all permits either expressly or by specific reference to this rule:

1. The agency's issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the permit.

2. The agency's issuance of a permit does not prevent the

future adoption by the agency of pollution control rules, standards, or orders more stringent than those now in existence and does not prevent the enforcement of these rules, standards, or orders against the permittee.

3. The permit does not convey a property right or an exclusive privilege.

4. The agency's issuance of a permit does not obligate the agency to enforce local laws, rules, or plans beyond that authorized by Minnesota statutes.

5. The permittee shall perform the actions or conduct the activity authorized by the permit in accordance with the plans and specifications approved by the agency and in compliance with the conditions of the permit.

6. The permittee shall at all times properly operate and maintain the facilities and systems of treatment and control and the appurtenances related to them which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. The permittee shall install and maintain appropriate back-up or auxiliary facilities if they are necessary to achieve compliance with the conditions of the permit and, for all permits other than hazardous waste facility permits, if these back-up or auxiliary facilities are technically and economically feasible.

7. The permittee may not knowingly make a false or misleading statement, representation, or certification in a record, report, plan, or other document required to be submitted to the agency or to the director by the permit. The permittee shall immediately upon discovery report to the director an error or omission in these records, reports, plans, or other documents.

8. The permittee shall, when requested by the director, submit within a reasonable time the information and reports that are relevant to the control of pollution regarding the construction, modification, or operation of the facility covered

by the permit or regarding the conduct of the activity covered by the permit.

9. When authorized by Minnesota Statutes, sections 115.04; 115B.17, subdivision 4; and 116.091, and upon presentation of proper credentials, the agency, or an authorized employee or agent of the agency, shall be allowed by the permittee to enter at reasonable times upon the property of the permittee to examine and copy books, papers, records, or memoranda pertaining to the construction, modification, or operation of the facility covered by the permit or pertaining to the activity covered by the permit; and to conduct surveys and investigations, including sampling or monitoring, pertaining to the construction, modification, or operation of the facility covered by the permit or pertaining to the activity covered by the permit.

10. If the permittee discovers, through any means, including notification by the agency, that noncompliance with a condition of the permit has occurred, the permittee shall take all reasonable steps to minimize the adverse impacts on human health, public drinking water supplies, or the environment resulting from the noncompliance.

11. If the permittee discovers that noncompliance with a condition of the permit has occurred which could endanger human health, public drinking water supplies, or the environment, the permittee shall, within 24 hours of the discovery of the noncompliance, orally notify the director. Within five days of the discovery of the noncompliance, the permittee shall submit to the director a written description of the noncompliance; the cause of the noncompliance; the exact dates of the period of the noncompliance; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

12. The permittee shall report noncompliance with the permit not reported under 11. as a part of the next report which the permittee is required to submit under this permit. If no

reports are required within 30 days of the discovery of the noncompliance, the permittee shall submit the information listed in 11. within 30 days of the discovery of the noncompliance.

13. The permittee shall give advance notice to the director as soon as possible of planned physical alterations or additions to the permitted facility or activity that may result in noncompliance with a Minnesota or federal pollution control statute or rule or a condition of the permit.

14. The permit is not transferable to any person without the express written approval of the agency after compliance with the requirements of 6 MCAR S 4.4019. A person to whom the permit has been transferred shall comply with the conditions of the permit.

15. The permit authorizes the permittee to perform the activities described in the permit under the conditions of the permit. In issuing the permit, the state and agency assume no responsibility for damage to persons, property, or the environment caused by the activities of the permittee in the conduct of its actions, including those activities authorized, directed, or undertaken under the permit. To the extent the state and agency may be liable for the activities of its employees, that liability is explicitly limited to that provided in the Tort Claims Act, Minnesota Statutes, section 3.736.

6 MCAR S 4.4016 Continuation of expired permit.

A person who holds an expired permit and who has submitted a timely and complete application for reissuance of the permit may continue to conduct the permitted activity until the agency takes final action on the application if the director determines that both of the following are true:

A. the permittee is in compliance with the terms and conditions of the expired permit; and

B. the agency, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

6 MCAR S 4.4017 Justification to commence modification of permit

or revocation and reissuance of permit.

The following constitute justification for the director to commence proceedings to modify a permit or to revoke and reissue a permit:

A. alterations or modifications to the permitted facility or activity that will result in or have the potential to result in significant alteration in the nature or quantity of permitted materials to be stored, processed, discharged, emitted, or disposed of by the permittee;

B. the director receives information previously unavailable to the agency that shows that the terms and conditions of the permit do not accurately represent the actual circumstances relating to the permitted facility or activity;

C. the agency or the federal government promulgates a new or amended pollution standard, limitation, or effluent guideline that is applicable to the permitted facility or activity;

D. a court of competent jurisdiction invalidates or modifies a Minnesota or federal statute or rule or federal guideline upon which a condition of the permit is based;

E. an event occurs that is beyond the control of the permittee that necessitates modification of a compliance schedule in the permit;

F. the director finds that the permitted facility or activity endangers human health or the environment and that a change in the operation of the permitted facility or in the conduct of the permitted activity would remove the danger to human health or the environment;

G. the director receives a request for transfer of the permit; ~~and~~ or

H. if applicable, there exists any justification listed in 6 MCAR S 4.4224 A.

6 MCAR S 4.4018 Justification to commence revocation without reissuance of permit.

The following constitute justification for the director to commence proceedings to revoke a permit without reissuance:

A. existence at the permitted facility of unresolved

noncompliance with applicable state and federal pollution statutes and rules or a condition of the permit, and refusal of the permittee to undertake a schedule of compliance to resolve the noncompliance;

B. the permittee fails to disclose fully the facts relevant to issuance of the permit or submits false or misleading information to the agency or to the director;

C. the operation of the permitted facility or activity terminates; and

D. the director finds that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit.

6 MCAR S 4.4019 Procedure for modification; revocation and reissuance; and revocation without reissuance of permits.

A. In general. If the permittee requests the modification or the revocation and reissuance of a permit, the director shall require and review a permit application as provided in 6 MCAR SS 4.4004-4.4009. Except as provided in B. and C., in modifying permits and in revoking and reissuing permits the agency shall follow the procedures set forth in 6 MCAR SS 4.4010-4.4013 to the same extent required for the issuance of the permit. In permit modification proceedings, only those portions of the permit that are proposed to be modified are open for comment and a contested case hearing. In proceedings to revoke and reissue a permit, the entire permit is open for comment and a contested case hearing.

B. Modification solely as to ownership or control. Upon obtaining the consent of the permittee, the agency ~~may~~ shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR SS 4.4010-4.4013 if the agency finds that no other change in the permit is necessary ~~and~~. If the permit is a permit described in 6 MCAR S 4.4002 A. or B., the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed

transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification.

C. Minor modification. Upon obtaining the consent of the permittee, the director may modify a permit to make the following corrections or allowances without following the procedures in 6 MCAR SS 4.4010-4.4013:

1. to correct typographical errors;

2. to change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the permit and does not interfere with the attainment of the final compliance date;

3. to change a provision in the permit that will not result in allowing an actual or potential increase in the emission or discharge of a pollutant into the environment, or that will not result in a reduction of the agency's ability to monitor the permittee's compliance with applicable statutes and rules; and

4. if applicable, to make a change as provided in 6 MCAR SS 4.4224 C. and 4.4321.

D. Revocation without reissuance. The director shall give notice to the permittee of a proposal to revoke a permit without reissuance. This notice must state that within 30 days of the receipt of the notice the permittee may request a contested case hearing be held on the proposed action. If the permittee requests a contested case hearing, the agency shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, 9 MCAR SS 2.201 et seq.

6 MCAR S 4.4020 Mailing list.

A person who desires to receive copies of public notices issued by the director under 6 MCAR S 4.4010 D. shall submit to

the director a written request that the person's name and address be placed on a mailing list kept by the director for the purpose of issuing public notices on permit applications. The person may request notice of all permit applications or may limit the request only to notice of permit applications for facilities or activities of a certain type or for facilities or activities in a defined geographical area. The director shall periodically update this list by mailing to persons on the list a notice asking whether the person wishes to continue to receive notices concerning permit applications. Failure to respond to the director's notice constitutes justification for the director to remove the person's name and address from the list. The director shall also annually publish in the public press and in the State Register notice of the opportunity to be placed on the mailing list.

6 MCAR S 4.4021 General permits.

A. Scope. This rule applies to the permits listed in 6 MCAR S 4.4002, except for agency permits required for the treatment, storage, and disposal of hazardous waste.

B. Determination by agency. If the agency finds that it is appropriate to issue a single permit to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar, the agency shall proceed under C.-F. This permit is known as a general permit.

C. Requirements. The agency shall not issue a general permit unless the agency finds that:

1. there are several permit applicants or potential permit applicants who have the same or substantially similar operations, emissions, activities, discharges, or facilities;

2. the permit applicants or potential permit applicants discharge, emit, process, handle, or dispose of the same types of waste;

3. the operations, emissions, activities, discharges, or facilities are subject to the same or substantially similar standards, limitations, and operating requirements; and

4. the operations, emissions, activities, discharges, or facilities are subject to the same or substantially similar monitoring requirements.

D. Notice of intent. The applicant and the agency shall follow the same procedures to issue a general permit as are required for the issuance of an individual permit. However, to comply with 6 MCAR S 4.4010 E.3., the agency shall publish notice of intent to issue a general permit in the State Register.

E. Geographical area. A general permit issued by the agency must state specifically the geographical area covered by the permit.

F. Issuance of individual permit. If a permit applicant who is eligible to be covered by a general permit requests an individual permit, the agency shall process the application as an application for an individual permit. If the agency finds that the operations, emissions, activities, discharges, or facilities of a permit applicant or a permittee covered by a general permit would be more appropriately controlled by an individual permit, the agency shall issue an individual permit to the applicant or the permittee. Upon issuance of the individual permit, a general permit previously applicable to the permittee no longer applies to that permittee. In considering whether it is appropriate to issue an individual permit under F., the agency shall consider:

1. whether the operations, emissions, activities, discharges, or facilities of the permit applicant or permittee have characteristics creating the potential for significant environmental effects;

2. whether the permittee has been in compliance with the terms of the general permit and applicable statutes and rules; and

3. whether the operations, emissions, activities, discharges, or facilities have been altered such that they no longer fit within the category covered by the general permit.

Repealer. Pollution Control Agency rule MPCA 5 is repealed.

2:05 PM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 2 6 1984
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
March 15 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

AG copy

Pollution Control Agency

Adopted Rules Relating to National Discharge Elimination System Permits

Rules as Adopted

6 MCAR S 4.4101 Scope and construction of rules.

Rules 6 MCAR SS 4.4101-4.4111 govern the application procedures, the issuance, and the conditions of a National Pollutant Discharge Elimination System permit. Rules 6 MCAR SS 4.3001-4.3011, 4.4001-4.4021, and 4.4101-4.111 shall be construed to complement each other.

6 MCAR S 4.4102 Satisfaction of requirement for two permits.

If a person who discharges a pollutant into the waters of the state is required by Minnesota Statutes or rules to obtain both a National Pollutant Discharge Elimination System permit and a state disposal system permit, the issuance of a National Pollutant Discharge Elimination System permit under these rules shall satisfy the requirement to obtain both permits.

6 MCAR S 4.4103 Definitions.

A. Scope. The definitions in Minnesota Statutes, section 115.01 and in 6 MCAR S 4.4001 apply to the terms used in 6 MCAR SS 4.4101-4.4111 unless the terms are defined in this rule.

As used in 6 MCAR SS 4.4101-4.4111, the terms in B.-EE. have the meanings given them.

B. Average monthly discharge limitation. "Average monthly discharge limitation" means the highest allowable average of daily discharge over a calendar month, calculated as the sum of all daily discharges measured during a calendar month, divided by the number of daily discharges during that month.

C. Average weekly discharge limitation. "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week, divided by the number of daily discharges measured during that week.

D. Best available technology. "Best available technology" means the application to a treatment facility of the best available technology economically achievable as required by Section 301(b)(2) of the Clean Water Act, United States Code, title 33, section 1311(b)(2) as amended.

E. Best management practices. "Best management practices" means practices to prevent or reduce the pollution of the waters of the state, including schedules of activities, prohibitions of practices, and other management practice, and also includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge, or waste disposal or drainage from raw material storage.

F. Bypass. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

G. Clean Water Act. "Clean Water Act" means the Federal Water Pollution Control Act as amended, commonly referred to as the Clean Water Act, United States Code, title 33, sections 1251 et seq.

H. Commencement of construction. "Commencement of construction" means:

1. to begin or cause to begin as a part of a continuous program the placement, assembly, or installation of facilities or equipment; or to conduct significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities, which site preparation is necessary for the placement, assembly, or installation of facilities or equipment; or

2. to enter into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used within a reasonable time in the operation of a new source. For the purpose of these rules, "binding contractual obligation" does not include an option to purchase or a contract which option or contract can be terminated without substantial financial loss, and does not include contracts for feasibility, engineering, or design studies.

I. Continuous discharge. "Continuous discharge" means a

discharge of a pollutant that occurs throughout the operating hours of a facility without interruption, except for occasional shutdowns for maintenance, process changes, or similar activities.

J. Daily discharge. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the discharge during the calendar day for the purposes of sampling.

K. Direct discharge. "Direct discharge" means the "discharge of a pollutant."

L. Discharge of a pollutant. "Discharge of a pollutant" means the addition of any pollutant to surface waters of the state. "Discharge of a pollutant" does not include the addition of pollutants into the waters of the state by an "indirect discharger."

M. Effluent limitation. "Effluent limitation" means a restriction established by rule or permit condition on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into waters of the state.

N. Effluent limitation guideline. "Effluent limitation guideline" means a regulation adopted by the Environmental Protection Agency under Section 304(b) of the Clean Water Act, United States Code, title 33, section 1314(b), which provides for the establishment of effluent limitations.

O. Indirect discharger. "Indirect discharger" means a nondomestic discharger that introduces pollutants into a publicly owned treatment works.

P. Facilities, equipment. "Facilities" or "equipment" means buildings, structures, process or production equipment, or machinery that form a permanent part of a source and that will be used in the operation of the source such that the construction of these facilities or the installation of this equipment must represent a substantial commitment to the construction of the source. These terms do not include facilities or equipment used in connection with feasibility, engineering, and design studies.

Q. Maximum daily discharge. "Maximum daily discharge" means the highest allowable daily discharge.

R. Municipality. "Municipality" means a county; a city; a town; the metropolitan waste control commission established in Minnesota Statutes, chapter 473; the metropolitan council when acting under the provisions of Minnesota Statutes, chapter 473; or other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in the state.

S. National Pollutant Discharge Elimination System. "National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402, and 405 of the Clean Water Act, United States Code, title 33, sections 1317, 1328, 1342, and 1345.

T. New discharger. "New discharger" means a building, structure, facility, or installation, including an indirect discharger which commences to discharge a pollutant and:

1. from which there is or may be a new or additional discharge of pollutants at a site at which on October 18, 1972, it had never before discharged pollutants;

2. which has not received a finally effective National Pollutant Discharge Elimination System permit for discharges at that site; and

3. which is not a new source as defined in U.

U. New source. "New source" means a source that is constructed on a site at which no other source is located, or that totally replaces an existing source, or construction of which results in a change in the nature or quantity of pollutants discharged, if construction of it commenced:

1. after the Environmental Protection Agency promulgated standards of performance under Section 306 of the Clean Water Act, United States Code, title 33, section 1316, that are applicable to the source;

2. after the Environmental Protection Agency has proposed

standards of performance under Section 306 of the Clean Water Act, United States Code, title 33, section 1316, that are applicable to the source, but only if the standards are promulgated within 120 days of their proposal.

V. Noncontact cooling water. "Noncontact cooling water" means water used to reduce temperature which does not come into contact with a raw material, intermediate product, waste product other than heat, or finished product. "Noncontact cooling water" includes water used in air conditioning equipment.

W. Point source. "Point source" means a discernible, confined, and discrete conveyance, including, but not limited to, a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

X. Pollutant. "Pollutant" has the meaning given to it by Minnesota Statutes, section 115.01, subdivision 13.

Y. Primary industry category. "Primary industry category" means any of the following industry categories:

1. adhesives and sealants;
2. aluminum;
3. auto and other laundries;
4. battery manufacturing;
5. coal mining;
6. coil coating;
7. copper forming;
8. electrical and electronic components;
9. electroplating;
10. explosives manufacturing;
11. foundries;
12. gum and wood chemicals;
13. inorganic chemicals manufacturing;
14. iron and steel manufacturing;
15. leather tanning and finishing;
16. mechanical products manufacturing;
17. nonferrous metals manufacturing;

18. ore mining;

19. organic chemicals manufacturing;

20. paint and ink formulation;

21. pesticides;

22. petroleum refining;

23. pharmaceutical preparations;

24. photographic equipment and supplies;

25. plastics processing;

26. plastic and synthetic materials manufacturing;

27. porcelain enameling;

28. printing and publishing;

29. pulp and paper mills;

30. rubber processing;

31. soap and detergent manufacturing;

32. steam electric power plants;

33. textile mills; and

34. timber products processing.

Z. Process wastewater. "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of a raw material, intermediate product, finished product, byproduct, or waste product.

AA. Publicly owned treatment works. "Publicly owned treatment works" means a device or system used in the treatment, recycling, or reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works for treatment.

BB. Source. "Source" means a building structure, facility, or installation from which there is or may be a discharge of pollutants.

CC. Technology-based effluent limitation, standard, or prohibition. "Technology-based effluent limitation, standard, or prohibition" means an effluent limitation, standard, or prohibition promulgated by the Environmental Protection Agency

at Code of Federal Regulations, title 40, parts 400-460, under Sections 301 and 306 of the Clean Water Act, United States Code, title 33, sections 1311 and 1316.

DD. Toxic pollutant. "Toxic pollutant" means a pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act, United States Code, title 33, section 1317(b)(1), or as defined by Minnesota Statutes, section 115.01, subdivision 14.

EE. Vessel. "Vessel" means a watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters of the state.

6 MCAR S 4.4104 Permit requirement and exemptions.

A. Permit required. Except as provided in B., no person may discharge a pollutant from a point source into the waters of the state without obtaining a National Pollutant Discharge Elimination System permit from the agency.

B. Exemptions. The following persons are not required to obtain a National Pollutant Discharge Elimination System permit:

1. persons who discharge sewage or effluent from a vessel;

2. persons discharging dredge or fill materials regulated by the federal government under Section 404 of the Clean Water Act, United States Code, title 33, section 1344;

3. persons discharging pollutants to a publicly owned treatment works;

4. persons discharging pollutants who are in compliance with the instructions of an on-scene coordinator in accordance with Code of Federal Regulations, title 40, section 1510;

5. persons introducing pollutants from nonpoint source agricultural and silvicultural sources into privately owned treatment works;

6. persons causing return flows from irrigated agriculture;

7. persons discharging pollutants into privately owned treatment works;

8. persons injecting water, gas, or other material into a well to facilitate the production of oil or gas; and

9. persons disposing of water in a well if this water is

associated with oil and gas production.

6 MCAR S 4.4105 Application deadline for new permits.

If a person proposes to construct a new facility or engage in a new activity for which a permit is required, the person shall submit a written permit application at least 180 days before the planned date of the commencement of facility construction or of the planned date of the commencement of the activity, whichever occurs first.

6 MCAR S 4.4106 Contents of NPDES permit application.

A. Publicly owned treatment works. If the applicant is requesting the issuance, modification, revocation and reissuance, or reissuance of a National Pollutant Discharge Elimination System permit for a publicly owned treatment works, the applicant shall submit the following information to the director:

1. the information required by 6 MCAR S 4.4005;

2. an identification, in terms of character and volume of pollutants, of all significant indirect dischargers into the publicly owned treatment works, which indirect dischargers are subject to pretreatment standards under Section 307(b) of the Clean Water Act, United States Code, title 33, section 1317(b), and under Code of Federal Regulations, title 40, part 403; and

3. a copy of any publicly owned treatment works pretreatment program prepared by the applicant under Code of Federal Regulations, title 40, section 403.8, unless the program has been previously submitted to the director and there have been no changes to the plan.

B. Manufacturing, commercial, mining, and silvicultural discharges. If the applicant is requesting the issuance, modification, revocation and reissuance, or reissuance of a National Pollutant Discharge Elimination System permit for a manufacturing, commercial, mining, or silvicultural discharge, the applicant shall submit the following information to the director:

1. The information required by 6 MCAR S 4.4005.

2. The name of the receiving water of the discharge.

3. The exact location of the outfall, including the latitude and longitude of the location to the nearest 15 seconds.

4. A line drawing of the water flow through the facility with a water balance, showing process and treatment operations contributing to the effluent. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant shall provide a pictorial description of the nature and amount of the sources of water and the collection and treatment measures.

5. A narrative identification of each type of process, operation, or production area which contributes or will contribute wastewater to the effluent for each outfall. This identification must include process wastewater, cooling water, and storm water runoff contributions to each outfall; the average flow that each process contributes; a description of the treatment the wastewater receives; a discussion of any disposal, other than by discharge, of solid or fluid wastes generated in the process; and the discharge frequency.

6. A statement as to the product that is or will be manufactured, processed, or produced at the facility and a statement as to the quantity of the product actually manufactured, processed, or produced at the facility. If a technology-based effluent guideline is applicable to the discharge, the applicant shall express the quantity of product in the same measure as that used in the applicable effluent limitation guideline.

7. If the applicant is subject to a requirement or compliance schedule for construction, upgrading, or operation of waste treatment equipment, an identification of the requirement, a description of the project, and a listing of the required and projected final compliance dates.

8. The results of analyses and other information required by 6 MCAR S 4.4107;

9. If the analyses required by 6 MCAR S 4.4107 were

performed by a contract laboratory or consulting firm, the name and address of the laboratory or firm, and an identification as to which analyses were performed by the laboratory or firm.

10. A list of any toxic pollutants that the applicant uses or manufactures or expects that it will use or manufacture during the next five years, including manufacturing as an intermediate or final product or byproduct.

11. A description of the expected levels of and the reasons for any discharge of pollutants that the applicant knows or has reason to believe will in the next five years exceed two times the values reported under 6 MCAR S 4.4107.

12. An identification of biological toxicity tests that the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water related to the applicant's discharge.

13. If the applicant proposes to construct or operate a new or existing concentrated animal feeding operation or aquatic animal production facility, the information required in Code of Federal Regulations, title 40, section 122.21(h).

14. If the applicant wishes to request that the director, in establishing a technology-based effluent limitation to be included in the conditions of the permit, establish an effluent limitation which is different than the effluent limitation which would result from the normal application of the relevant effluent limitation guideline, then the applicant shall submit, either in the application or in a supplement to the application filed no later than the last day of the comment period established in 6 MCAR S 4.4010 D., the following information:

a. An identification of the relevant effluent limitation guideline and the effluent limitation requested by the applicant.

b. If the request is based on the claim that there are factors to be considered which are fundamentally different from the factors on which the Environmental Protection Agency based the applicable effluent limitation guideline, the applicant shall submit an explanation and documentation supporting this

claim.

c. If the request is based on the claim that there is no reasonable relationship between the economic and social costs and the benefits to be obtained from the effluent limitation which would result from the normal application of the effluent limitation guideline, the applicant shall submit an explanation and documentation of this claim.

d. If the applicant's discharge contains a pollutant subject to the best available technology requirements of Section 301(b)(2)(F) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(F), and if the applicant's request is based on the claim that the technology being requested represents the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the elimination of the discharge of pollutants, the applicant shall submit an explanation and documentation supporting this claim. The applicant's right to make this request expires 270 days after the promulgation by the Environmental Protection Agency of an effluent limitation guideline that pertains to the pollutant discharged by the applicant that is subject to the best available technology requirement, or at the close of the public comment period established under 6 MCAR S 4.4010 D., whichever is earlier.

e. If the applicant's discharge contains a pollutant that is subject to the best available technology requirements of Section 301(b)(2)(F) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(F), and if the applicant's request is based on the claim that the requested effluent limitation will meet the standards in Section 301(g) of the Clean Water Act, United States Code, title 33, section 1311(g), the applicant shall submit an explanation and documentation supporting this claim. The applicant's right to make this request expires 270 days after the promulgation by the Environmental Protection Agency of an effluent limitation guideline that pertains to the pollutant discharged by the

applicant that is subject to the best available technology requirement, or at the close of the public comment period established under 6 MCAR S 4.4010 D., whichever is earlier.

15. If the applicant desires to request an extension from the statutory deadline established in Section 301(b)(2)(A) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(A), on the grounds that the applicant proposes to replace existing production capacity with an innovative production process which will meet the standards in Section 301(k) of the Clean Water Act, United States Code, title 33, section 1311(k), the applicant shall submit an explanation and documentation supporting this claim.

6 MCAR S 4.4107 Effluent analysis by existing manufacturing, commercial, mining, and silvicultural dischargers.

A. Requirement. If the applicant is an existing manufacturing, commercial, mining, or silvicultural discharger, the applicant shall perform an analysis of a sample of its effluent from each of its outfalls, except that if the director finds that two or more of such outfalls have substantially identical effluents, the director shall allow the applicant to analyze a sample from one of the identical effluents. The applicant shall perform the analyses according to B.-J.

B. Methods of sampling and analysis. The sampling method for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform must be the grab sampling method. For all other pollutants the applicant shall use 24-hour composite samples (unless otherwise approved by the director.) The applicant shall perform the analysis by using the appropriate analytical techniques in Code of Federal Regulations, title 40, part 136, or by using techniques found by the director to be appropriate considering the circumstances and the parameters which are to be analyzed.

C. Parameters. The applicant shall analyze for the following parameters:

1. Unless the director grants a written exemption to the applicant after making a finding that a given pollutant is not

likely to be present in the effluent, the applicant shall analyze for biochemical oxygen demand, chemical oxygen demand, total organic carbon, total suspended solids, ammonia (as N), temperature (both winter and summer), and pH.

2. Except as provided in 6., an applicant who has processes in one or more of the primary industry categories shall:

a. analyze, using the specified Gas Chromatograph/Mass Spectrometer (GC/MS) analysis for the organic toxic pollutants listed in D.-G. for the applicable industry category indicated in Exhibit 6 MCAR S 4.4107-1.; and

b. analyze for the pollutants listed in H.-I.

3. Except as provided in 6., an applicant who has processes not included in one of the primary industry categories and who has reason to believe that the pollutants listed in D.-I. may be present in the effluent shall identify these pollutants and shall analyze for these pollutants except those that are present in the effluent solely as the result of their presence in the intake water.

4. The applicant shall identify each pollutant listed in J. which the applicant knows or has reason to believe is present in the effluent and shall state the reason why the applicant knows or has reason to believe that the pollutant is present. The applicant shall analyze for each identified pollutant except those that are present in the effluent solely as the result of their presence in the intake water.

5. The applicant shall analyze, using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin if:

a. the applicant uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloroproprionate (Erbon); 0,0-dimethyl 0-(2,4,5-trichlorophenyl) ~~phosphorothicate~~ phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

b. the applicant knows or has reason to believe that 2,3,7,8-tetrachlorodibenzo-p-dioxin is or may be present in an effluent.

6. An applicant is exempt from the requirements of 2. and 3. to analyze for the pollutants listed in D.-G. if the facility which is the subject of the application has gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars) for the three-year period prior to submittal of the application.

D. Volatile substances. The following volatile substances must be analyzed under C.2. and 3.:

1. acrolein;
2. acrylonitrile;
3. benzene;
4. bis(chloromethyl)ether;
5. bromoform;
6. carbon tetrachloride;
7. chlorobenzene;
8. chlorodibromomethane;
9. chloroethane;
10. 2-chloroethylvinyl ether;
11. chloroform;
12. dichlorobromomethane;
13. dichlorodifluoromethane;
14. 1,1-dichloroethane;
15. 1,2-dichloroethane;
16. 1,1-dichlorethylene;
17. 1,2-dichloropropane;
18. 1,2-dichloropropylene;
19. ethylbenzene;
20. methyl bromide;
21. methyl chloride;
22. methylene chloride;
23. 1,1,2,2-tetrachloroethane;
24. tetrachloroethylene;
25. toluene;

26. 1,2-trans-dichloroethylene;

27. 1,1,1-trichloroethane;

28. 1,1,2-trichloroethane;

29. trichloroethylene;

30. trichlorofluoromethane; and

31. vinyl chloride.

E. Acid compounds. The following acid compounds must be analyzed under C.2. and 3.:

1. 2-chlorophenol;

2. 2,4-dichlorophenol;

3. 2,4-dimethylphenol;

4. 4,6-dinitro-o-cresol;

5. 2,4-dinitrophenol;

6. 2-nitrophenol;

7. 4-nitrophenol;

8. p-chloro-m-cresol;

9. pentachlorophenol;

10. phenol; and

11. 2,4,6-trichlorophenol.

F. Base/neutral substances. The following base/neutral substances must be analyzed under C.2. and 3.:

1. acenaphthene;

2. acenaphthylene;

3. anthracene;

4. benzidine;

5. benzo(a)anthracene;

6. benzo(a)pyrene;

7. 3,4-benzofluoranthene;

8. benzo(ghi)perylene;

9. benzo(k)fluoroanthene;

10. bis(2-chloroethoxy)methane;

11. bis(2-chloroethyl)ether;

12. bis(2-chloroisopropyl)ether;

13. bis(2-ethylhexyl)phthalate;

14. 4-bromophenyl phenyl ether;

15. butylbenzyl phthalate;

16. 2-chloronaphthalene;

17. 4-chlorophenyl phenyl ether;

18. chrysene;

19. dibenzo(a,h)anthracene;

20. 1,2-dichlorobenzene;

21. 1,3-dichlorobenzene;

22. 1,4-dichlorobenzene;

23. 3,3'-dichlorobenzidine;

24. diethyl phthalate;

25. dimethyl phthalate;

26. di-n-butyl phthalate;

27. 2,4-dinitrotoluene;

28. 2,6-dinitrotoluene;

29. di-n-octyl phthalate;

30. 1,2-diphenylhydrazine (as azobenzene);

31. fluoranthene;

32. fluorene;

33. hexachlorobenzene;

34. hexachlorobutadiene;

35. hexachlorocyclopentadiene;

36. hexachloroethane;

37. indeno(1,2,3-cd)pyrene;

38. isophorone;

39. naphthalene;

40. nitrobenzene;

41. N-nitrosodimethylamine;

42. N-nitrosodi-n-propylamine;

43. N-nitrosodiphenylamine;

44. phenanthrene;

45. pyrene; and

46. 1,2,4-trichlorobenzene.

G. Pesticides. The following pesticides must be analyzed under C.2. and 3.:

1. aldrin;

2. α-BHC;

3. β-BHC;

4. γ-BHC;

5. δ-BHC;

6. chlordane;

7. 4,4'-DDT;

8. 4,4'-DDD;

9. 4,4'-DDE;

10. dieldrin;

11. α-endosulfan;

12. β-endosulfan;

13. endosulfan sulfate;

14. endrin;

15. endrin aldehyde;

16. heptachlor;

17. heptachlor epoxide;

18. PCB-1242;

19. PCB-1254;

20. PCB-1221;

21. PCB-1232;

22. PCB-1248;

23. PCB-1260;

24. PCB-1016; and

25. toxaphene.

H. Metals, cyanides, and phenols. The following metals, cyanide, and phenols must be analyzed for quantity present under C.2. and 3.:

1. antimony;

2. arsenic;

3. beryllium;

4. cadmium;

5. chromium;

6. copper;

7. lead;

8. mercury;

9. nickel;

10. selenium;

11. silver;

12. thallium;

13. zinc;

14. total cyanide; and

15. total phenols.

I. Conventional and nonconventional pollutants. The following conventional and nonconventional pollutants must be analyzed under C.2. and 3.:

1. aluminum;

2. barium;

3. boron;

4. bromide;

5. total residual chlorine;

6. cobalt;

7. color;

8. fecal coliform;

9. fluoride;

10. iron;

11. magnesium;

12. manganese;

13. molybdenum;

14. nitrate-nitrite;

15. total organic nitrogen;

16. oil and grease;

17. total phosphorous;

18. radioactivity;

19. sulfate;

20. sulfide;

21. sulfite;

22. surfactants;

23. total tin; and

24. total titanium.

J. Toxic pollutants and hazardous substances. The following toxic pollutants and hazardous substances must be analyzed under C.4.:

1. asbestos;

2. acetaldehyde;

3. allyl alcohol;
4. allyl chloride;
5. amyl acetate;
6. aniline;
7. benzonitrile;
8. benzyl chloride;
9. butyl acetate;
10. butylamine;
11. captan;
12. carbaryl;
13. carbofuran;
14. carbon disulfide;
15. chlorpyrifos;
16. coumaphos;
17. cresol;
18. crotonaldehyde;
19. cyclohexane;
20. 2,4-D (2,4-dichlorophenoxy acetic acid)
21. diazinon;
22. dicamba;
23. dichlobenil;
24. dichlone;
25. 2,2-dichloropropionic acid;
26. dichlorvos;
27. diethyl amine;
28. dimethyl amine;
29. dinitrobenzene;
30. diquat;
31. disulfoton;
32. diuron;
33. epichlorohydrin;
34. ethanolamine;
35. ethion;
36. ethylene diamine;
37. ethylene dibromide;
38. formaldehyde;

39. furfural;
40. guthion;
41. isoprene;
42. isopropanolamine;
43. kelthane;
44. kepone;
45. malathion;
46. mercaptodimethur;
47. methoxychlor;
48. methyl mercaptan;
49. methyl methacrylate;
50. methyl parathion;
51. mevinphos;
52. mexacarbate;
53. monoethyl amine;
54. monomethyl amine;
55. naled;
56. napthenic acid;
57. nitrotoluene;
58. parathion;
59. phenolsulfanate;
60. phosgene;
61. propargite;
62. propylene oxide;
63. pyrethrins;
64. quinoline;
65. resorcinol;
66. strontium;
67. strychnine;
68. styrene;
69. 2,4,5-T (2,4,5-trichlorophenoxy acetic acid);
70. TDE (tetrachlorodiphenylethane);
71. 2,4,5-TP [2-(2,4,5-trichlorophenoxy) propanoic acid];
72. trichlorofon;
73. triethylamine;
74. trimethylamine;

75. uranium;

76. vanadium;

77. vinyl acetate;

78. xylene;

79. xylenol; and

80. zirconium.

Exhibit 6 MCAR S 4.4107-1.

Testing Requirements for Organic Toxic Pollutants by Industrial Category for Existing Dischargers

Industrial Category	GC/MS fraction[1]			
	Volatile	Acid	Base/ neutral	Pesticide
Adhesives and Sealants	*	*	*	...
Aluminum Forming	*	*	*	...
Auto and Other Laundries	*	*	*	*
Battery Manufacturing	*	...	*	...
Coal Mining	*	*	*	*
Coil Coating	*	*	*	...
Copper Forming	*	*	*	...
Electric and Electronic Components	*	*	*	*
Electroplating	*	*	*	...
Explosives Manufacturing	...	*	*	...
Foundries	*	*	*	...
Gum and Wood Chemicals	*	*	*	*
Inorganic Chemicals Manufacturing	*	*	*	...
Iron and Steel Manufacturing	*	*	*	...
Leather Tanning and Finishing	*	*	*	*
Mechanical Products Manufacturing	*	*	*	...
Nonferrous Metals Manufacturing	*	*	*	*
Ore Mining**	...	*	...	...
Organic Chemicals Manufacturing	*	*	*	*
Paint and Ink Formulation	*	*	*	*
Pesticides	*	*	*	*
Petroleum Refining	*	*	*	*
Pharmaceutical Preparation	*	*	*	....
Photographic Equipment and Supplies	*	*	*	*
Plastic and Synthetic Materials Manufacturing	*	*	*	*
Plastic Processing	*	...	...	...
Porcelain Enameling	*	...	*	*
Printing and Publishing	*	*	*	*
Pulp and Paper Mills	*	*	*	*
Rubber Processing	*	*	*	...
Soap and Detergent Manufacturing	*	*	*	...
Steam Electric Power Plants	*	*	*	...
Textile Mills	*	*	*	*
Timber Products Processing	*	*	*	*

[1]The toxic pollutants in each fraction are listed in 6 MCAR S 4.4107 D.-G. * Testing required. **Applies only to base and precious metals.

6 MCAR S 4.4108 Preliminary determination, draft permit, and public comments.

A. Scope. The provisions of 6 MCAR SS 4.4010 and 4.4011 apply to the public notice of draft permits and preliminary determinations and the use of fact sheets concerning draft permits and public comments, except as specifically otherwise provided in B. and C.

B. Fact sheets. The director shall prepare a fact sheet for each draft permit for a facility that the director finds to be major based on a review of the potential impacts of the facility on the environment.

C. Response to public comments. The director shall respond to all significant comments received under 6 MCAR S 4.4011 during the public comment period. The response may be made either orally or in writing.

6 MCAR S 4.4109 Establishment of special conditions for National Pollutant Discharge Elimination System permits.

A. Requirement. According to 6 MCAR S 4.4015 B., a National Pollutant Discharge Elimination System permit issued by the agency must contain conditions necessary for the permittee to achieve compliance with all Minnesota or federal statutes or rules. These conditions must be initially established by the director in the draft permit but are subject to final issuance by the agency. The conditions to be included are given in B.

B. Effluent limitations, standards, or prohibitions. Except as provided in C., the director shall establish effluent limitations, standards, or prohibitions for each pollutant to be discharged from each outfall or discharge point of the permitted facility; except that if the director finds that as a result of exceptional circumstances it is not feasible to establish effluent limitations, standards, or prohibitions which are applicable at the point of discharge, the director shall establish effluent limitations, standards, or prohibitions for pollutants in internal waste streams at the point prior to mixing with other waste streams or cooling water streams. In

determining the appropriate effluent limitations, standards, or prohibitions the director shall comply with the following requirements:

1. Effluent limitations, standards, or prohibitions must be expressed in terms of weight or mass, where applicable, and in the following terms:

a. for continuous discharges from a publicly owned treatment works, in terms of average weekly and maximum monthly discharge limitations;

b. for continuous discharges from a facility which is not a publicly owned treatment works, in terms of maximum daily and average monthly discharge limitations;

c. for noncontinuous discharges, in terms which most appropriately limit the discharge, such as frequency, total mass, concentration, or maximum rate of discharge;

d. for metals, in terms of total metal, which is the sum of the dissolved and suspended fractions of the metal. This requirement does not apply if a federal or state rule requires that an effluent limitation, standard, or prohibition be expressed in terms of the dissolved or valent form of the metal; or if the director determines that the expression of the effluent limitation, standard, or prohibition in a different manner would better enable the agency to determine compliance by the permittee with all applicable Minnesota or federal statutes or rules.

2. In establishing effluent limitations, standards, or prohibitions the director shall consider the following:

a. technology-based effluent limitations, standards, or prohibitions and effluent limitation guidelines that apply to the permittee;

b. effluent standards or limitations applicable to the permittee; promulgated by the Environmental Protection Agency under Sections 302, 303, 304, 307, 318, 402(a), and 405 of the Clean Water Act, United States Code, title 33, sections 1312, 1313, 1314, 1317, 1328, 1342, and 1345 as amended; and published in Code of Federal Regulations, title 40, parts 400-460, which

are applicable to the permittee;

c. the applicable water quality standards in 6 MCAR SS 4.8001, 4.8014, 4.8015, 4.8024, 4.8025, 4.8027, 4.8028, 4.8030, 4.8041, and 4.8043;

d. the requirements of the water quality management plan adopted by the state and approved by the Environmental Protection Agency under Section 208(b) of the Clean Water Act, United States Code, title 33, section 1288(b) as amended; and

e. the requirements of the National Environmental Policy Act, United States Code, title 42, sections 4321 et seq. as amended, and the Minnesota Environmental Policy Act, Minnesota Statutes, chapter 116D.

3. If the establishment of an effluent limitation, standard, or prohibition requires the making of a calculation, the director shall comply with the following, if applicable:

a. for a publicly owned treatment works, calculations must be based on the design flow of the facility;

b. for a facility which is not a publicly owned treatment works, calculations of technology-based effluent limitations must be based on a reasonable measure of the actual quantity of the product manufactured, processed, or produced at the facility, or, for a new source or new discharger, the projected measure of the quantity of product;

c. for a facility which is not a publicly owned treatment works, calculations of effluent limitations other than technology-based effluent limitations must be based on a reasonably representative quantity of flow from the facility; and

d. for a facility which disposes of any part of its wastewater in a manner which does not involve a discharge of a pollutant into the waters of the state, calculations of effluent limitations, standards, or prohibitions expressed in terms of mass must be based only upon that portion of the wastewater which is discharged into the waters of the state.

4. If a permit issued to a new source or a new discharger contains technology-based effluent limitations,

standards, or prohibitions for pollutants other than toxic pollutants or hazardous substances, the source or discharger must not be subject to more stringent technology-based limitations, standards, or prohibitions for the following periods of time, whichever is less:

a. for new sources, ten years from the date that construction of the source is completed;

b. ten years from the date that the source begins to discharge process or other nonconstruction related wastewater; or

c. the period of depreciation or amortization of the facility for the purposes of Section 167 or 169, or both, of the Internal Revenue Code of 1954, United States Code, title 26.

C. Best management practices. If the director finds that it is not feasible to establish an effluent limitation, standard, or prohibition using a numerical value, the director shall establish permit conditions requiring the implementation by the permittee of best management practices. The director may also require implementation of best management practices if the director finds that this requirement is necessary to achieve compliance with an effluent limitation, standard, or prohibition or to comply with Minnesota or federal statutes or rules, including requirements for the control of toxic pollutants and hazardous substances from ancillary activities.

D. Reporting violations. The director shall include as a condition of the permit that the permittee shall report, in accordance with 6 MCAR S 4.4015 C.11., all violations of maximum daily discharge limitations for certain pollutants. The pollutants must be listed in the permit.

E. Monitoring requirements. In addition to the requirements in 6 MCAR S 4.4015 B., the director shall establish appropriate monitoring and reporting of monitoring requirements to ensure compliance with permit limitations. These requirements must include:

1. a specification of the appropriate measurement to be reported for each pollutant limited in the permit;

2. the volume of effluent discharged from each outfall;

3. any other measurement needed to determine compliance with a permit condition;

4. specification as to any test procedures which the permittee is required to use which differ from those set forth in Code of Federal Regulations, title 40, part 136; and

5. specification of the frequency of monitoring and monitoring reporting. In no case may the frequency of monitoring and monitoring reporting be less than once per year.

F. Pretreatment requirements for publicly owned treatment works. If the applicant proposes to own or operate a publicly owned treatment works and if the applicant is required by Code of Federal Regulations, title 40, section 403.8 to develop a publicly owned treatment works pretreatment program, the director shall incorporate the provisions of the publicly owned treatment works pretreatment program into the permit and shall require the permittee to submit the information set forth in Code of Federal Regulations, title 40, section 403.12.

G. Conditions imposed in construction grants. If the applicant is using construction grant funds to construct or operate its wastewater treatment facility, the director shall incorporate into the permit any provisions of the grant that relate to the achievement of compliance with effluent limitations, standards, or prohibitions or with water quality standards.

H. Conditions related to navigation. The director shall incorporate into the permit conditions that are necessary to ensure that navigation and anchorage will not be substantially impaired.

I. Conditions in reissued permits. In a reissued permit the director shall establish effluent limitations, standards, or prohibitions that are at least as stringent as the effluent limitations, standards, or prohibitions or conditions in the previous permit unless the director makes the finding in 1.-3. In no event may the director establish an effluent limitation, standard, or prohibition that is less stringent than that

allowed by the applicable effluent limitation guideline in effect at the date of the renewal or reissuance of the permit. Less stringent effluent limitations, standards, prohibitions, or conditions may only be established if the director finds:

1. the circumstances upon which the previous permit was based have materially and substantially changed since the time the previous permit was issued and this change would constitute cause for permit modification or revocation and reissuance under 6 MCAR S 4.4019;

2. the permittee has installed the treatment facilities required to meet the effluent limitations, standards, or prohibitions in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve compliance with these effluent limitations, standards, or prohibitions; and that the effluent limitation guideline upon which the original effluent limitation, standard, or prohibition was based has been amended by the Environmental Protection Agency to allow the establishment of a less stringent effluent limitation, standard, or prohibition. The revised effluent limitation, standard, or prohibition must not be less stringent than the level of pollutant control actually achieved by the permittee;

3. that the Environmental Protection Agency has amended the effluent limitation guideline applicable to the permittee and that the amended effluent guideline is based upon best conventional pollutant control technology under Section 301(b)(2)(E) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(E) as amended; or

4. that the permittee has increased production at the facility to cause a significant reduction in treatment efficiency; and that the effluent limitation guideline upon which the original effluent limitation, standard, or prohibition was based has been amended by the Environmental Protection Agency to allow the establishment of a less stringent effluent limitation, standard, or prohibition.

6 MCAR S 4.4110 General conditions of National Pollutant

Discharge Elimination System permits.

A. Conditions for all permits. National Pollutant Discharge Elimination System ~~permit~~ permits issued by the agency must contain the general conditions set forth in 6 MCAR S 4.4015 and the general conditions as follows:

1. Notwithstanding the absence in this permit of an effluent limitation for any toxic pollutant, the permittee shall not discharge a toxic pollutant except according to Code of Federal Regulations, title 40, sections 400-460 and 6 MCAR SS 4.8014-4.8015 and any other applicable agency rules.

2. Noncompliance with a term or condition of this permit subjects the permittee to penalties provided by federal and state law set forth in Section 309 of the Clean Water Act, United States Code, title 33, section 1319 as amended, and in Minnesota Statutes, section 115.071, including monetary penalties, imprisonment, or both.

3. In the event of a reduction or loss of effective treatment of wastewater at the facility, the permittee shall control production or curtail its discharges to the extent necessary to maintain compliance with the terms and conditions of this permit. The permittee shall continue this control or curtailment until the wastewater treatment facility has been restored or until an alternative method of treatment is provided.

4. The permittee shall submit monitoring data, calculations, and results on a form provided by the director, known as a discharge monitoring report.

5. If the permittee monitors a pollutant more frequently than required by the permit, the permittee shall include data, calculations, and results of this monitoring in the discharge monitoring report.

6. Calculations of monitoring results that require averaging of measurements must utilize an arithmetic mean unless otherwise specified by the permit.

7. A person who falsifies, tampers with, or knowingly renders inaccurate a monitoring device or method required to be maintained under this permit is subject to penalties provided by

federal and state law, set forth in Section 309 of the Clean Water Act, United States Code, title 33, section 1319 as amended and Minnesota Statutes, section 115.071, subdivision 2, clause (2).

8. A person who knowingly makes a false statement, representation, or certification in a record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance is subject to penalties provided by federal and state law set forth in Section 309 of the Clean Water Act, United States Code, title 33, section 1319, and Minnesota Statutes, section 115.071, subdivision 2, clause (2).

9. In addition to other facts or incidents required by the permit to be reported within 24 hours, the permittee shall report in accordance with 6 MCAR S 4.4015 C.11. any unanticipated bypass or upset that causes an exceedance of an applicable effluent limitation. The permittee need not submit a written report if the director finds that the written report is unnecessary.

10. The permittee may allow a bypass to occur if the bypass will not cause the exceedance of an effluent limitation but only if the bypass is necessary for essential maintenance to assure efficient operation of the facility. The permittee shall submit notice of the need for the bypass at least ten days before the date of the bypass or as soon as possible under the circumstances.

11. The permittee shall not allow an anticipated bypass to occur that will cause an exceedance of an applicable effluent limitation unless the following conditions are met:

a. The bypass is unavoidable to prevent loss of life, personal injury, or severe property damage. For the purposes of this paragraph, "severe property damage" means substantial damage to property of the permittee or of others; damage to the wastewater treatment facilities that may cause them to become inoperable; or substantial and permanent loss of natural resources that can reasonably be expected to occur in the

absence of a bypass. "Severe property damage" does not mean economic loss as a result of a delay in production.

b. There is no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or performance of maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance.

c. The permittee has notified the director of the anticipated bypass and the director has approved the bypass. The director shall approve the bypass if the director finds that the conditions set forth in 1. and 2. are met.

12. In the event of temporary noncompliance by the permittee with an applicable effluent limitation resulting from an upset at the permittee's facility due to factors beyond the control of the permittee, the permittee has an affirmative defense to an enforcement action brought by the agency as a result of the noncompliance if the permittee demonstrates by a preponderance of competent evidence:

a. the specific cause of the upset;

b. that the upset was unintentional;

c. that the upset resulted from factors beyond the control of the permittee and did not result from operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or increases in production which are beyond the design capability of the treatment facilities;

d. that at the time of the upset the facility was being properly operated;

e. that the permittee properly notified the director of the upset in accordance with 9.; and

f. that the permittee implemented the remedial measures required by 6 MCAR S 4.4015 C.10.

B. Permits to manufacturing, commercial, mining, or

silvicultural dischargers. A National Pollutant Discharge Elimination System permit issued by the agency to a manufacturing, commercial, mining, or silvicultural discharger must contain the following additional conditions:

1. The permittee shall notify the director immediately of any knowledge or reason to believe that an activity has occurred that would result in the discharge of a toxic pollutant listed in 6 MCAR S 4.4107 D.-J. or listed below that is not limited in the permit, if the discharge of this toxic pollutant has exceeded or is expected to exceed the following levels:

a. for acrolein and acrylonitrile, 200 micrograms per liter;

b. for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol, 500 micrograms per liter;

c. for antimony, one milligram per liter;

d. for any other toxic pollutant listed in 6 MCAR S 4.4107 D.-J., 100 micrograms per liter; or

e. five times the maximum concentration value identified and reported for that pollutant in the permit application.

2. The permittee shall notify the director immediately if the permittee has begun or expects to begin to use or manufacture as an intermediate or final by-product a toxic pollutant that was not reported in the permit application under 6 MCAR S 4.4106 I.

C. Permits for publicly owned treatment works. A National Pollutant Discharge Elimination System permit issued by the agency to a publicly owned treatment works must require the permittee to report the following to the director as soon as possible:

1. the new introduction of pollutants into the publicly owned treatment works from an indirect discharger that would be subject to the requirements of Section 301 or 306 of the Clean Water Act, United States Code, title 33, section 1311 or 1316 as amended if it were directly discharging those pollutants;

2. a substantial change in the volume or character of

pollutants being introduced into the publicly owned treatment works by a source that was introducing pollutants into the publicly owned treatment works at the time the permit was issued; and

3. the quantity and quality of the additional or changed effluent being received by the publicly owned treatment works and the anticipated impact on the effluent to be discharged by the publicly owned treatment works.

6 MCAR S 4.4111 Final determination.

A. Issuance of permit. Except as provided in B.-D., the agency shall issue a National Pollutant Discharge Elimination System permit in accordance with 6 MCAR S 4.4014.

B. Certification. If the applicant is required to obtain a certification under Section 401 of the Clean Water Act, United States Code, title 33, section 1341 as amended, no permit may be issued by the agency unless the agency finds that the certification has been obtained by the applicant.

C. Violation of adjoining state's water quality standard. The agency shall not issue a permit if it finds that the applicant's discharge will result in the violation of water quality standards adopted by a state that adjoins the receiving water of the applicant's discharge.

D. Warfare agents. The agency shall not issue a permit if it finds that the issuance will result in the discharge of a radiological, chemical, or biological warfare agent.

Repealer. Pollution Control Agency Rule WPC 36 is repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 2 6 1984
Joan Anderson Growe
Secretary of State
2:05 PM

APPROVED AS TO FORM AND LEGALITY
March 15 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL