

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1175

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-25-85
DATE FOR REVIEW 7-4-85
DATE DUE 7-9-85

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

Approved 7-11-85 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 7-11-85 Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 6.25.85 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 5.21.84 + Affidavit of Mailing Notice
See SONR for notification to SM. BIZ.

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency no small biz statement but see SONR for methods used to notify small biz

✓ Affidavit of Mailing Notice or rulemaking
12.3.84 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.3.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption

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 includes statement that rules do impact small biz.

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

✓ Notice of Submission to the Attorney General - substantially complies with AG format except overstates comment period to AG by two days.

To:

Date: 6/27/85

Re: DNR – Peatland Reclamation

Rules as Adopted

p. 11, line 4 6131.0130 subpts. 4.C. and D.

" line 8 These sections allow the permittee to accomplish required steps over a longer period of time than established by rule if the period is approved by the commissioner. There are no criteria (except in the general variance section) to guide agency discretion

Question: Would this longer period of time constitute a variance?

p. 13, line 33 6131.0140, subpt. 5. A. (3)

Same situation as above – "commissioner approval" without express criteria

p. 17, line 6 6131.0190, subp. 2

It would seem there is no choice under the law about hearings are to be held; therefore "may" is required here

p. 18, line 16 6131.0190, subp. 3. A. (3)

This section requires the commissioner follow one of three courses of action, one of which is "request additional information." There is no indication of what additional info. might be requested.

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources

DATE: 7-11-85

ATTN: A. W. CLAPP
Special Assistant Attorney General

FROM: J. MICHAEL MILES JMM
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of Rules for Peatland Reclamation.

The above-referenced rule has been approved as to its legality by the Attorney General on July 11, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM:sz

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

AG copy

Department of Natural Resources

Division of Minerals

Adopted Rules Relating to Peatland Reclamation

Rules as Adopted

DEPARTMENT OF NATURAL RESOURCES

PEATLAND RECLAMATION

GENERAL PROVISIONS

6131.0010 DEFINITIONS.

Subpart 1. **Auxiliary facilities.** "Auxiliary facilities" means all permittee-owned stationary physical property used in a mining operation, including power plants and associated facilities; transmission lines; pipelines; roads; railroads; borrow areas and leased borrow areas and associated facilities; fuel production or preparation facilities; and parking areas, shops, offices, buildings, structures, and storage facilities located within the area where mining is conducted. This does not include common carrier transportation facilities.

Subp. 2. **Beneficiating plants.** "Beneficiating plants" means all processing plants and other facilities used for pelletizing, chemical extraction, gasification, compaction, drying, bagging, densification, pulverizing, and wet carbonization.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Department of Natural Resources, or a duly authorized representative.

Subp. 4. **Deactivation.** "Deactivation" means the process of finally terminating and reclaiming any specific portion of a mining operation. Deactivation begins when mining activities and uses associated with product production have ceased and there will be no renewed use by the permittee that will interfere with reclamation.

Subp. 5. **Hereafter.** "Hereafter" means after the effective date of parts 6131.0010 to 6131.0340.

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Subp. 6. **Mine plot.** "Mine plot" means an area from which peat is or will be mined as part of a permitted mining operation. This does not include areas that have been successfully reclaimed.

Subp. 7. **Mining area or area subjected to mining.** "Mining area" or "area subjected to mining" means any area of land from which material is hereafter removed in connection with the extraction of peat; the lands upon which material from mining is hereafter deposited; the lands upon which beneficiation plants and auxiliary facilities are hereafter located; lands upon which the water reservoirs used in the mining process are hereafter located; and auxiliary lands that are hereafter used or intended to be used in a particular mining operation.

Subp. 8. **Natural resources.** "Natural resources" means all mineral, animal, plant, air, water, land, timber, soil, quietude, recreational, historic, scenic, and aesthetic resources.

Subp. 9. **Operating life of the mine.** "Operating life of the mine" means the term determined necessary by the commissioner for the completion of the proposed mining operation, including reclamation.

Subp. 10. **Operator.** "Operator" means any owner or lessee of peat resources engaged in or preparing to engage in a mining operation.

Subp. 11. **Peat.** "Peat" means organic matter, excluding coal, formed by the partial decomposition of plant material under saturated conditions.

Subp. 12. **Peat mining.** "Peat mining" means the removal of peat for commercial purposes, including draining, stockpiling, processing, storing, transporting, and reclaiming any material in connection with the commercial development of peat. "Peat mining" does not include removal of peat that is incidental to the harvesting of an agricultural or horticultural crop, or to mining of a metallic mineral that is subject to a mineland reclamation rule and a permit to mine.

Subp. 13. **Permit to mine or mining permit.** "Permit to

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mine" or "mining permit" means permit issued pursuant to Minnesota Statutes, section 93.481.

Subp. 14. **Progressive reclamation.** "Progressive reclamation" means the removal of resource in a manner which creates areas that can be reclaimed as soon after initiation of the operation as practical and as continuously as practical throughout the life of the operation.

Subp. 15. **Protected waters.** "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 105.37, subdivision 14 or 15; or 105.391, subdivision 1.

Subp. 16. **Reclamation.** "Reclamation" means the successful accomplishment of the goals in parts 6131.0100 to 6131.0130.

Subp. 17. **Stockpile.** "Stockpile" means an accumulation of mined or processed peat.

6131.0020 PURPOSE AND POLICY.

The purpose of this chapter is to implement Minnesota Statutes, sections 93.44 to 93.51 in order to control possible adverse environmental effects of peat mining, to preserve the natural resources, and to encourage the planning of future land utilization, while at the same time promoting the orderly development of peat mining, the encouragement of good peat mining practices, and the recognition and identification of the beneficial aspects of peat mining.

Until more is known about the technological, economic, and environmental feasibility of reclaiming large-scale peat mining operations, the Department of Natural Resources shall adopt parts 6131.0010 to 6131.0340 to serve the state while more information and knowledge is obtained on the feasibility of mining and reclaiming large peat operations. It is the department's intention to amend parts 6131.0010 to 6131.0340 as may be needed in light of new information.

Because of the unique character of each individual peatland and the extreme diversity of the possible types and sizes of operations which might develop during the period when parts 6131.0010 to 6131.0340 are in effect, it is the policy of parts

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6131.0010 to 6131.0340 that specific permit requirements for each permitted operation be negotiated within the framework set forth by parts 6131.0010 to 6131.0340. The requirements shall endeavor to fulfill the goals described herein and to attain the best reclamation plan for each individual site.

6131.0030 SCOPE.

Subpart 1. **Generally.** No permit to mine is required until a peat mining operation exceeds 40 acres in size, unless the commissioner determines that there is potential for significant environmental effects which may result from the peat mining operation. A person intending to engage in or carry on a peat mining operation of 40 acres or less, if the intended operation involves removal of more than 1,000 tons of air-dried peat per year, shall notify the commissioner in writing before beginning any mining, specifying the legal description of the tract to be mined and the mining methods to be used. Within 20 days after either receipt of written notice of intent to mine the tract, or after receiving additional information requested, the commissioner shall notify the person of the decision to require, or not to require, a permit.

Subp. 2. **Persons currently engaged in peat mining.** Any person engaged in a peat mining operation as of the effective date of parts 6131.0010 to 6131.0340 and not excluded by subpart 1 shall apply for a permit to mine within 180 days of the effective date of parts 6131.0010 to 6131.0340. Any existing mining operation may continue during the pendancy of the application.

Subp. 3. **Permits before commencement of operations.** Any person intending to conduct a new peat mining operation or reactivate an inactive peat mining operation not excluded by subpart 1 shall obtain a permit to mine prior to commencing operations.

Subp. 4. **Mine plot size limit.** No permit to mine shall be issued for a peat mining operation whose total mine plot acreage exceeds 3,000 acres.

Subp. 5. **Term of permit.** The term of a permit to mine

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issued under parts 6131.0010 to 6131.0340 is the period determined necessary by the commissioner for the completion of the proposed mining and reclamation activities, based on information provided under part 6131.0150.

Subp. 6. **New, existing, and reactivated operations.** Parts 6131.0010 to 6131.0340 apply to:

A. all portions of a peat mining operation initiated hereafter, including both new operations and reactivated operations; and

B. all portions of existing peat mining operations which are hereafter created or used, except that the siting requirements shall not apply to portions constructed prior to the effective date of parts 6131.0010 to 6131.0340.

Subp. 7. **Effect on other rules or statutes.** Nothing in parts 6131.0010 to 6131.0340 shall be construed to waive the requirements of any other applicable rules or statutes.

Subp. 8. **Other rights.** Pursuant to Minnesota Statutes, section 93.47, subdivision 3, parts 6131.0010 to 6131.0340 are subject to any rights existing pursuant to any permit, license, lease, or other valid existing authorization issued by the commissioner, the Pollution Control Agency, or any other governmental entity or their predecessors in office.

PEATLAND RECLAMATION STANDARDS

6131.0100 SITING.

Subpart 1. **Goals.** Mining areas shall be sited to avoid conflicts with adjacent noncompatible land uses.

Subp. 2. **Requirements; exclusion areas for mining.** No peat mining shall be conducted within any of the areas in items A to I unless the commissioner determines that a state or national emergency exists that would require the exploitation of the peat resources within these areas:

A. in and within one-fourth mile of:

(1) the Boundary Waters Canoe Area Wilderness as legally described in Volume 45, No. 67, of the Federal Register for April 4, 1980; and

(2) national wilderness areas, national parks,

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and national monuments all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340;

B. in and within one-fourth mile of state wilderness areas and state parks;

C. within a national wild, scenic, or recreational river district or within one-fourth mile of a national wild, scenic, or recreational river (whichever is greater), all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340; within a designated state land use district or within one-fourth mile of any state wild, scenic, or recreational river (whichever is greater);

D. on sites designated in the National Register of Historic Places and in registered national natural landmarks all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340; on sites designated in the state Registry of Historic Sites and in designated state scientific and natural areas;

E. within 300 feet of:

(1) any state trout stream designated by commissioner's order;

(2) any river listed in Minnesota Statutes, section 85.32, subdivision 1; and

(3) the Bois de Sioux, Red River of the North, Roseau, Rainy, and Pigeon rivers;

F. within 400 feet of any natural watercourse located within the area defined by the federal Shipsted-Newton-Nolan Act (United States Code, title 16, sections 577-577b);

G. within any stream trout lake designated by commissioner's order;

H. within the following areas that are in existence before the issuance of a permit to mine:

(1) 500 feet of any occupied dwelling, public school, church, public institution, cemetery, county or municipal park, unless allowed by the owner; and

(2) 100 feet of the outside right-of-way line of any public roadway, except where mine access or haul roads cross

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such right-of-way line; and

I. within any area, except federal areas, added to the categories listed in this subpart if the designation is made before the issuance of a permit to mine the area, and an opportunity for a public hearing has been afforded.

Subp. 3. **Requirements; avoidance areas for mining.** Peat mining within the areas in items A to F will be allowed only if the mining and associated reclamation will enhance the existing use of the area; or, if no reasonable or prudent alternative exists and, in the case of state-owned land, the affected area will be replaced by an area of equal or greater public value serving the same purposes as the affected area:

A. On all lands within the boundaries of all Peatland Protection Management Areas legally described in Peatland Reclamation Report No. 1, Department of Natural Resources, December 1984, which is incorporated by reference and which is available through the Minitex Interlibrary Loan System. This document is not subject to frequent change.

B. Within any national wildlife refuge or waterfowl production area, or on lands designated as national natural landmarks or national trails, all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340.

C. Within any state wildlife management area and on any state designated trail listed in Minnesota Statutes, sections 84.029 and 85.015.

D. Within any shorelands defined in Minnesota Statutes, section 105.485, subdivision 2.

E. Within any protected waters except as provided in Minnesota Statutes, section 105.391, subdivision 3.

F. Within any area added to the categories listed in this subpart, provided the designation is made before the issuance of a permit to mine the area.

6131.0110 MINE DESIGN.

Subpart 1. **Goals.** Mining areas shall be designed, constructed, and managed to be compatible with surrounding nonmining land uses; to minimize adverse water quality and

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quantity effects; to be structurally sound; to promote progressive reclamation; and to encourage the prompt attainment of site restoration goals.

Subp. 2. **Requirements.** The requirements of mine design are contained in items A to D:

A. Mining shall proceed in a manner approved by the commissioner according to the following:

(1) Where practical, the mining area shall be developed as a series of mine plots.

(2) Scheduling of mine plots shall be accomplished in a manner which promotes progressive reclamation.

(3) Mine plots shall be designed so that when reclaimed, open water areas expected to form therein shall have a stable shoreline and a water level which shall not fluctuate to expose large areas of unvegetated land.

B. Adjacent permitted peat mining operations shall be separated by unmined or successfully reclaimed areas, when necessary, to mitigate environmental impacts. The extent of these separations shall be determined by the commissioner according to the following criteria:

(1) mine plot sizes and schedules for production and reclamation;

(2) the extent to which separations will mitigate impacts;

(3) the attainment of site restoration goals;

(4) the use of the peat resource; and

(5) land ownership.

C. Dewatering and ditch design shall proceed in a manner approved by the commissioner according to the following:

(1) Levels of surrounding protected waters shall not be lowered.

(2) Adjacent peatlands shall not be dewatered to the extent that the value of the resource is diminished.

(3) Ditches which divert waters around, or carry waters away from the mining area shall be constructed to avoid bank slumping and erosion.

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D. Mine wastes (including peat and wood wastes) from mining and processing shall be disposed of in a manner approved by the commissioner.

6131.0120 SITE RESTORATION.

Subpart 1. **Goals.** The mining area shall be progressively reclaimed so that it is nonpolluting, establishes a water system which is compatible with the surrounding regional water resource, has current land use value and future land use potential which recognizes the productivity of the site, and is maintenance-free to the maximum extent possible, unless an approved postmining management plan provides for maintenance.

Subp. 2. **Requirements.** The requirements of site restoration are contained in items A to D:

A. The operator shall contact the landowner to determine whether the landowner agrees to assume management responsibility for a specific postmining land use including but not limited to wildlife habitat, forest production, agriculture, or biomass production. If the landowner does not agree to assume responsibility for postmining management, then the operator shall comply with the site restoration requirements in item B. If the landowner agrees to assume postmining management, the operator and the landowner shall jointly develop a postmining management plan at the time of application for or amendment to a permit to mine. The postmining management plan shall:

(1) be compatible with restoration goals;

(2) be compatible with adjacent uses;

(3) consider the needs of the area;

(4) consider the productivity of the site;

(5) consider projected land use trends;

(6) protect public health and safety;

(7) avoid pollution of air and water; and

(8) be compatible with local land use plans and plans of the surface owners.

B. Within the mining area, all mined peat surfaces, islands, littoral zones, and disturbed peat and mineral surfaces

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such as ditches (excluding field ditches), dredge spoil, borrow pits, plant sites, and auxiliary facilities shall be stablilized with vegetation.

(1) To ensure progressive reclamation, the establishment of vegetation shall be initiated during the first normal planting period following the point when according to the permit to mine, a surface, structure, facility, or element is no longer scheduled to be disturbed or used in a manner that would interfere with the establishment and maintenance of vegetation.

(2) During the fourth and fifth year following initiation of revegetation, a vegetated reclaimed area shall have a 75 percent live vegetative cover comprised of wetland or typical peatland species that are either planted or naturally occurring. The vegetation shall be self-sustaining, and either regenerating or in a stage of natural succession. Cover estimates of revegetation shall be measured by standard procedures approved by the commissioner for assessing ground cover and productivity. Where this standard is not met, the surface shall be repaired as necessary and replanted during the next normal planting period. No release pursuant to part 6131.0250 shall be granted until the area has such characteristics.

(3) Water levels in open water areas shall be stable within five years following the cessation of mining.

C. The amount of peat that remains in a mine plot shall be dependent on the texture and type of the underlying soil and the approved mining and reclamation plans.

D. Plans for water control shall be implemented pursuant to part 6131.0170.

6131.0130 CLEANUP.

Subpart 1. **Goals.** The mining area shall be cleaned up so that it is nonpolluting, free of hazards, and maintenance-free to the maximum extent possible.

Subp. 2. **Requirements.** The requirements for cleanup are contained in items A to D:

A. Cleanup shall commence upon deactivation.

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B. The mining area shall be managed during cleanup to attain site restoration goals.

C. Within one year after cleanup begins or within a longer period approved by the commissioner, debris and mobile equipment which will not be used for reclamation shall be removed from the area being deactivated.

D. Within three years after cleanup begins, or within a longer period approved by the commissioner, the following shall be accomplished unless provisions have been made for continued subsequent use in accordance with an approved deactivation plan pursuant to part 6131.0250:

(1) removal of roads, parking areas, and storage pads; and

(2) all equipment, facilities, and structures shall be removed and the site shall be revegetated.

PERMIT REQUIREMENTS

6131.0140 PERMIT TO MINE PEAT.

Subpart 1. **Preapplication conference and site visit.** Prior to the preparation of an application for a permit to mine, a person shall meet with the commissioner for a preapplication conference and a site visit.

Subp. 2. **Generally.** Pursuant to part 6131.0030, subpart 1, no person shall carry out a mining operation for peat in this state without first obtaining a permit to mine from the commissioner.

Subp. 3. **Mines in operation on effective date.** Pursuant to part 6131.0030, subpart 1, a person conducting a mining operation on the effective date of parts 6131.0010 to 6131.0340, who applies for a permit to mine within 180 days after that date, may continue to conduct the operation during the pendency of the application.

Subp. 4. **Joint applications.** Where two or more persons are or will be engaged in a mining operation, all shall join in the application and the permit to mine shall be issued on a joint basis. Where a person is or will be engaged in only a portion of the operation, that person need only be a joint

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permittee in the portion in which that person is participating.

6131.0150 PERMIT APPLICATIONS.

Subpart 1. **Submission of application.** An application for a permit to mine containing the information in subparts 2 to 6, shall be submitted in duplicate by the applicant to the commissioner.

Subp. 2. **Documents.** To comply with statutory requirements, the applicant shall submit:

A. a certificate or evidence of insurance as required by Minnesota Statutes, section 93.481, subdivision 1, clause (b);

B. the notice and affidavit of publication pursuant to part 6131.0190, subpart 1;

C. if the applicant is a foreign corporation, as defined by Minnesota Statutes, sections 300.02 and 303.02, a certified copy of the certificate of authority to transact business in Minnesota; and

D. a statement documenting financial capability to perform reclamation obligations or a performance bond pursuant to part 6131.0310.

Subp. 3. **Organizational data.** To comply with statutory requirements, the applicant shall submit:

A. the post office address of the applicant;

B. the general organizational structure of the applicant, any parent companies, owners, principal stockholders, partners, and joint venturers;

C. any managing agents or subsidiaries which are or may be involved in the mining operation; and

D. organizational relationships between or among joint applicants.

Subp. 4. **Environmental setting.** To gain information on the environmental setting of the proposed mining area, the applicant shall submit:

A. A copy of any environmental reports prepared relative to the mining operation.

B. Environmental setting maps prepared as overlays to 7-1/2 minute United States Geologic Survey quadrangle maps

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delineating the mining area and such adjacent lands as required by the commissioner to show the areas directly or indirectly affected by the mining operation. The following information as it exists at the time of application shall be submitted:

(1) shape and depth of the peatland;

(2) ditch locations, surface waterflow in existing ditches, water basins, water courses, and wetlands which are or could be affected by the mining operation;

(3) surface ownership of record and ownership of easements above, on, or below the surface within the mining area; ~~and~~

(4) all underground uses of the property including pipelines and cables; and

~~(4)~~ (5) exclusion and avoidance areas pursuant to part 6131.0100, subparts 2 and 3.

Subp. 5. **Mining and reclamation maps and plans.** The purpose of mining and reclamation maps and plans is to evaluate anticipated activities to be conducted during the term of the permit. Minnesota Statutes, section 93.481, subdivision 3 requires that a permit be issued for the life of the operation. Therefore, for the operating life of the mine, the applicant shall submit:

A. Mining and reclamation maps and cross-sections containing all features normally found on a United States Geologic Survey quadrangle map, at a scale agreed upon by the applicant and the commissioner which:

(1) describe the shape, depth, and type of the peat resource that will support the operating life of the mine and the texture and type of the underlying mineral soil;

(2) identify potential peat mining areas which have not been included as part of the mining plan; and

(3) depict at appropriate production or time intervals approved by the commissioner the status of development and reclamation for:

(a) mine plots;

(b) ditches;

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(c) water control structures;

(d) settling basins;

(e) stockpiling areas; and

(f) auxiliary facilities.

B. Mining and reclamation plans that describe for the operating life of the mine:

(1) the mining activities to be conducted including:

(a) the types, amounts, sequence, and schedule for mining the peat; and

(b) the beneficiating process, including a discussion of the type and amount of any chemicals to be added, and the types, amounts, and means of waste disposal;

(2) the methods and schedules of reclamation activities; and

(3) anticipated or proposed reclamation research.

Subp. 6. **Postmining management plan.** In support of the postmining management plan required by part 6131.0120, subpart 2, item A, the applicant shall submit:

A. documentation of the landowner's management ability; and

B. a copy of the written agreement between the landowner and the operator detailing fiscal and reclamation responsibilities.

6131.0160 ANNUAL REPORT.

Subpart 1. **Purpose.** The purpose of the annual report is to describe actual mining activities completed during the past year and mining activities planned for the upcoming year. The permittee shall submit to the commissioner in duplicate an annual report between March 1 and 31 of each year.

Subp. 2. **Preceding calendar year.** For the preceding calendar year, the report shall include:

A. a statement describing financial capability to perform reclamation obligations;

B. the actual rate of mining;

C. the actual mining activities; and

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D. the actual reclamation activities.

Subp. 3. **Upcoming calendar year.** For the upcoming calendar year, the report shall include:

A. the anticipated rate of mining;

B. the anticipated mining activities including:

(1) the types, amounts, and schedule for mining the peat; and

(2) the beneficiating process, including a discussion of the type and amount of any chemicals to be added and the types, amount, and means of waste disposal; and

C. the anticipated reclamation activities including methods, schedules, and research.

Subp. 4. **Map.** For the preceding and upcoming year, the report shall contain a map in the form prescribed by part 6131.0150, subpart 5, item A, which depicts the status of mining, reclamation, and watershed modifications.

6131.0170 PLAN FOR DEACTIVATION.

Subpart 1. **Purpose.** The purpose of the deactivation plan is to describe the detailed reclamation activities to be conducted on the deactivated portion. This plan shall be approved by the commissioner pursuant to part 6131.0250 prior to its implementation.

Subp. 2. **Deactivation plan.** The permittee shall submit to the commissioner in duplicate, a deactivation plan at least two years prior to beginning deactivation for any portion of the mining area. This plan shall replace the annual report for the portion of the mining area to be deactivated. The deactivation plan shall contain:

A. detailed plans, schedules, designs, specifications, and supporting data for reclamation activities which comply with the mining permit;

B. the depth and the physical and chemical characteristics of the soil in each mine plot;

C. a description of water table depths;

D. a description of water control structures including location and extent, inspection methods and schedule,

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potential maintenance problems and solutions, and an estimate of maintenance costs; and

E. an updated copy of the written agreement between the landowner and the operator detailing fiscal, reclamation, and postmining management responsibilities.

6131.0180 REQUEST FOR RELEASE.

Subpart 1. **Purpose.** The purpose of the request for release is to evaluate compliance with parts 6131.0010 to 6131.0340, the approved deactivation plans, and the permit to mine in order to release the permittee from further responsibilities.

Subp. 2. **Request for release.** The permittee shall submit to the commissioner in duplicate a request for release pursuant to part 6131.0250. This request shall include:

A. a detailed description of provisions for continued maintenance;

B. identification of the ownership of the mining area and all remaining structures and facilities; and

C. a map in the form prescribed by part 6131.0150, subpart 5, item A, which depicts the following:

(1) the final topography;

(2) the postmining drainage system including the amounts and locations of discharge to receiving waters;

(3) the extent and type of vegetation; and

(4) the existing and expected permanent water levels within the deactivated mining area and the year in which they will be reached.

PROCEDURES AND STANDARDS

6131.0190 PERMITS TO MINE.

Subpart 1. **Application and publication.** The process for requesting a permit to mine is commenced by submitting an application to the commissioner pursuant to parts 6131.0010 to 6131.0340. After the commissioner determines the application is complete, the applicant shall publish an advertisement as required by part 6131.0280. Within seven days after the last

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date of publication, the applicant shall submit to the commissioner a copy of the advertisement and an affidavit from the printer verifying publication. The application shall then be considered filed.

Subp. 2. **Determination with hearing.** Hearings on permits to mine may be held as follows:

A. Written objections and a request for a hearing may be filed with the commissioner according to Minnesota Statutes, section 93.481, subdivision 2.

B. Within ten days after the receipt of the objections, the commissioner shall determine whether the person filing the objection is entitled to object. If the objections were filed by a person entitled to object, the commissioner shall:

(1) Select a hearing date which shall be no more than 30 days after the last date of opportunity to object.

(2) Serve an order for hearing in the form and manner required by part 1400.5600, except those in part 1400.5600, subpart 3 which shall not apply. In no event shall such an order be served less than 20 days prior to the hearing.

(3) Mail a copy of the order for hearing to all persons who filed objections and all local units of government in which all or a part of the operation is located.

(4) Publish notice of subject, time, date, and place of the hearing at least once prior to the hearing in a newspaper which must be both a legal newspaper, within the meaning of Minnesota Statutes, section 331.02, and circulated in the locality of the proposed mining operation.

If the objections were filed by a person not entitled to object, the commissioner shall notify the person in writing by mail of the determination giving reasons for it.

C. The commissioner may hold a hearing on the proposed application without receipt of objections if the commissioner deems it necessary to protect public health, safety, and welfare.

D. Within 120 days after the close of the hearing

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record, or 90 days after service of the hearing examiner's report whichever comes later, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 3. **Determination without hearing.** Determination without hearing:

A. If, within 30 days after the last publication required by part 6131.0280, no objections to an application are received from persons entitled to object, the commissioner within 120 days, may without hearing process the application in accordance with the following:

(1) grant the permit to mine with or without modifications or conditions;

(2) deny the permit to mine stating reasons therefor; or

(3) request in writing that the applicant provide additional information. ? what additional info.

B. If the commissioner has made a request for additional information within 120 days after receiving the information, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 4. **Hearing upon demand of applicant.** If the commissioner processes an application without a hearing, the applicant may, within 30 days after mailed notice of the commissioner's order on the application, file with the commissioner a demand for hearing pursuant to Minnesota Statutes, chapter 14. The application shall thereupon be fully heard on notice.

Within 120 days after the close of the hearing record or 90 days after service of the hearing examiner's report, whichever comes later, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 5. **Review of annual report.** After granting a permit to mine, the commissioner shall review the annual report

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required by part 6131.0160, to determine if it complies with the provisions of the permit to mine and parts 6131.0010 to 6131.0340. Upon completion of this review, the commissioner shall inform the permittee regarding compliance of the report with the permit to mine and parts 6131.0010 to 6131.0340.

6131.0200 VARIANCE PROCEDURES.

Subpart 1. **Application for variance.** A proceeding for requesting a variance from parts 6131.0010 to 6131.0340 is commenced when the permit applicant or permittee files an application for a variance with the commissioner. The application shall include information necessary for the commissioner to determine that the proposed variance is consistent with the general welfare and the goals of parts 6131.0010 to 6131.0340.

Subp. 2. **Determination by commissioner.** Within 30 days after receipt of the application, the commissioner shall determine whether the proposed variance constitutes a substantial change from the requirements of parts 6131.0010 to 6131.0340.

? see p. 25 for standards for variance

If the commissioner determines that a substantial change, would result, the applicant shall follow the procedures for permit to mine applications in part 6131.0190.

If the commissioner determines that there would be no substantial change, the commissioner shall without a hearing allow the variance with or without additional terms or conditions which are consistent with parts 6131.0010 to 6131.0340, or deny the application stating reasons therefor.

Subp. 3. **Demand for hearing.** If the commissioner processes the application without a hearing, pursuant to subpart 2, the applicant may file with the commissioner a demand for hearing on the decision pursuant to part 6131.0190, subpart 4.

Subp. 4. **Simultaneous filing of applications.** Applications for variance from parts 6131.0010 to 6131.0340 may be filed simultaneously with an application for a permit to mine, provided that the advertisement contains all information required for applications for permits to mine and for variance.

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6131.0210 AMENDMENTS.

Subpart 1. **Application for amendment.** A proceeding for requesting an amendment of a permit to mine is commenced when the permittee files an application for an amendment with the commissioner. The application shall include information necessary for the commissioner to determine that the proposed amendment meets the lawful requirements and parts 6131.0010 to 6131.0340.

Subp. 2. **Determination by commissioner.** Within 30 days after receipt of the application, the commissioner shall determine whether the proposed amendment constitutes a substantial change in the permit to mine.

If the commissioner determines that a substantial change would occur, the applicant shall follow the procedures for permit to mine applications in part 6131.0190.

If the commissioner determines that there would be no substantial change, the commissioner shall without a hearing allow the amendment with or without additional terms or conditions which are consistent with parts 6131.0010 to 6131.0340, or deny the applications stating reasons therefor.

Subp. 3. **Demand for hearing.** If the commissioner processes the application without a hearing pursuant to subpart 2, the applicant may file with the commissioner a demand for hearing on the decision pursuant to part 6131.0190, subpart 4.

6131.0220 CANCELLATION OF PERMIT.

Subpart 1. **Cancellation at request of permittee.** A proceeding to cancel a permit to mine at the request of the permittee is commenced when a permittee files a written request with the commissioner. The request shall identify the permittee and give reasons for the cancellation.

Within 30 days after the receipt of a request, the commissioner shall determine whether cancellation would have a significant adverse effect on any public interest relating to the goals of parts 6131.0010 to 6131.0340.

If the commissioner determines that the cancellation has

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such an adverse effect, the permittee shall publish an advertisement pursuant to part 6131.0280 and the commissioner shall proceed as if an application for a permit to mine pursuant to part 6131.0190 had been received.

If the commissioner determines that the cancellation shall not have such adverse effect, the permit may be canceled with or without conditions.

Subp. 2. **Cancellation with consent of permittee.** A proceeding to cancel a permit to mine with the consent of the permittee is commenced when the commissioner serves the permittee with a written request giving reasons for the cancellation.

If no reply or an affirmative reply is filed with the commissioner within 30 days, procedures pursuant to subpart 1 shall be commenced except that the commissioner shall publish an advertisement pursuant to part 6131.0280.

If a negative reply is filed with the commissioner within 30 days, the permit to mine will continue in effect or a proceeding to revoke the permit to mine pursuant to part 6131.0220, subpart 2 shall be commenced.

6131.0230 REVOCATION OR MODIFICATION.

Subpart 1. **Commencement of proceedings.** A proceeding to revoke or modify a permit to mine, to require a performance bond, or to assess a civil penalty shall be commenced by serving upon the permittee:

A. a notice and order for hearing in the form and manner under part 1400.5600;

B. a proposed order revoking or modifying the permit to mine, requiring a performance bond, or assessing a civil penalty; and

C. a statement of the measures, if any, required to correct the situation and the time available therefor.

If conditions that provided the grounds for the action are corrected to the commissioner's satisfaction, within a period, established by the commissioner, of not less than 15 days after the notice, or as appropriate, approved measures are taken to

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ensure that the conditions do not recur, the proceedings shall be canceled.

Subp. 2. **Hearing prior to determination.** The commissioner shall hold a hearing prior to the determination to revoke or modify a permit to mine, require a performance bond, or assess a civil penalty if, within 15 days after commencement of the proceeding, any permittee serves an answer on the commissioner and all other parties. If an answer is served, the commissioner, without further notice, shall hold the hearing at the time and place specified in the order for hearing. No hearing shall be held less than 30 days after commencement of the proceeding.

An answer shall contain a written statement of the defenses to each violation alleged in the order for hearing, and a specific admission, denial, or explanation of each fact alleged in the order for hearing, or, if the permittee is without knowledge thereof, a statement to that effect.

Allegations of a complaint not answered shall be deemed to have been admitted.

If an answer contains an admission to an alleged fact, no hearing shall be held on that fact and the allegation shall prevail.

Failure of a permittee to serve an answer, pursuant to subpart 2, item A or to appear at the hearing constitutes a waiver of a hearing on the allegations of the order for hearing and the contents of the proposed order. The waiver authorizes the commissioner, without further notice to the permittee and without proceeding further with the hearing, to adopt the proposed order, or that much as is applicable if the proposed order is in the alternative or if there have been correction measures attempted. The order shall be the commissioner's final decision on the matter.

If the permittee appears at the hearing the commissioner, in reaching a final decision, shall not be bound by the proposed order.

6131.0240 SUSPENSION.

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The permit to mine may be suspended by the commissioner, pursuant to Minnesota Statutes, section 93.481, subdivision 4, clause (d). The commissioner's order suspending the permit to mine for the specified period, once served, constitutes the commissioner's final decision on the matter.

6131.0250 DEACTIVATION AND RELEASE OF PERMITTEE.

Subpart 1. **Deactivation.** The commissioner shall review the deactivation plan, pursuant to part 6131.0170, to determine if it complies with the requirements of the permit to mine and parts 6131.0010 to 6131.0340, in the same manner as if the commissioner had received an application for an amendment pursuant to part 6131.0210.

Subp. 2. **Release.** A proceeding to release the permittee from responsibility on any portion of a deactivated mining area is commenced when the permittee submits a request for release pursuant to part 6131.0180.

The commissioner shall review the request and determine if all terms and conditions of applicable provisions of parts 6131.0010 to 6131.0340, the permit to mine, and the approved deactivation plan have been satisfied; and that it is not necessary to defer the release until other portions of the mining area have been deactivated.

Within 270 days after receipt of the request the commissioner shall release the permittee with or without modifications or conditions, or deny the request stating reasons therefor.

6131.0260 ASSIGNMENT OF PERMIT.

Pursuant to Minnesota Statutes, section 93.481, subdivision 5, the commissioner shall allow the assignment of a permit to mine only if the commissioner determines that the assignee will perform all outstanding obligations of the act, parts 6131.0010 to 6131.0340, and the permit to mine.

6131.0270 HEARING PROCEDURES.

Procedures pursuant to parts 1400.5100 to 1400.8500, shall apply to any contested case hearing under parts 6131.0010 to

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6131.0340, except as otherwise provided in Minnesota Statutes, sections 93.44 to 93.51 and parts 6131.0010 to 6131.0340.

6131.0280 PUBLICATION.

When an advertisement is required, it shall be published once each week for four successive weeks in a legal newspaper, pursuant to Minnesota Statutes, section 331.02, which is circulated in the locality of the proposed mining operation. This advertisement shall contain:

A. a statement and map indicating the location and boundaries of the mining area;

B. the names of all surface owners of record and owners of easements above, on, or below the surface within the mining area; FF 3

C. the schedule for accomplishing what is being proposed;

D. a notice of the deadline date for filing objections; and

E. the following information:

(1) if application is made for a permit to mine, a description of the proposed mining operation including the general kinds of reclamation or restoration measures to be undertaken pursuant to the reclamation plan;

(2) if an amendment to a permit to mine is requested, a description of the purpose and nature of the proposed amendment;

(3) if a cancellation of a permit to mine is requested, an explanation of the request for cancellation and the consequences of allowing such a request; or

(4) if a variance from parts 6131.0010 to 6131.0340 is requested, a description of the purpose and nature of the requested variance and a description of the proposed alternative means which will be used to meet the goals and comply with the requirements of parts 6131.0010 to 6131.0340.

6131.0290 VARIANCE STANDARDS.

Subpart 1. **Granting of variance.** The commissioner shall

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grant a variance from the requirements of parts 6131.0010 to 6131.0340 upon application by a permit applicant or permittee, if it is determined that:

A. a variance is consistent with the general welfare and general purposes of parts 6131.0010 to 6131.0340;

B. by reason of exceptional circumstances, the strict enforcement of the reclamation requirements would cause undue hardship or strict conformity with the requirements of parts 6131.0010 to 6131.0340 would be unreasonable or not feasible; and

C. acceptable alternative means of accomplishing the goals, pursuant to parts 6131.0100 to 6131.0130, have been provided by the permit applicant or permittee.

Subp. 2. **Conditional granting.** The commissioner shall grant a variance upon such conditions as shall be necessary for the prevention, control, or correction of adverse environmental effects, consistent with the requirements of parts 6131.0010 to 6131.0340 and Minnesota Statutes.

6131.0300 REVOCATION OR MODIFICATION AUTHORITY.

The commissioner may revoke a permit to mine or modify any of its terms or conditions, pursuant to Minnesota Statutes, section 93.481, subdivision 4. A permittee shall not be considered to have commenced substantial construction of plant facilities unless erection of the primary plant facilities has begun. Planning, securing capital, purchasing land and materials, and otherwise preparing for construction are not sufficient.

6131.0310 PERFORMANCE BONDS.

Subpart 1. **Need for bond.** At any time during the pendency of a permit application, during the mining operation, or following the completion of mining but prior to the release of the permittee, the commissioner:

A. shall require the operator to furnish a performance bond if the commissioner determines that the operator has failed to:

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(1) perform any part of a reclamation measure required by the permit to mine or any amendment or modification thereto;

(2) comply with a provision of parts 6131.0010 to 6131.0340; or

(3) perform any research required, pursuant to Minnesota Statutes, sections 93.44 to 93.51; or

B. may require the operator to furnish a performance bond if there is reasonable doubt that the operator will be financially able to comply with the requirements of the permit to mine or parts 6131.0010 to 6131.0340.

Subp. 2. **Amount of bond.** The amount of a performance bond shall be determined by the commissioner and shall be equal to the estimated cost, to the Department of Natural Resources, of satisfactorily accomplishing reclamation of all lands disturbed and unreclaimed up to the date of annual bond review.

Subp. 3. **Conditions of bond.** A performance bond required pursuant to this part shall be conditioned upon the performance by the operator within a time period established by the commissioner of all actions necessary to correct the deficiency or noncompliance for which reason the bond is required. For the purpose of the bond, "performance" shall mean the accomplishment as determined by the commissioner of all actions required under the bond. The bond shall also provide that the surety or a successor or assign is not released in any way from liability thereunder by any amendment of the terms or conditions of the permit to mine; provided that, regardless of amendment, the surety shall be liable for no more than the amount specified in the bond. The need for and amount of all bonds shall be reviewed annually.

Subp. 4. **Other security and assurance.** Whenever an operator is required to furnish a performance bond pursuant to this part, the operator may, in lieu thereof:

A. Submit as security to the commissioner for deposit with the state treasurer, assignable bonds or notes of the United States in a sum equal, at their par value, to the amount

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of the required performance bond.

B. Give a lien against a real or personal property as its wholesale value in lieu of a bond. The property must remain in the state for the duration of the agreement and be managed and repaired by the permittee as necessary to maintain its value. Failure to maintain value shall allow the commissioner to modify or revoke the permit to mine, or to require bonds or notes to be deposited as a replacement bond. The commissioner shall accept such property as assurance if it is determined, by the commissioner, that no other liens exist on said property; the wholesale value is adequate to cover reclamation costs; and sufficient market exists, such that, the sale of said property can occur rapidly.

C. Submit other security or assurances as may be acceptable to the commissioner.

The permittee shall submit an agreement authorizing the commissioner to collect or sell the bonds, notes, property, or other security or assurance so submitted or deposited, upon the same conditions as would constitute a default under a performance bond. The acceptance of United States bonds, notes, a lien on property, or other security or assurance, in lieu of a performance bond, shall have the same force and effect as if a performance bond has been furnished.

Subp. 5. **Return of security or assurance to permittee.** When it is determined during the annual bond review that security is no longer necessary, any bonds, notes, lien, or other security or assurance deposited pursuant to part 6131.0310 shall be returned to the permittee.

Subp. 6. **Access to mining areas after forfeiture.** Upon forfeiture of a bond the permittee shall allow access to the commissioner and his or her designated contractors into all mining areas for the purpose of reclaiming all lands disturbed and unreclaimed.

6131.0320 CIVIL PENALTIES.

Subpart 1. **Amount.** If any person violates any provision of Minnesota Statutes, sections 93.44 to 93.51, parts 6131.0010

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to 6131.0340, or any permit to mine issued thereunder, the commissioner may order imposition of a civil penalty of not more than $1,000 per day for each violation of each provision or the same provision in more than one portion of the mining area.

Subp. 2. **Determining the amount.** In determining the amount of a penalty, the commissioner shall consider the severity of the violation, the need to deter future violations, and the magnitude of potential or actual gains resulting from the violation.

Subp. 3. **Collection.** The commissioner shall collect any assessed civil penalty in the same manner as any other debt owed the state.

6131.0330 SUSPENSION OF PERMIT.

The commissioner may suspend all or any part of a permit to mine pursuant to Minnesota Statutes, section 93.481, subdivision 4. Any suspension ordered pursuant to this part shall be for such period and upon such terms as the commissioner deems appropriate to correct the conditions which necessitated suspension.

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6131.0340 INSPECTION OF MINING AREA.

The permittee shall allow the commissioner to inspect all mining operations and records needed to monitor compliance with the permit to mine and parts 6131.0010 to 6131.0340 after reasonable prior notice.

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9:30 AM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 11 1985
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND EXECUTION

7/11 1985

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
~~SPECIAL~~ ASSISTANT ATTORNEY GENERAL

Rules as proposed (all new material)

DEPARTMENT OF NATURAL RESOURCES

PEATLAND RECLAMATION

GENERAL PROVISIONS

6131.0010 DEFINITIONS.

Subpart 1. **Auxiliary facilities.** "Auxiliary facilities" means all permittee-owned stationary physical property used in a mining operation, including power plants and associated facilities; transmission lines; pipelines; roads; railroads; borrow areas and leased borrow areas and associated facilities; fuel production or preparation facilities; and parking areas, shops, offices, buildings, structures, and storage facilities located within the area where mining is conducted. This does not include common carrier transportation facilities.

Subp. 2. **Beneficiating plants.** "Beneficiating plants" means all processing plants and other facilities used for pelletizing, chemical extraction, gasification, compaction, drying, bagging, densification, pulverizing, and wet carbonization.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Department of Natural Resources, or a duly authorized representative.

Subp. 4. **Deactivation.** "Deactivation" means the process of finally terminating and reclaiming any specific portion of a mining operation. Deactivation begins when mining activities and uses associated with product production have ceased and there will be no renewed use by the permittee that will interfere with reclamation.

Subp. 5. **Hereafter.** "Hereafter" means after the effective date of parts 6131.0010 to 6131.0340.

Subp. 6. **Mine plot.** "Mine plot" means an area from which peat is or will be mined as part of a permitted mining operation. This does not include areas that have been successfully reclaimed.

Subp. 7. Mining area or area subjected to mining. "Mining area" or "area subjected to mining" means any area of land from

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which material is hereafter removed in connection with the extraction of peat; the lands upon which material from mining is hereafter deposited; the lands upon which beneficiation plants and auxiliary facilities are hereafter located; lands upon which the water reservoirs used in the mining process are hereafter located; and auxiliary lands that are hereafter used or intended to be used in a particular mining operation.

Subp. 8. **Natural resources.** "Natural resources" means all mineral, animal, plant, air, water, land, timber, soil, quietude, recreational, historic, scenic, and aesthetic resources.

Subp. 9. **Operating life of the mine.** "Operating life of the mine" means the term determined necessary by the commissioner for the completion of the proposed mining operation, including reclamation.

Subp. 10. **Operator.** "Operator" means any owner or lessee of peat resources engaged in or preparing to engage in a mining operation.

Subp. 11. **Peat.** "Peat" means organic matter, excluding coal, formed by the partial decomposition of plant material under saturated conditions.

Subp. 12. **Peat mining.** "Peat mining" means the removal of peat for commercial purposes, including draining, stockpiling, processing, storing, transporting, and reclaiming any material in connection with the commercial development of peat. "Peat mining" does not include removal of peat that is incidental to the harvesting of an agricultural or horticultural crop, or to mining of a metallic mineral that is subject to a mineland reclamation rule and a permit to mine.

Subp. 13. **Permit to mine or mining permit.** "Permit to mine" or "mining permit" means permit issued pursuant to Minnesota Statutes, section 93.481.

Subp. 14. **Progressive reclamation.** "Progressive reclamation" means the removal of resource in a manner which creates areas that can be reclaimed as soon after initiation of the operation as practical and as continuously as practical

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throughout the life of the operation.

Subp. 15. **Protected waters.** "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 105.37, subdivision 14 or 15; or 105.391, subdivision 1.

Subp. 16. **Reclamation.** "Reclamation" means the successful accomplishment of the goals in parts 6131.0100 to 6131.0130.

Subp. 17. **Stockpile.** "Stockpile" means an accumulation of mined or processed peat.

6131.0020 PURPOSE AND POLICY.

The purpose of this chapter is to implement Minnesota Statutes, sections 93.44 to 93.51 in order to control possible adverse environmental effects of peat mining, to preserve the natural resources, and to encourage the planning of future land utilization, while at the same time promoting the orderly development of peat mining, the encouragement of good peat mining practices, and the recognition and identification of the beneficial aspects of peat mining.

Until more is known about the technological, economic, and environmental feasibility of reclaiming large-scale peat mining operations, the Department of Natural Resources shall adopt parts 6131.0010 to 6131.0340 to serve the state while more information and knowledge is obtained on the feasibility of mining and reclaiming large peat operations. It is the department's intention to amend parts 6131.0010 to 6131.0340 as may be needed in light of new information.

Because of the unique character of each individual peatland and the extreme diversity of the possible types and sizes of operations which might develop during the period when parts 6131.0010 to 6131.0340 are in effect, it is the policy of parts 6131.0010 to 6131.0340 that specific permit requirements for each permitted operation be negotiated within the framework set forth by parts 6131.0010 to 6131.0340. The requirements shall endeavor to fulfill the goals described herein and to attain the best reclamation plan for each individual site.

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6131.0030 SCOPE.

Subpart 1. **Generally.** No permit to mine is required until a peat mining operation exceeds 40 acres in size, unless the commissioner determines that there is potential for significant environmental effects which may result from the peat mining operation. A person intending to engage in or carry on a peat mining operation of 40 acres or less, if the intended operation involves removal of more than 1,000 tons of air-dried peat per year, shall notify the commissioner in writing before beginning any mining, specifying the legal description of the tract to be mined and the mining methods to be used. Within 20 days after either receipt of written notice of intent to mine the tract, or after receiving additional information requested, the commissioner shall notify the person of the decision to require, or not to require, a permit.

Subp. 2. **Persons currently engaged in peat mining.** Any person engaged in a peat mining operation as of the effective date of parts 6131.0010 to 6131.0340 and not excluded by subpart 1 shall apply for a permit to mine within 180 days of the effective date of parts 6131.0010 to 6131.0340. Any existing mining operation may continue during the pendancy of the application.

Subp. 3. **Permits before commencement of operations.** Any person intending to conduct a new peat mining operation or reactivate an inactive peat mining operation not excluded by subpart 1 shall obtain a permit to mine prior to commencing operations.

Subp. 4. **Mine plot size limit.** No permit to mine shall be issued for a peat mining operation whose total mine plot acreage exceeds 3,000 acres.

Subp. 5. **Term of permit.** The term of a permit to mine issued under parts 6131.0010 to 6131.0340 is the period determined necessary by the commissioner for the completion of the proposed mining and reclamation activities, based on information provided under part 6131.0150.

Subp. 6. New, existing, and reactivated operations. Parts

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6131.0010 to 6131.0340 apply to:

A. all portions of a peat mining operation initiated hereafter, including both new operations and reactivated operations; and

B. all portions of existing peat mining operations which are hereafter created or used, except that the siting requirements shall not apply to portions constructed prior to the effective date of parts 6131.0010 to 6131.0340.

Subp. 7. **Effect on other rules or statutes.** Nothing in parts 6131.0010 to 6131.0340 shall be construed to waive the requirements of any other applicable rules or statutes.

Subp. 8. **Other rights.** Pursuant to Minnesota Statutes, section 93.47, subdivision 3, parts 6131.0010 to 6131.0340 are subject to any rights existing pursuant to any permit, license, lease, or other valid existing authorization issued by the commissioner, the Pollution Control Agency, or any other governmental entity or their predecessors in office.

PEATLAND RECLAMATION STANDARDS

6131.0100 SITING.

Subpart 1. **Goals.** Mining areas shall be sited to avoid conflicts with adjacent noncompatible land uses.

Subp. 2. **Requirements; exclusion areas for mining.** No peat mining shall be conducted within any of the areas in items A to I unless the commissioner determines that a state or national emergency exists that would require the exploitation of the peat resources within these areas:

A. in and within one-fourth mile of:

(1) the Boundary Waters Canoe Area Wilderness as legally described in Volume 45, No. 67, of the Federal Register for April 4, 1980; and

(2) national wilderness areas, national parks, and national monuments all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340;

B. in and within one-fourth mile of state wilderness areas and state parks;

C. within a national wild, scenic, or recreational

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river district or within one-fourth mile of a national wild, scenic, or recreational river (whichever is greater), all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340; within a designated state land use district or within one-fourth mile of any state wild, scenic, or recreational river (whichever is greater);

D. on sites designated in the National Register of Historic Places and in registered national natural landmarks all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340; on sites designated in the state Registry of Historic Sites and in designated state scientific and natural areas;

E. within 300 feet of:

(1) any state trout stream designated by commissioner's order;

(2) any river listed in Minnesota Statutes, section 85.32, subdivision 1; and

(3) the Bois de Sioux, Red River of the North, Roseau, Rainy, and Pigeon rivers;

F. within 400 feet of any natural watercourse located within the area defined by the federal Shipsted-Newton-Nolan Act (United States Code, title 16, sections 577-577b);

G. within any stream trout lake designated by commissioner's order;

H. within the following areas that are in existence before the issuance of a permit to mine:

(1) 500 feet of any occupied dwelling, public school, church, public institution, cemetery, county or municipal park, unless allowed by the owner; and

(2) 100 feet of the outside right-of-way line of any public roadway, except where mine access or haul roads cross such right-of-way line; and

I. within any area, except federal areas, added to the categories listed in this subpart if the designation is made before the issuance of a permit to mine the area, and an opportunity for a public hearing has been afforded.

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Subp. 3. Requirements; avoidance areas for mining. Peat mining within the areas in items A to F will be allowed only: if the mining and associated reclamation will enhance the existing use of the area; or, if no reasonable or prudent alternative exists and, in the case of state-owned land, the affected area will be replaced by an area of equal or greater public value serving the same purposes as the affected area:

A. On all lands within the boundaries of all Peatland Protection Management Areas legally described in Peatland Reclamation Report No. 1, Department of Natural Resources, December 1984, which is incorporated by reference and which is available through the Minitex Interlibrary Loan System. This document is not subject to frequent change.

B. Within any national wildlife refuge or waterfowl production area, or on lands designated as national natural landmarks or national trails, all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340.

C. Within any state wildlife management area and on any state designated trail listed in Minnesota Statutes, sections 84.029 and 85.015.

D. Within any shorelands defined in Minnesota Statutes, section 105.485, subdivision 2.

E. Within any protected waters except as provided in Minnesota Statutes, section 105.391, subdivision 3.

F. Within any area added to the categories listed in this subpart, provided the designation is made before the issuance of a permit to mine the area.

6131.0110 MINE DESIGN.

Subpart 1. Goals. Mining areas shall be designed, constructed, and managed to be compatible with surrounding nonmining land uses; to minimize adverse water quality and quantity effects; to be structurally sound; to promote progressive reclamation; and to encourage the prompt attainment of site restoration goals.

Subp. 2. Requirements. The requirements of mine design are contained in items A to D:

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A. Mining shall proceed in a manner approved by the commissioner according to the following:

(1) Where practical, the mining area shall be developed as a series of mine plots.

(2) Scheduling of mine plots shall be accomplished in a manner which promotes progressive reclamation.

(3) Mine plots shall be designed so that when reclaimed, open water areas expected to form therein shall have a stable shoreline and a water level which shall not fluctuate to expose large areas of unvegetated land.

B. Adjacent permitted peat mining operations shall be separated by unmined or successfully reclaimed areas, when necessary, to mitigate environmental impacts. The extent of these separations shall be determined by the commissioner according to the following criteria:

(1) mine plot sizes and schedules for production and reclamation;

(2) the extent to which separations will mitigate impacts;

(3) the attainment of site restoration goals;

(4) the use of the peat resource; and

(5) land ownership.

C. Dewatering and ditch design shall proceed in a manner approved by the commissioner according to the following:

(1) Levels of surrounding protected waters shall not be lowered.

(2) Adjacent peatlands shall not be dewatered to the extent that the value of the resource is diminished.

(3) Ditches which divert waters around, or carry waters away from the mining area shall be constructed to avoid bank slumping and erosion.

D. Mine wastes (including peat and wood wastes) from mining and processing shall be disposed of in a manner approved by the commissioner.

6131.0120 SITE RESTORATION.

Subpart 1. Goals. The mining area shall be progressively

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reclaimed so that it is nonpolluting, establishes a water system which is compatible with the surrounding regional water resource, has current land use value and future land use potential which recognizes the productivity of the site, and is maintenance-free to the maximum extent possible, unless an approved postmining management plan provides for maintenance.

Subp. 2. **Requirements.** The requirements of site restoration are contained in items A to D:

A. The operator shall contact the landowner to determine whether the landowner agrees to assume management responsibility for a specific postmining land use including but limited to wildlife habitat, forest production, agriculture, or biomass production. If the landowner does not agree to assume responsibility for postmining management, then the operator shall comply with the site restoration requirements in item B. If the landowner agrees to assume postmining management, the operator and the landowner shall jointly develop a postmining management plan at the time of application for or amendment to a permit to mine. The postmining management plan shall:

(1) be compatible with restoration goals;

(2) be compatible with adjacent uses;

(3) consider the needs of the area;

(4) consider the productivity of the site;

(5) consider projected land use trends;

(6) protect public health and safety;

(7) avoid pollution of air and water; and

(8) be compatible with local land use plans and plans of the surface owners.

B. Within the mining area, all mined peat surfaces, islands, littoral zones, and disturbed peat and mineral surfaces such as ditches (excluding field ditches), dredge spoil, borrow pits, plant sites, and auxiliary facilities shall be stablilized with vegetation.

(1) To ensure progressive reclamation, the establishment of vegetation shall be initiated during the first normal planting period following the point when according to the

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permit to mine, a surface, structure, facility, or element is no longer scheduled to be disturbed or used in a manner that would interfere with the establishment and maintenance of vegetation.

(2) During the fourth and fifth year following initiation of revegetation, a vegetated reclaimed area shall have a 75 percent live vegetative cover comprised of wetland or typical peatland species that are either planted or naturally occurring. The vegetation shall be self-sustaining, and either regenerating or in a stage of natural succession. Cover estimates of revegetation shall be measured by standard procedures approved by the commissioner for assessing ground cover and productivity. Where this standard is not met, the surface shall be repaired as necessary and replanted during the next normal planting period. No release pursuant to part 6131.0250 shall be granted until the area has such characteristics.

(3) Water levels in open water areas shall be stable within five years following the cessation of mining.

C. The amount of peat that remains in a mine plot shall be dependent on the texture and type of the underlying soil and the approved mining and reclamation plans.

D. Plans for water control shall be implemented pursuant to part 6131.0170.

6131.0130 CLEANUP.

Subpart 1. Goals. The mining area shall be cleaned up so that it is nonpolluting, free of hazards, and maintenance-free to the maximum extent possible.

Subp. 2. Requirements. The requirements for cleanup are contained in items A to D:

A. Cleanup shall commence upon deactivation.

B. The mining area shall be managed during cleanup to attain site restoration goals.

C. Within one year after cleanup begins or within a longer period approved by the commissioner, debris and mobile equipment which will not be used for reclamation shall be removed from the area being deactivated.

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D. Within three years after cleanup begins, or within a longer period approved by the commissioner, the following shall be accomplished unless provisions have been made for continued subsequent use in accordance with an approved deactivation plan pursuant to part 6131.0250:

(1) removal of roads, parking areas, and storage pads; and

(2) all equipment, facilities, and structures shall be removed and the site shall be revegetated.

PERMIT REQUIREMENTS

6131.0140 PERMIT TO MINE PEAT.

Subpart 1. **Preapplication conference and site visit.** Prior to the preparation of an application for a permit to mine, a person shall meet with the commissioner for a preapplication conference and a site visit.

Subp. 2. **Generally.** Pursuant to part 6131.0030, subpart 1, no person shall carry out a mining operation for peat in this state without first obtaining a permit to mine from the commissioner.

Subp. 3. **Mines in operation on effective date.** Pursuant to part 6131.0030, subpart 1, a person conducting a mining operation on the effective date of parts 6131.0010 to 6131.0340, who applies for a permit to mine within 180 days after that date, may continue to conduct the operation during the pendency of the application.

Subp. 4. **Joint applications.** Where two or more persons are or will be engaged in a mining operation, all shall join in the application and the permit to mine shall be issued on a joint basis. Where a person is or will be engaged in only a portion of the operation, that person need only be a joint permittee in the portion in which that person is participating.

6131.0150 PERMIT APPLICATIONS.

Subpart 1. **Submission of application.** An application for a permit to mine containing the information in subparts 2 to 6, shall be submitted in duplicate by the applicant to the

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commissioner.

Subp. 2. **Documents.** To comply with statutory requirements, the applicant shall submit:

A. a certificate or evidence of insurance as required by Minnesota Statutes, section 93.481, subdivision 1, clause (b);

B. the notice and affidavit of publication pursuant to part 6131.0190, subpart 1;

C. if the applicant is a foreign corporation, as defined by Minnesota Statutes, sections 300.02 and 303.02, a certified copy of the certificate of authority to transact business in Minnesota; and

D. a statement documenting financial capability to perform reclamation obligations or a performance bond pursuant to part 6131.0310.

Subp. 3. **Organizational data.** To comply with statutory requirements, the applicant shall submit:

A. the post office address of the applicant;

B. the general organizational structure of the applicant, any parent companies, owners, principal stockholders, partners, and joint venturers;

C. any managing agents or subsidiaries which are or may be involved in the mining operation; and

D. organizational relationships between or among joint applicants.

Subp. 4. **Environmental setting.** To gain information on the environmental setting of the proposed mining area, the applicant shall submit:

A. A copy of any environmental reports prepared relative to the mining operation.

B. Environmental setting maps prepared as overlays to 7-1/2 minute United States Geologic Survey quadrangle maps delineating the mining area and such adjacent lands as required by the commissioner to show the areas directly or indirectly affected by the mining operation. The following information as it exists at the time of application shall be submitted:

(1) shape and depth of the peatland;

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(2) ditch locations, surface waterflow in existing ditches, water basins, water courses, and wetlands which are or could be affected by the mining operation;

(3) surface ownership of record within the mining area; and

(4) exclusion and avoidance areas pursuant to part 6131.0100, subparts 2 and 3.

Subp. 5. Mining and reclamation maps and plans. The purpose of mining and reclamation maps and plans is to evaluate anticipated activities to be conducted during the term of the permit. Minnesota Statutes, section 93.481, subdivision 3 requires that a permit be issued for the life of the operation. Therefore, for the operating life of the mine, the applicant shall submit:

A. Mining and reclamation maps and cross-sections containing all features normally found on a United States Geologic Survey quadrangle map, at a scale agreed upon by the applicant and the commissioner which:

(1) describe the shape, depth, and type of the peat resource that will support the operating life of the mine and the texture and type of the underlying mineral soil;

(2) identify potential peat mining areas which have not been included as part of the mining plan; and

(3) depict at appropriate production or time intervals approved by the commissioner the status of development and reclamation for:

(a) mine plots;

(b) ditches;

(c) water control structures;

(d) settling basins;

(e) stockpiling areas; and

(f) auxiliary facilities.

B. Mining and reclamation plans that describe for the operating life of the mine:

(1) the mining activities to be conducted including:

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(a) the types, amounts, sequence, and schedule for mining the peat; and

(b) the beneficiating process, including a discussion of the type and amount of any chemicals to be added, and the types, amounts, and means of waste disposal;

(2) the methods and schedules of reclamation activities; and

(3) anticipated or proposed reclamation research.

Subp. 6. **Postmining management plan.** In support of the postmining management plan required by part 6131.0120, subpart 2, item A, the applicant shall submit:

A. documentation of the landowner's management ability; and

B. a copy of the written agreement between the landowner and the operator detailing fiscal and reclamation responsibilities.

6131.0160 ANNUAL REPORT.

Subpart 1. **Purpose.** The purpose of the annual report is to describe actual mining activities completed during the past year and mining activities planned for the upcoming year. The permittee shall submit to the commissioner in duplicate an annual report between March 1 and 31 of each year.

Subp. 2. **Preceding calendar year.** For the preceding calendar year, the report shall include:

A. a statement describing financial capability to perform reclamation obligations;

B. the actual rate of mining;

C. the actual mining activities; and

D. the actual reclamation activities.

Subp. 3. **Upcoming calendar year.** For the upcoming calendar year, the report shall include:

A. the anticipated rate of mining;

B. the anticipated mining activities including:

(1) the types, amounts, and schedule for mining the peat; and

(2) the beneficiating process, including a

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discussion of the type and amount of any chemicals to be added and the types, amount, and means of waste disposal; and

C. the anticipated reclamation activities including methods, schedules, and research.

Subp. 4. **Map.** For the preceding and upcoming year, the report shall contain a map in the form prescribed by part 6131.0150, subpart 5, item A, which depicts the status of mining, reclamation, and watershed modifications.

6131.0170 PLAN FOR DEACTIVATION.

Subpart 1. **Purpose.** The purpose of the deactivation plan is to describe the detailed reclamation activities to be conducted on the deactivated portion. This plan shall be approved by the commissioner pursuant to part 6131.0250 prior to its implementation.

Subp. 2. **Deactivation plan.** The permittee shall submit to the commissioner in duplicate, a deactivation plan at least two years prior to beginning deactivation for any portion of the mining area. This plan shall replace the annual report for the portion of the mining area to be deactivated. The deactivation plan shall contain:

A. detailed plans, schedules, designs, specifications, and supporting data for reclamation activities which comply with the mining permit;

B. the depth and the physical and chemical characteristics of the soil in each mine plot;

C. a description of water table depths;

D. a description of water control structures including location and extent, inspection methods and schedule, potential maintenance problems and solutions, and an estimate of maintenance costs; and

E. an updated copy of the written agreement between the landowner and the operator detailing fiscal, reclamation, and postmining management responsibilities.

6131.0180 REQUEST FOR RELEASE.

Subpart 1. Purpose. The purpose of the request for

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release is to evaluate compliance with parts 6131.0010 to 6131.0340, the approved deactivation plans, and the permit to mine in order to release the permittee from further responsibilities.

Subp. 2. **Request for release.** The permittee shall submit to the commissioner in duplicate a request for release pursuant to part 6131.0250. This request shall include:

A. a detailed description of provisions for continued maintenance;

B. identification of the ownership of the mining area and all remaining structures and facilities; and

C. a map in the form prescribed by part 6131.0150, subpart 5, item A, which depicts the following:

(1) the final topography;

(2) the postmining drainage system including the amounts and locations of discharge to receiving waters;

(3) the extent and type of vegetation; and

(4) the existing and expected permanent water levels within the deactivated mining area and the year in which they will be reached.

PROCEDURES AND STANDARDS

6131.0190 PERMITS TO MINE.

Subpart 1. **Application and publication.** The process for requesting a permit to mine is commenced by submitting an application to the commissioner pursuant to parts 6131.0010 to 6131.0340. After the commissioner determines the application is complete, the applicant shall publish an advertisement as required by part 6131.0280. Within seven days after the last date of publication, the applicant shall submit to the commissioner a copy of the advertisement and an affidavit from the printer verifying publication. The application shall then be considered filed.

Subp. 2. **Determination with hearing.** Hearings on permits to mine may be held as follows:

A. Written objections and a request for a hearing may be filed with the commissioner according to Minnesota Statutes

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section 93.481, subdivision 2.

B. Within ten days after the receipt of the objections, the commissioner shall determine whether the person filing the objection is entitled to object. If the objections were filed by a person entitled to object, the commissioner shall:

(1) Select a hearing date which shall be no more than 30 days after the last date of opportunity to object.

(2) Serve an order for hearing in the form and manner required by part 1400.5600, except those in part 1400.5600, subpart 3 which shall not apply. In no event shall such an order be served less than 20 days prior to the hearing.

(3) Mail a copy of the order for hearing to all persons who filed objections and all local units of government in which all or a part of the operation is located.

(4) Publish notice of subject, time, date, and place of the hearing at least once prior to the hearing in a newspaper which must be both a legal newspaper, within the meaning of Minnesota Statutes, section 331.02, and circulated in the locality of the proposed mining operation.

If the objections were filed by a person not entitled to object, the commissioner shall notify the person in writing by mail of the determination giving reasons for it.

C. The commissioner may hold a hearing on the proposed application without receipt of objections if the commissioner deems it necessary to protect public health, safety, and welfare.

D. Within 120 days after the close of the hearing record, or 90 days after service of the hearing examiner's report whichever comes later, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 3. **Determination without hearing.** Determination without hearing:

A. If, within 30 days after the last publication required by part 6131.0280, no objections to an application are

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received from persons entitled to object, the commissioner within 120 days, may without hearing process the application in accordance with the following:

(1) grant the permit to mine with or without modifications or conditions;

(2) deny the permit to mine stating reasons therefor; or

(3) request in writing that the applicant provide additional information.

B. If the commissioner has made a request for additional information within 120 days after receiving the information, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 4. **Hearing upon demand of applicant.** If the commissioner processes an application without a hearing, the applicant may, within 30 days after mailed notice of the commissioner's order on the application, file with the commissioner a demand for hearing pursuant to Minnesota Statutes, chapter 14. The application shall thereupon be fully heard on notice.

Within 120 days after the close of the hearing record or 90 days after service of the hearing examiner's report, whichever comes later, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 5. **Review of annual report.** After granting a permit to mine, the commissioner shall review the annual report required by part 6131.0160, to determine if it complies with the provisions of the permit to mine and parts 6131.0010 to 6131.0340. Upon completion of this review, the commissioner shall inform the permittee regarding compliance of the report with the permit to mine and parts 6131.0010 to 6131.0340.

6131.0200 VARIANCE PROCEDURES.

Subpart 1. Application for variance. A proceeding for requesting a variance from parts 6131.0010 to 6131.0340 is

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commenced when the permit applicant or permittee files an application for a variance with the commissioner. The application shall include information necessary for the commissioner to determine that the proposed variance is consistent with the general welfare and the goals of parts 6131.0010 to 6131.0340.

Subp. 2. **Determination by commissioner.** Within 30 days after receipt of the application, the commissioner shall determine whether the proposed variance constitutes a substantial change from the requirements of parts 6131.0010 to 6131.0340.

If the commissioner determines that a substantial change, would result, the applicant shall follow the procedures for permit to mine applications in part 6131.0190.

If the commissioner determines that there would be no substantial change, the commissioner shall without a hearing allow the variance with or without additional terms or conditions which are consistent with parts 6131.0010 to 6131.0340, or deny the application stating reasons therefor.

Subp. 3. **Demand for hearing.** If the commissioner processes the application without a hearing, pursuant to subpart 2, the applicant may file with the commissioner a demand for hearing on the decision pursuant to part 6131.0190, subpart 4.

Subp. 4. **Simultaneous filing of applications.** Applications for variance from parts 6131.0010 to 6131.0340 may be filed simultaneously with an application for a permit to mine, provided that the advertisement contains all information required for applications for permits to mine and for variance.

6131.0210 AMENDMENTS.

Subpart 1. **Application for amendment.** A proceeding for requesting an amendment of a permit to mine is commenced when the permittee files an application for an amendment with the commissioner. The application shall include information necessary for the commissioner to determine that the proposed amendment meets the lawful requirements and parts 6131.0010 to 6131.0340.

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Subp. 2. Determination by commissioner. Within 30 days after receipt of the application, the commissioner shall determine whether the proposed amendment constitutes a substantial change in the permit to mine.

If the commissioner determines that a substantial change would occur, the applicant shall follow the procedures for permit to mine applications in part 6131.0190.

If the commissioner determines that there would be no substantial change, the commissioner shall without a hearing allow the amendment with or without additional terms or conditions which are consistent with parts 6131.0010 to 6131.0340, or deny the applications stating reasons therefor.

Subp. 3. Demand for hearing. If the commissioner processes the application without a hearing pursuant to subpart 2, the applicant may file with the commissioner a demand for hearing on the decision pursuant to part 6131.0190, subpart 4.

6131.0220 CANCELLATION OF PERMIT.

Subpart 1. Cancellation at request of permittee. A proceeding to cancel a permit to mine at the request of the permittee is commenced when a permittee files a written request with the commissioner. The request shall identify the permittee and give reasons for the cancellation.

Within 30 days after the receipt of a request, the commissioner shall determine whether cancellation would have a significant adverse effect on any public interest relating to the goals of parts 6131.0010 to 6131.0340.

If the commissioner determines that the cancellation has such an adverse effect, the permittee shall publish an advertisement pursuant to part 6131.0280 and the commissioner shall proceed as if an application for a permit to mine pursuant to part 6131.0190 had been received.

If the commissioner determines that the cancellation shall not have such adverse effect, the permit may be canceled with or without conditions.

Subp. 2. Cancellation with consent of permittee. A proceeding to cancel a permit to mine with the consent of the

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permittee is commenced when the commissioner serves the permittee with a written request giving reasons for the cancellation.

If no reply or an affirmative reply is filed with the commissioner within 30 days, procedures pursuant to subpart 1 shall be commenced except that the commissioner shall publish an advertisement pursuant to part 6131.0280.

If a negative reply is filed with the commissioner within 30 days, the permit to mine will continue in effect or a proceeding to revoke the permit to mine pursuant to part 6131.0220, subpart 2 shall be commenced.

6131.0230 REVOCATION OR MODIFICATION.

Subpart 1. Commencement of proceedings. A proceeding to revoke or modify a permit to mine, to require a performance bond, or to assess a civil penalty shall be commenced by serving upon the permittee:

A. a notice and order for hearing in the form and manner under part 1400.5600;

B. a proposed order revoking or modifying the permit to mine, requiring a performance bond, or assessing a civil penalty; and

C. a statement of the measures, if any, required to correct the situation and the time available therefor.

If conditions that provided the grounds for the action are corrected to the commissioner's satisfaction, within a period, established by the commissioner, of not less than 15 days after the notice, or as appropriate, approved measures are taken to ensure that the conditions do not recur, the proceedings shall be canceled.

Subp. 2. Hearing prior to determination. The commissioner shall hold a hearing prior to the determination to revoke or modify a permit to mine, require a performance bond, or assess a civil penalty if, within 15 days after commencement of the proceeding, any permittee serves an answer on the commissioner and all other parties. If an answer is served, the commissioner, without further notice, shall hold the hearing at

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the time and place specified in the order for hearing. No hearing shall be held less than 30 days after commencement of the proceeding.

An answer shall contain a written statement of the defenses to each violation alleged in the order for hearing, and a specific admission, denial, or explanation of each fact alleged in the order for hearing, or, if the permittee is without knowledge thereof, a statement to that effect.

Allegations of a complaint not answered shall be deemed to have been admitted.

If an answer contains an admission to an alleged fact, no hearing shall be held on that fact and the allegation shall prevail.

Failure of a permittee to serve an answer, pursuant to subpart 2, item A or to appear at the hearing constitutes a waiver of a hearing on the allegations of the order for hearing and the contents of the proposed order. The waiver authorizes the commissioner, without further notice to the permittee and without proceeding further with the hearing, to adopt the proposed order, or that much as is applicable if the proposed order is in the alternative or if there have been correction measures attempted. The order shall be the commissioner's final decision on the matter.

If the permittee appears at the hearing the commissioner, in reaching a final decision, shall not be bound by the proposed order.

6131.0240 SUSPENSION.

The permit to mine may be suspended by the commissioner, pursuant to Minnesota Statutes, section 93.481, subdivision 4, clause (d). The commissioner's order suspending the permit to mine for the specified period, once served, constitutes the commissioner's final decision on the matter.

6131.0250 DEACTIVATION AND RELEASE OF PERMITTEE.

Subpart 1. **Deactivation.** The commissioner shall review the deactivation plan, pursuant to part 6131.0170, to determine

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if it complies with the requirements of the permit to mine and parts 6131.0010 to 6131.0340, in the same manner as if the commissioner had received an application for an amendment pursuant to part 6131.0210.

Subp. 2. **Release.** A proceeding to release the permittee from responsibility on any portion of a deactivated mining area is commenced when the permittee submits a request for release pursuant to part 6131.0180.

The commissioner shall review the request and determine if all terms and conditions of applicable provisions of parts 6131.0010 to 6131.0340, the permit to mine, and the approved deactivation plan have been satisfied; and that it is not necessary to defer the release until other portions of the mining area have been deactivated.

Within 270 days after receipt of the request the commissioner shall release the permittee with or without modifications or conditions, or deny the request stating reasons therefor.

6131.0260 ASSIGNMENT OF PERMIT.

Pursuant to Minnesota Statutes, section 93.481, subdivision 5, the commissioner shall allow the assignment of a permit to mine only if the commissioner determines that the assignee will perform all outstanding obligations of the act, parts 6131.0010 to 6131.0340, and the permit to mine.

6131.0270 HEARING PROCEDURES.

Procedures pursuant to parts 1400.5100 to 1400.8500, shall apply to any contested case hearing under parts 6131.0010 to 6131.0340, except as otherwise provided in Minnesota Statutes, sections 93.44 to 93.51 and parts 6131.0010 to 6131.0340.

6131.0280 PUBLICATION.

When an advertisement is required, it shall be published once each week for four successive weeks in a legal newspaper, pursuant to Minnesota Statutes, section 331.02, which is circulated in the locality of the proposed mining operation. This advertisement shall contain:

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A. a statement and map indicating the location and boundaries of the mining area;

B. the names of all surface owners of record within the mining area;

C. the schedule for accomplishing what is being proposed;

D. a notice of the deadline date for filing objections; and

E. the following information:

(1) if application is made for a permit to mine, a description of the proposed mining operation including the general kinds of reclamation or restoration measures to be undertaken pursuant to the reclamation plan;

(2) if an amendment to a permit to mine is requested, a description of the purpose and nature of the proposed amendment;

(3) if a cancellation of a permit to mine is requested, an explanation of the request for cancellation and the consequences of allowing such a request; or

(4) if a variance from parts 6131.0010 to 6131.0340 is requested, a description of the purpose and nature of the requested variance and a description of the proposed alternative means which will be used to meet the goals and comply with the requirements of parts 6131.0010 to 6131.0340.

6131.0290 VARIANCE STANDARDS.

Subpart 1. **Granting of variance.** The commissioner shall grant a variance from the requirements of parts 6131.0010 to 6131.0340 upon application by a permit applicant or permittee, if it is determined that:

A. a variance is consistent with the general welfare and general purposes of parts 6131.0010 to 6131.0340;

B. by reason of exceptional circumstances, the strict enforcement of the reclamation requirements would cause undue hardship or strict conformity with the requirements of parts 6131.0010 to 6131.0340 would be unreasonable or not feasible; and

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C. acceptable alternative means of accomplishing the goals, pursuant to parts 6131.0100 to 6131.0130, have been provided by the permit applicant or permittee.

Subp. 2. **Conditional granting.** The commissioner shall grant a variance upon such conditions as shall be necessary for the prevention, control, or correction of adverse environmental effects, consistent with the requirements of parts 6131.0010 to 6131.0340 and Minnesota Statutes.

6131.0300 REVOCATION OR MODIFICATION AUTHORITY.

The commissioner may revoke a permit to mine or modify any of its terms or conditions, pursuant to Minnesota Statutes, section 93.481, subdivision 4. A permittee shall not be considered to have commenced substantial construction of plant facilities unless erection of the primary plant facilities has begun. Planning, securing capital, purchasing land and materials, and otherwise preparing for construction are not sufficient.

6131.0310 PERFORMANCE BONDS.

Subpart 1. **Need for bond.** At any time during the pendency of a permit application, during the mining operation, or following the completion of mining but prior to the release of the permittee, the commissioner:

A. shall require the operator to furnish a performance bond if the commissioner determines that the operator has failed to:

(1) perform any part of a reclamation measure required by the permit to mine or any amendment or modification thereto;

(2) comply with a provision of parts 6131.0010 to 6131.0340; or

(3) perform any research required, pursuant to Minnesota Statutes, sections 93.44 to 93.51; or

B. may require the operator to furnish a performance bond if there is reasonable doubt that the operator will be financially able to comply with the requirements of the permit

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to mine or parts 6131.0010 to 6131.0340.

Subp. 2. **Amount of bond.** The amount of a performance bond shall be determined by the commissioner and shall be equal to the estimated cost, to the Department of Natural Resources, of satisfactorily accomplishing reclamation of all lands disturbed and unreclaimed up to the date of annual bond review.

Subp. 3. **Conditions of bond.** A performance bond required pursuant to this part shall be conditioned upon the performance by the operator within a time period established by the commissioner of all actions necessary to correct the deficiency or noncompliance for which reason the bond is required. For the purpose of the bond, "performance" shall mean the accomplishment as determined by the commissioner of all actions required under the bond. The bond shall also provide that the surety or a successor or assign is not released in any way from liability thereunder by any amendment of the terms or conditions of the permit to mine; provided that, regardless of amendment, the surety shall be liable for no more than the amount specified in the bond. The need for and amount of all bonds shall be reviewed annually.

Subp. 4. **Other security and assurance.** Whenever an operator is required to furnish a performance bond pursuant to this part, the operator may, in lieu thereof:

A. Submit as security to the commissioner for deposit with the state treasurer, assignable bonds or notes of the United States in a sum equal, at their par value, to the amount of the required performance bond.

B. Give a lien against a real or personal property as its wholesale value in lieu of a bond. The property must remain in the state for the duration of the agreement and be managed and repaired by the permittee as necessary to maintain its value. Failure to maintain value shall allow the commissioner to modify or revoke the permit to mine, or to require bonds or notes to be deposited as a replacement bond. The commissioner shall accept such property as assurance if it is determined, by the commissioner, that no other liens exist on said property;

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the wholesale value is adequate to cover reclamation costs; and sufficient market exists, such that, the sale of said property can occur rapidly.

C. Submit other security or assurances as may be acceptable to the commissioner.

The permittee shall submit an agreement authorizing the commissioner to collect or sell the bonds, notes, property, or other security or assurance so submitted or deposited, upon the same conditions as would constitute a default under a performance bond. The acceptance of United States bonds, notes, a lien on property, or other security or assurance, in lieu of a performance bond, shall have the same force and effect as if a performance bond has been furnished.

Subp. 5. **Return of security or assurance to permittee.** When it is determined during the annual bond review that security is no longer necessary, any bonds, notes, lien, or other security or assurance deposited pursuant to part 6131.0310 shall be returned to the permittee.

Subp. 6. **Access to mining areas after forfeiture.** Upon forfeiture of a bond the permittee shall allow access to the commissioner and his or her designated contractors into all mining areas for the purpose of reclaiming all lands disturbed and unreclaimed.

6131.0320 CIVIL PENALTIES.

Subpart 1. **Amount.** If any person violates any provision of Minnesota Statutes, sections 93.44 to 93.51, parts 6131.0010 to 6131.0340, or any permit to mine issued thereunder, the commissioner may order imposition of a civil penalty of not more than $1,000 per day for each violation of each provision or the same provision in more than one portion of the mining area.

Subp. 2. **Determining the amount.** In determining the amount of a penalty, the commissioner shall consider the severity of the violation, the need to deter future violations, and the magnitude of potential or actual gains resulting from the violation.

Subp. 3. **Collection.** The commissioner shall collect any

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

assessed civil penalty in the same manner as any other debt owed the state.

6131.0330 SUSPENSION OF PERMIT.

The commissioner may suspend all or any part of a permit to mine pursuant to Minnesota Statutes, section 93.481, subdivision 4. Any suspension ordered pursuant to this part shall be for such period and upon such terms as the commissioner deems appropriate to correct the conditions which necessitated suspension.

6131.0340 INSPECTION OF MINING AREA.

The permittee shall allow the commissioner to inspect all mining operations and records needed to monitor compliance with the permit to mine and parts 6131.0010 to 6131.0340 after reasonable prior notice.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD648

Agency: Department of Natural Resources

Division:

Agency Contact: Cindy Buttleman, 296-2995

Minnesota Rules: Parts 6131.0010 to 6131.0030; and 6131.0100 to 6131.0340

Title: Proposed Rules Relating to Peatland Reclamation

Type of Rules: Permanent

Incorporations by Reference:

Rule Number:	Material Incorporated:
6131.0100, Subp. 3	Peatland Reclamation Report No. 1, Department of Natural Resources, December 1984, available at Minitex Interlibrary Loan System

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948
Date: November 13, 1984

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Rules
for Peatland Reclamation

ORDER
ADOPTING RULES

Notice of intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 3, 1984, and sent by U.S. mail to all persons on the list maintained by the agency under Minnesota Statutes, section 14.14, subdivision 1a, on the same day.

Less than 25 written requests for public hearing were received. Comments received were responded to, and the need for and reasonableness of the rules have been determined as described in the Findings of Fact of the same date as this order.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Minnesota Rules, Parts 6131.0010-6131.0340, are adopted pursuant to authority vested in me by Minnesota Statutes, section 93.461.

Dated June 25, 1985.

Eugene H. Stone

for JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Proposed Adoption of
Rules of the Department
of Natural Resources
Relating to Peatland Reclamation

ORDER FOR NOTICE OF
INTENT TO ADOPT RULES
WITHOUT PUBLIC HEARING

IT IS HEREBY ORDERED that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Natural Resources for that purpose and be published in the State Register.

Dated at Saint Paul, Minnesota, this 14 day of November, 1984.

JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Proposed Adoption of
Rules of the Department
of Natural Resources
Relating to Peatland Reclamation

ORDER PROPOSING THE
ADOPTION OF RULES
WITHOUT PUBLIC HEARING

WHEREAS, Minnesota Statutes Section 93.461 (1983 Supp.) requires the Commissioner of Natural Resources to adopt rules regulating peat mine reclamation; and

WHEREAS, such rules have been prepared in proposed form; and

WHEREAS, it has been determined that the proposed rules are non-controversial in nature;

NOW, THEREFORE, pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby accept the proposed rules and order commencement of the process of adoption of the proposed rules without public hearing.

Dated at Saint Paul, Minnesota, this 14 day of November, 1984.

JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed
Adoption of Rules of the
Department of Natural Resources
Relating to Peatland Reclamation

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, CYNTHIA GAIL BUTTLEMAN, hereby certify that on the 23rd day of May, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, I served the attached Notice of Intent to Solicit Outside Opinion upon all addressees on the attached list, and upon all additional addressees on the attached list so entitled, by causing copies of said notice, properly enveloped and addressed and with postage prepaid, to be deposited in the United States mail, or in the Minnesota Central Mail System, as appropriate.

Cynthia Gail Buttleman
CYNTHIA GAIL BUTTLEMAN

Subscribed and sworn to before me
this 16th day of November, 1984.

M. E. McDonald
Notary Public

M. E. McDONALD
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept. 14, 1990

CERTIFICATE

STATE OF MINNESOTA
COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules Governing Peatland Reclamation

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes 1983 Supplement, Section 14.14, subd. 1a, that their names be placed on file and maintained by the Minnesota Department of Natural Resources for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 8:00 A.m., this 14th day of May, 198__.

Andy Brewer

In the Matter of the Proposed Adoption of Rules Governing Peatland Reclamation

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

CYNTHIA GAIL BUTTLEMAN being first duly sworn deposes and says:

That on the 23rd day of May, 1984, at the City of Saint Paul, County of Ramsey, State of Minnesota, S he served the attached Notice of Intent to Solicit Outside Information by depositing in the State of Minnesota Central Mail System or United States mailing at said City of Saint Paul, 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 Minnesota Department of Natural Resources for the purpose of receiving notice of the proposed adoption of rules by this Department.

Cynthia Gail Buttleman

Subscribed and sworn to before me this 23rd day of May, 1984.

Bertha Bailey Whatley

Bertha Bailey Whatley
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES JUNE 23, 1988

Minnesota Teachers Retirement Association

Meeting Notice of Board of Trustees

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Tuesday, June 5, 1984, at 8:30 a.m. in Room 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota to consider matters which may properly come before the Board.

Department of Natural Resources Minerals Division

Outside Opinion Sought Regarding Proposed Adoption of Rules Governing Peatland Reclamation

Notice is hereby given that the Minnesota Department of Natural Resources is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the reclamation of peatlands in order to control possible adverse environmental affects of mining.

The promulgation of these rules is authorized by Minnesota Statutes 1983 Supp., sec. 93.44 and sec. 93.461, which permit the agency to adopt rules and regulations relating to reclamation of lands subjected to the mining of peat.

The Minnesota Department of Natural Resources requests information and comments concerning the subject matter of the proposed rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements shall be addressed to:

Cindy Buttleman
Division of Minerals
Department of Natural Resources
Box 45
Centennial Office Building
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-4807 and in person at the above address.

All statements of information and comment will be accepted until June 30, 1984. Any written material received by the Minnesota Department of Natural Resources shall become part of the record in the event that the rules are promulgated.

Steven G. Thorne, Deputy Commissioner
Department of Natural Resources

Board of Optometry

Outside Opinion Sought in Preparing New Rules Governing Clinical Practical Demonstrations and Jurisprudence Testing

Pursuant to Minn. Stat. § 14.10 (1982), notice is hereby given that the Minnesota State Board of Optometry is seeking information or opinions from persons outside the Board in preparing to promulgate new rules governing clinical practical demonstrations and jurisprudence testing as authorized by Minn. Stat. § 148.53 (1982); to amend a rule governing continuing education requirements as authorized by Minn. Stat. §§ 148.53 and 214.12 (1982); to amend a rule governing individual annual license renewal as authorized by Minn. Stat. §§ 148.53, 148.59, and 214.06 (1982); and to amend a rule governing licensure by reciprocity as authorized by Minn. Stat. §§ 148.53, and 148.57, subd. 2 (1982).

The Minnesota State Board of Optometry requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment to: Dr. Burton Skuza, Executive Secretary, Room 342, 717 Delaware Street Southeast, P.O. Box 9441, Minneapolis, Minnesota 55440, phone: (612) 623-5544.

RECEIVED
MAY 25 1984
DIVISION OF MINERALS

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Proposed Adoption of Rules
of the Department of Natural
Resources Relating to Peatland
Reclamation

CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, ANDY BREWER, hereby certify that the attached list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. Sec. 14.14, that their names be placed on file with and maintained by the Minnesota Department of Natural Resources for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 9:00 o'clock a.m., this 22nd day of May, 1984.

Andy Brewer
ANDY BREWER

Subscribed and sworn to
before me this 3d day
of December, 1984.

Linda K. Rogers
Notary Public

LINDA K. ROGERS
NOTARY PUBLIC—MINNESOTA
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My Commission Expires Oct. 2, 1986

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23 May 84

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PUBLIC REVIEW
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Chisago	Lake of the Woods	Sherburne
Clay	Mahnomen	Stearns
Clearwater	Marshall	Stevens
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STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed
Adoption of Rules of the
Department of Natural Resources
Relating to Peatland Reclamation

AFFIDAVIT OF MAILING

I, CYNTHIA GAIL BUTTLEMAN, hereby certify that on the 3rd day of December, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, I served an original copy of the attached State Register, Volume 9, No. 23, dated December 3, 1984, which contains the Notice of Intent to Adopt Rules Without Public Hearing and the Proposed Rules in the above-referenced matter (9 S.R. 1236-1249), upon all addressees on the attached list, and upon all additional addressees on the attached list so entitled, by causing copies of said notice, properly enveloped and addressed and with postage prepaid, to be deposited in the United States mail, or in the Minnesota Central Mail System, as appropriate.

Cynthia Gail Buttleman
CYNTHIA GAIL BUTTLEMAN

Subcribed and sworn to
before me this 4th day
of December, 1984.

M. E. McDonald
Notary Public

M. E. McDONALD
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept. 14, 1990

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Proposed Adoption of Rules
of the Department of Natural
Resources Relating to Peatland
Reclamation

CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, ANDY BREWER, hereby certify that the attached list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. Sec. 14.14, that their names be placed on file with and maintained by the Minnesota Department of Natural Resources for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 9:00 AB o'clock A.m., this 3rd day of December, 1984.

Andy Brewer
ANDY BREWER

Subscribed and sworn to
before me this 3d day
of December, 1984.

Linda K. Rogers
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LINDA K. ROGERS
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- Indian Affairs Council
- Iron Range Resources and Rehabilitation
- Legislative Commission on Minnesota Resources
- Minnesota Pollution Control Agency
- Metropolitan Council
- Soil and Water Conservation Board
- Water Resources Board
- DNR
- Legislators

STATE COMMISSIONS AND ASSOCIATIONS.....12

LOCAL GOVERNMENT.....13

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Becker	Itasca	Polk
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Benton	Kittson	Rice
Carlton	Koochiching	Roseau
Cass	Lake	St. Louis
Chisago	Lake of the Woods	Sherburne
Clay	Mahnomen	Stearns
Clearwater	Marshall	Stevens
Cook	Mille Lacs	Todd
Crow Wing	Norman	Wadena
Douglas	Morrison	Washington
Grant	Otter Tail	Wilkin
Hubbard	Pennington	

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- Bemidji State University

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STATE REGISTER

STATE OF MINNESOTA



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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 9		
24	Monday Nov 26	Monday Dec 3	Monday Dec 10
25	Monday Dec 3	Monday Dec 10	Monday Dec 17
26	Monday Dec 10	Friday Dec 14	Monday Dec 24
27	Friday Dec 14	Thursday Dec 20	Monday Dec 31

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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 also.

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 Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless an agency requests this.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
- Adopted amendments to emergency rules (changes made since the proposed version was published).
- Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before July 31, 1983 are published in the *Minnesota Rules 1983*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules 1983* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

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

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issues 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

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ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after 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 emergency rule will be published in the manner provided for adopted rules under § 14.18.

Housing Finance Agency

Proposed Rules Governing the Home Ownership Assistance Fund

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Housing Finance Agency ("agency") proposes to adopt the above-entitled rules without a public hearing. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules within the 30-day comment period. Such comments are encouraged, and should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified as the result of comments received 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. Unless twenty-five or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.14 *et. seq.* Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Kathleen J. Johnson
Legal Division
Minnesota Housing Finance Agency
Suite 200
333 Sibley Street
St. Paul, Minnesota 55101
Telephone: 612/296-9793

Authority for the adoption of these rules is contained in Minn. Stat. § 462A.06, Subd. 4 and 11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and that identifies the data and information relied upon to support the proposed rules has been prepared and is available from Kathleen J. Johnson 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 a designee of the Attorney General for review as to form and legality, including the issue of substantial change, and to determine whether the agency has the authority to adopt the rules and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to receive notice of the date of submission of these rules to the Attorney General for review, or who wish to receive a free copy of the final rules as adopted, should make such requests to Kathleen J. Johnson.

A copy of the proposed rule is attached to this notice. Additional copies may be obtained by contacting Kathleen J. Johnson.

Please be advised that Minn. Stat. Ch. 10A.03 requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 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 $250.00, 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 $250.00, 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 provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

November 30, 1984

James J. Solem
Executive Director

Rule as Proposed

4900.1330 HOME OWNERSHIP ASSISTANCE FUND.

Subpart 1. [Unchanged.]

Subp. 2. Metropolitan area. The following exhibit applies to eligible recipients whose qualifying property is in the metropolitan area as defined in Minnesota Statutes, section 473.121, subdivision 2.

Mortgage Interest Rate		Initial Maximum Monthly Assistance				
		$100	$80	$60	$40	$20
0-10.00%	Adj. Hshld. Income	0-19,000	19,001-20,000	20,001-21,000	21,001-22,000	22,001-23,000
10.01-10.50%	Adj. Hshld. Income	0-20,000	20,001-21,000	21,001-22,000	22,001-23,000	23,001-24,000
10.51-11.00%	Adj. Hshld. Income	0-21,000	21,001-22,000	22,001-23,000	23,001-24,000	24,001-25,000
11.01-11.50%	Adj. Hshld. Income	0-22,000	22,001-23,000	23,001-24,000	24,001-25,000	25,001-26,000
11.51% and Up	Adj. Hshld. Income	0-23,000	23,001-24,000	24,001-25,000	25,001-26,000	26,001-27,000

Subp. 3. Nonmetropolitan area. The following exhibit applies to eligible recipients whose qualifying property is not in the metropolitan area as defined in Minnesota Statutes, section 473.121, subdivision 2.

Mortgage Interest Rate		Initial Maximum Monthly Assistance				
		$100	$80	$60	$40	$20
0-10.00%	Adj. Hshld. Income	0-13,000	13,001-14,000	14,001-15,000	15,001-16,000	16,001-17,000
10.01-10.50%	Adj. Hshld. Income	0-14,000	14,001-15,000	15,001-16,000	16,001-17,000	17,001-18,000
10.51-11.00%	Adj. Hshld. Income	0-15,000	15,001-16,000	16,001-17,000	17,001-18,000	18,001-19,000
11.01-11.50%	Adj. Hshld. Income	0-16,000	16,001-17,000	17,001-18,000	18,001-19,000	19,001-20,000
11.51%-and Up	Adj. Hshld. Income	0-17,000	17,001-18,000	18,001-19,000	19,001-20,000	20,001-21,000

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.

Department of Natural Resources
Division of Minerals

Proposed Rules Relating to Peatland Reclamation

Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Natural Resources proposes to adopt the above-entitled rules without a public hearing. The Department of Natural Resources has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes Section 14.21-14.28 (1982 and Supp. 1983; Laws 1984, ch. 640, secs. 12-15).

Minnesota Statutes Section 93.461 (1983 Supp.) provides that the Department of Natural Resources shall adopt rules regulating peat mine reclamation. With input from the peat mining industry, environmentalists and the public at large, the DNR has prepared such rules. A Statement of Need and Reasonableness describing the need for and reasonableness of each provision of the proposed rules and identifying the data and information relied upon to support the proposed rules has also been prepared and is available for inspection by the public during regular business hours, at the address below. A copy of the Statement of Need and Reasonableness will be provided upon request made to the address below.

Persons interested shall have at least 30 days, specifically until January 9, 1985, to submit comments in support of or in opposition to the proposed rules. Such comments are encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the DNR and do not result in substantial change in the proposed language.

If 25 or more persons submit a written request for a public hearing during the 30 day comment period, a public hearing will be held pursuant to the provisions of Minnesota Statutes Sections 14.14 to 14.20. Each person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

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 submitted 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 request to the address below.

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. Minn. Stat. § 10A.01, subdivision 11 defines a lobbyist 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 purposes 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 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. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Persons who wish to submit comments or a written request for a public hearing, or who wish to receive a copy of the Statement of Need and Reasonableness or of the final rules or to be informed when the rules are submitted to the Attorney General, should submit such comments or requests to:

Cindy Buttleman
Division of Minerals
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55146
Telephone: (612) 296-4807

The proposed rules follow this notice.

November 16, 1984.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Rules as proposed (all new material)

DEPARTMENT OF NATURAL RESOURCES
PEATLAND RECLAMATION
GENERAL PROVISIONS

6131.0010 DEFINITIONS.

Subpart 1. Auxiliary facilities. "Auxiliary facilities" means all permittee-owned stationary physical property used in a mining operation, including power plants and associated facilities; transmission lines; pipelines; roads; railroads; borrow areas and leased borrow areas and associated facilities; fuel production or preparation facilities; and parking areas, shops, offices, buildings, structures, and storage facilities located within the area where mining is conducted. This does not include common carrier transportation facilities.

Subp. 2. Beneficiating plants. "Beneficiating plants" means all processing plants and other facilities used for pelletizing, chemical extraction, gasification, compaction, drying, bagging, densification, pulverizing, and wet carbonization.

Subp. 3. Commissioner. "Commissioner" means the commissioner of the Department of Natural Resources, or a duly authorized representative.

Subp. 4. Deactivation. "Deactivation" means the process of finally terminating and reclaiming any specific portion of a mining operation. Deactivation begins when mining activities and uses associated with product production have ceased and there will be no renewed use by the permittee that will interfere with reclamation.

Subp. 5. Hereafter. "Hereafter" means after the effective date of parts 6131.0010 to 6131.0340.

Subp. 6. Mine plot. "Mine plot" means an area from which peat is or will be mined as part of a permitted mining operation. This does not include areas that have been successfully reclaimed.

Subp. 7. Mining area or area subject to mining. "Mining area" or "area subjected to mining" means any area of land from which material is hereafter removed in connection with the extraction of peat; the lands upon which material from mining is hereafter deposited; the lands upon which beneficiation plants and auxiliary facilities are hereafter located; lands upon which the water reservoirs used in the mining process are hereafter located; and auxiliary lands that are hereafter used or intended to be used in a particular mining operation.

Subp. 8. Natural resources. "Natural resources" means all mineral, animal, plant, air, water, land, timber, soil, quietude, recreational, historic, scenic, and aesthetic resources.

Subp. 9. Operating life of the mine. "Operating life of the mine" means the term determined necessary by the commissioner for the completion of the proposed mining operation, including reclamation.

Subp. 10. Operator. "Operator" means any owner or lessee of peat resources engaged in or preparing to engage in a mining operation.

Subp. 11. Peat. "Peat" means organic matter, excluding coal, formed by the partial decomposition of plant material under saturated conditions.

Subp. 12. Peat mining. "Peat mining" means the removal of peat for commercial purposes, including draining, stockpiling, processing, storing, transporting, and reclaiming any material in connection with the commercial development of peat. "Peat mining" does not include removal of peat that is incidental to the harvesting of an agricultural or horticultural crop, or to mining of a metallic mineral that is subject to a mineland reclamation rule and a permit to mine.

Subp. 13. Permit to mine or mining permit. "Permit to mine" or "mining permit" means permit issued pursuant to Minnesota Statutes, section 93.481.

Subp. 14. Progressive reclamation. "Progressive reclamation" means the removal of resource in a manner which creates areas that can be reclaimed as soon after initiation of the operation as practical and as continuously as practical throughout the life of the operation.

Subp. 15. Protected waters. "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 105.37, subdivision 14 or 15; or 105.391, subdivision 1.

Subp. 16. Reclamation. "Reclamation" means the successful accomplishment of the goals in parts 6131.0100 to 6131.0130.

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.

Subp. 17. Stockpile. "Stockpile" means an accumulation of mined or processed peat.

6131.0020 PURPOSE AND POLICY.

The purpose of this chapter is to implement Minnesota Statutes, sections 93.44 to 93.51 in order to control possible adverse environmental effects of peat mining, to preserve the natural resources, and to encourage the planning of future land utilization, while at the same time promoting the orderly development of peat mining, the encouragement of good peat mining practices, and the recognition and identification of the beneficial aspects of peat mining.

Until more is known about the technological, economic, and environmental feasibility of reclaiming large-scale peat mining operations, the Department of Natural Resources shall adopt parts 6131.0010 to 6131.0340 to serve the state while more information and knowledge is obtained on the feasibility of mining and reclaiming large peat operations. It is the department's intention to amend parts 6131.0010 to 6131.0340 as may be needed in light of new information.

Because of the unique character of each individual peatland and the extreme diversity of the possible types and sizes of operations which might develop during the period when parts 6131.0010 to 6131.0340 are in effect, it is the policy of parts 6131.0010 to 6131.0340 that specific permit requirements for each permitted operation be negotiated within the framework set forth by parts 6131.0010 to 6131.0340. The requirements shall endeavor to fulfill the goals described herein and to attain the best reclamation plan for each individual site.

6131.0030 SCOPE.

Subpart 1. Generally. No permit to mine is required until a peat mining operation exceeds 40 acres in size, unless the commissioner determines that there is potential for significant environmental effects which may result from the peat mining operation. A person intending to engage in or carry on a peat mining operation of 40 acres or less, if the intended operation involves removal of more than 1,000 tons of air-dried peat per year, shall notify the commissioner in writing before beginning any mining, specifying the legal description of the tract to be mined and the mining methods to be used. Within 20 days after either receipt of written notice of intent to mine the tract, or after receiving additional information requested, the commissioner shall notify the person of the decision to require, or not to require, a permit.

Subp. 2. Persons currently engaged in peat mining. Any person engaged in a peat mining operation as of the effective date of parts 6131.0010 to 6131.0340 and not excluded by subpart 1 shall apply for a permit to mine within 180 days of the effective date of parts 6131.0010 to 6131.0340. Any existing mining operation may continue during the pendancy of the application.

Subp. 3. Permits before commencement of operations. Any person intending to conduct a new peat mining operation or reactivate an inactive peat mining operation not excluded by subpart 1 shall obtain a permit to mine prior to commencing operations.

Subp. 4. Mine plot size limit. No permit to mine shall be issued for a peat mining operation whose total mine plot acreage exceeds 3,000 acres.

Subp. 5. Term of permit. The term of a permit to mine issued under parts 6131.0010 to 6131.0340 is the period determined necessary by the commissioner for the completion of the proposed mining and reclamation activities, based on information provided under part 6131.0150.

Subp. 6. New, existing, and reactivated operations. Parts 6131.0010 to 6131.0340 apply to:

A. all portions of a peat mining operation initiated hereafter, including both new operations and reactivated operations; and

B. all portions of existing peat mining operations which are hereafter created or used, except that the siting requirements shall not apply to portions constructed prior to the effective date of parts 6131.0010 to 6131.0340.

Subp. 7. Effect on other rules or statutes. Nothing in parts 6131.0010 to 6131.0340 shall be construed to waive the requirements of any other applicable rules or statutes.

Subp. 8. Other rights. Pursuant to Minnesota Statutes, section 93.47, subdivision 3, parts 6131.0010 to 6131.0340 are subject to any rights existing pursuant to any permit, license, lease, or other valid existing authorization issued by the commissioner, the Pollution Control Agency, or any other governmental entity or their predecessors in office.

PEATLAND RECLAMATION STANDARDS

6131.0100 SITING.

Subpart 1. Goals. Mining areas shall be sited to avoid conflicts with adjacent noncompatible land uses.

Subp. 2. Requirements; exclusion areas for mining. No peat mining shall be conducted within any of the areas in items A to I unless the commissioner determines that a state or national emergency exists that would require the exploitation of the peat resources within these areas:

A. in and within one-fourth mile of:

(1) the Boundary Waters Canoe Area Wilderness as legally described in Volume 45, No. 67, of the Federal Register for April 4, 1980; and

(2) national wilderness areas, national parks, and national monuments all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340;

B. in and within one-fourth mile of state wilderness areas and state parks;

C. within a national wild, scenic, or recreational river district or within one-fourth mile of a national wild, scenic, or recreational river (whichever is greater), all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340; within a designated state land use district or within one-fourth mile of any state wild, scenic, or recreational river (whichever is greater);

D. on sites designated in the National Register of Historic Places and in registered national natural landmarks all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340; on sites designated in the state Registry of Historic Sites and in designated state scientific and natural areas;

E. within 300 feet of:

(1) any state trout stream designated by commissioner's order;

(2) any river listed in Minnesota Statutes, section 85.32, subdivision 1; and

(3) the Bois de Sioux, Red River of the North, Roseau, Rainy, and Pigeon rivers;

F. within 400 feet of any natural watercourse located within the area defined by the federal Shipsted-Newton-Nolan Act (United States Code, title 16, sections 577-577b);

G. within any stream trout lake designated by commissioner's order;

H. within the following areas that are in existence before the issuance of a permit to mine:

(1) 500 feet of any occupied dwelling, public school, church, public institution, cemetery, county or municipal park, unless allowed by the owner; and

(2) 100 feet of the outside right-of-way line of any public roadway, except where mine access or haul roads cross such right-of-way line; and

I. within any area, except federal areas, added to the categories listed in this subpart if the designation is made before the issuance of a permit to mine the area, and an opportunity for a public hearing has been afforded.

Subp. 3. Requirements; avoidance areas for mining. Peat mining within the areas in items A to F will be allowed only: if the mining and associated reclamation will enhance the existing use of the area; or, if no reasonable or prudent alternative exists and, in the case of state-owned land, the affected area will be replaced by an area of equal or greater public value serving the same purposes as the affected area:

A. On all lands within the boundaries of all Peatland Protection Management Areas legally described in Peatland Reclamation Report No. 1, Department of Natural Resources, December 1984, which is incorporated by reference and which is available through the Minitex Interlibrary Loan System. This document is not subject to frequent change.

B. Within any national wildlife refuge or waterfowl production area, or on lands designated as national natural landmarks or national trails, all as they exist and are defined by law on the effective date of parts 6131.0010 to 6131.0340.

C. Within any state wildlife management area and on any state designated trail listed in Minnesota Statutes, sections 84.029 and 85.015.

D. Within any shorelands defined in Minnesota Statutes, section 105.485, subdivision 2.

E. Within any protected waters except as provided in Minnesota Statutes, section 105.391, subdivision 3.

F. Within any area added to the categories listed in this subpart, provided the designation is made before the issuance of a permit to mine the area.

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6131.0110 MINE DESIGN.

Subpart 1. Goals. Mining areas shall be designed, constructed, and managed to be compatible with surrounding nonmining land uses; to minimize adverse water quality and quantity effects; to be structurally sound; to promote progressive reclamation; and to encourage the prompt attainment of site restoration goals.

Subp. 2. Requirements. The requirements of mine design are contained in items A to D:

A. Mining shall proceed in a manner approved by the commissioner according to the following:

(1) Where practical, the mining area shall be developed as a series of mine plots.

(2) Scheduling of mine plots shall be accomplished in a manner which promotes progressive reclamation.

(3) Mine plots shall be designed so that when reclaimed, open water areas expected to form therein shall have a stable shoreline and a water level which shall not fluctuate to expose large areas of unvegetated land.

B. Adjacent permitted peat mining operations shall be separated by unmined or successfully reclaimed areas, when necessary, to mitigate environmental impacts. The extent of these separations shall be determined by the commissioner according to the following criteria:

(1) mine plot sizes and schedules for production and reclamation;

(2) the extent to which separations will mitigate impacts;

(3) the attainment of site restoration goals;

(4) the use of the peat resource; and

(5) land ownership.

C. Dewatering and ditch design shall proceed in a manner approved by the commissioner according to the following:

(1) Levels of surrounding protected waters shall not be lowered.

(2) Adjacent peatlands shall not be dewatered to the extent that the value of the resource is diminished.

(3) Ditches which divert waters around, or carry waters away from the mining area shall be constructed to avoid bank slumping and erosion.

D. Mine wastes (including peat and wood wastes) from mining and processing shall be disposed of in a manner approved by the commissioner.

6131.0120 SITE RESTORATION.

Subpart 1. Goals. The mining area shall be progressively reclaimed so that it is nonpolluting, establishes a water system which is compatible with the surrounding regional water resource, has current land use value and future land use potential which recognizes the productivity of the site, and is maintenance-free to the maximum extent possible, unless an approved postmining management plan provides for maintenance.

Subp. 2. Requirements. The requirements of site restoration are contained in items A to D:

A. The operator shall contact the landowner to determine whether the landowner agrees to assume management responsibility for a specific postmining land use including but limited to wildlife habitat, forest production, agriculture, or biomass production. If the landowner does not agree to assume responsibility for postmining management, then the operator shall comply with the site restoration requirements in item B. If the landowner agrees to assume postmining management, the operator and the landowner shall jointly develop a postmining management plan at the time of application for or amendment to a permit to mine. The postmining management plan shall:

(1) be compatible with restoration goals;

(2) be compatible with adjacent uses;

(3) consider the needs of the area;

(4) consider the productivity of the site;

(5) consider projected land use trends;

(6) protect public health and safety;

(7) avoid pollution of air and water; and

(8) be compatible with local land use plans and plans of the surface owners.

B. Within the mining area, all mined peat surfaces, islands, littoral zones, and disturbed peat and mineral surfaces such

as ditches (excluding field ditches), dredge spoil, borrow pits, plant sites, and auxiliary facilities shall be stabilized with vegetation.

(1) To ensure progressive reclamation, the establishment of vegetation shall be initiated during the first normal planting period following the point when according to the permit to mine, a surface, structure, facility, or element is no longer scheduled to be disturbed or used in a manner that would interfere with the establishment and maintenance of vegetation.

(2) During the fourth and fifth year following initiation of revegetation, a vegetated reclaimed area shall have a 75 percent live vegetative cover comprised of wetland or typical peatland species that are either planted or naturally occurring. The vegetation shall be self-sustaining, and either regenerating or in a stage of natural succession. Cover estimates of revegetation shall be measured by standard procedures approved by the commissioner for assessing ground cover and productivity. Where this standard is not met, the surface shall be repaired as necessary and replanted during the next normal planting period. No release pursuant to part 6131.0250 shall be granted until the area has such characteristics.

(3) Water levels in open water areas shall be stable within five years following the cessation of mining.

C. The amount of peat that remains in a mine plot shall be dependent on the texture and type of the underlying soil and the approved mining and reclamation plans.

D. Plans for water control shall be implemented pursuant to part 6131.0170.

6131.0130 CLEANUP.

Subpart 1. Goals. The mining area shall be cleaned up so that it is nonpolluting, free of hazards, and maintenance-free to the maximum extent possible.

Subp. 2. Requirements. The requirements for cleanup are contained in items A to D:

A. Cleanup shall commence upon deactivation.

B. The mining area shall be managed during cleanup to attain site restoration goals.

C. Within one year after cleanup begins or within a longer period approved by the commissioner, debris and mobile equipment which will not be used for reclamation shall be removed from the area being deactivated.

D. Within three years after cleanup begins, or within a longer period approved by the commissioner, the following shall be accomplished unless provisions have been made for continued subsequent use in accordance with an approved deactivation plan pursuant to part 6131.0250:

(1) removal of roads, parking areas, and storage pads; and
(2) all equipment, facilities, and structures shall be removed and the site shall be revegetated.

PERMIT REQUIREMENTS

6131.0140 PERMIT TO MINE PEAT.

Subpart 1. Preapplication conference and site visit. Prior to the preparation of an application for a permit to mine, a person shall meet with the commissioner for a preapplication conference and a site visit.

Subp. 2. Generally. Pursuant to part 6131.0030, subpart 1, no person shall carry out a mining operation for peat in this state without first obtaining a permit to mine from the commissioner.

Subp. 3. Mines in operation on effective date. Pursuant to part 6131.0030, subpart 1, a person conducting a mining operation on the effective date of parts 6131.0010 to 6131.0340, who applies for a permit to mine within 180 days after that date, may continue to conduct the operation during the pendency of the application.

Subp. 4. Joint applications. Where two or more persons are or will be engaged in a mining operation, all shall join in the application and the permit to mine shall be issued on a joint basis. Where a person is or will be engaged in only a portion of the operation, that person need only be a joint permittee in the portion in which that person is participating.

6131.0150 PERMIT APPLICATIONS.

Subpart 1. Submission of application. An application for a permit to mine containing the information in subparts 2 to 6, shall be submitted in duplicate by the applicant to the commissioner.

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Subp. 2. Documents. To comply with statutory requirements, the applicant shall submit:

A. a certificate or evidence of insurance as required by Minnesota Statutes, section 93.481, subdivision 1, clause (b);

B. the notice and affidavit of publication pursuant to part 6131.0190, subpart 1;

C. if the applicant is a foreign corporation, as defined by Minnesota Statutes, sections 300.02 and 303.02, a certified copy of the certificate of authority to transact business in Minnesota; and

D. a statement documenting financial capability to perform reclamation obligations or a performance bond pursuant to part 6131.0310.

Subp. 3. Organizational data. To comply with statutory requirements, the applicant shall submit:

A. the post office address of the applicant;

B. the general organizational structure of the applicant, any parent companies, owners, principal stockholders, partners, and joint venturers;

C. any managing agents or subsidiaries which are or may be involved in the mining operation; and

D. organizational relationships between or among joint applicants.

Subp. 4. Environmental setting. To gain information on the environmental setting of the proposed mining area, the applicant shall submit:

A. A copy of any environmental reports prepared relative to the mining operation.

B. Environmental setting maps prepared as overlays to 7½ minute United States Geologic Survey quadrangle maps delineating the mining area and such adjacent lands as required by the commissioner to show the areas directly or indirectly affected by the mining operation. The following information as it exists at the time of application shall be submitted:

(1) shape and depth of the peatland;

(2) ditch locations, surface waterflow in existing ditches, water basins, water courses, and wetlands which are or could be affected by the mining operation;

(3) surface ownership of record within the mining area; and

(4) exclusion and avoidance areas pursuant to part 6131.0100, subparts 2 and 3.

Subp. 5. Mining and reclamation maps and plans. The purpose of mining and reclamation maps and plans is to evaluate anticipated activities to be conducted during the term of the permit. Minnesota Statutes, section 93.481, subdivision 3 requires that a permit be issued for the life of the operation. Therefore, for the operating life of the mine, the applicant shall submit:

A. Mining and reclamation maps and cross-sections containing all features normally found on a United States Geologic survey quadrangle map, at a scale agreed upon by the applicant and the commissioner which:

(1) describe the shape, depth, and type of the peat resource that will support the operating life of the mine and the texture and type of the underlying mineral soil;

(2) identify potential peat mining areas which have not been included as part of the mining plan; and

(3) depict at appropriate production or time intervals approved by the commissioner the status of development and reclamation for:

(a) mine plots;

(b) ditches;

(c) water control structures;

(d) settling basins;

(e) stockpiling areas; and

(f) auxiliary facilities.

B. Mining and reclamation plans that describe for the operating life of the mine:

(1) the mining activities to be conducted including:

(a) the types, amounts, sequence, and schedule for mining the peat; and

(b) the beneficiating process, including a discussion of the type and amount of any chemicals to be added, and the types, amounts, and means of waste disposal;

(2) the methods and schedules of reclamation activities; and

(3) anticipated or proposed reclamation research.

Subp. 6. Postmining management plan. In support of the postmining management plan required by part 6131.0120, subpart 2, item A, the applicant shall submit:

A. documentation of the landowner's management ability; and

B. a copy of the written agreement between the landowner and the operator detailing fiscal and reclamation responsibilities.

6131.0160 ANNUAL REPORT.

Subpart 1. Purpose. The purpose of the annual report is to describe actual mining activities completed during the past year and mining activities planned for the upcoming year. The permittee shall submit to the commissioner in duplicate an annual report between March 1 and 31 of each year.

Subp. 2. Preceding calendar year. For the preceding calendar year, the report shall include:

A. a statement describing financial capability to perform reclamation obligations;

B. the actual rate of mining;

C. the actual mining activities; and

D. the actual reclamation activities.

Subp. 3. Upcoming calendar year. For the upcoming calendar year, the report shall include:

A. the anticipated rate of mining;

B. the anticipated mining activities including:

(1) the types, amounts, and schedule for mining the peat; and

(2) the beneficating process, including a discussion of the type and amount of any chemicals to be added and the types, amount, and means of waste disposal; and

C. the anticipated reclamation activities including methods, schedules, and research.

Subp. 4. Map. For the preceding and upcoming year, the report shall contain a map in the form prescribed by part 6131.0150, subpart 5, item A, which depicts the status of mining, reclamation, and watershed modifications.

6131.0170 PLAN FOR DEACTIVATION.

Subpart 1. Purpose. The purpose of the deactivation plan is to describe the detailed reclamation activities to be conducted on the deactivated portion. This plan shall be approved by the commissioner pursuant to part 6131.0250 prior to its implementation.

Subp. 2. Deactivation plan. The permittee shall submit to the commissioner in duplicate, a deactivation plan at least two years prior to beginning deactivation for any portion of the mining area. This plan shall replace the annual report for the portion of the mining area to be deactivated. The deactivation plan shall contain:

A. detailed plans, schedules, designs, specifications, and supporting data for reclamation activities which comply with the mining permit;

B. the depth and the physical and chemical characteristics of the soil in each mine plot;

C. a description of water table depths;

D. a description of water control structures including location and extent, inspection methods and schedule, potential maintenance problems and solutions, and an estimate of maintenance costs; and

E. an updated copy of the written agreement between the landowner and the operator detailing fiscal, reclamation, and postmining management responsibilities.

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6131.0180 REQUEST FOR RELEASE.

Subpart 1. Purpose. The purpose of the request for release is to evaluate compliance with parts 6131.0010 to 6131.0340, the approved deactivation plans, and the permit to mine in order to release the permittee from further responsibilities.

Subp. 2. Request for release. The permittee shall submit to the commissioner in duplicate a request for release pursuant to part 6131.0250. This request shall include:

A. a detailed description of provisions for continued maintenance;

B. identification of the ownership of the mining area and all remaining structures and facilities; and

C. a map in the form prescribed by part 6131.0150, subpart 5, item A, which depicts the following:

(1) the final topography;

(2) the postmining drainage system including the amounts and locations of discharge to receiving waters;

(3) the extent and type of vegetation; and

(4) the existing and expected permanent water levels within the deactivated mining area and the year in which they will be reached.

PROCEDURES AND STANDARDS

6131.0190 PERMITS TO MINE.

Subpart 1. Application and publication. The process for requesting a permit to mine is commenced by submitting an application to the commissioner pursuant to parts 6131.0010 to 6131.0340. After the commissioner determines the application is complete, the applicant shall publish an advertisement as required by part 6131.0280. Within seven days after the last date of publication, the applicant shall submit to the commissioner a copy of the advertisement and an affidavit from the printer verifying publication. The application shall then be considered filed.

Subp. 2. Determination with hearing. Hearings on permits to mine may be held as follows:

A. Written objections and a request for a hearing may be filed with the commissioner according to Minnesota Statutes, section 93.481, subdivision 2.

B. Within ten days after the receipt of the objections, the commissioner shall determine whether the person filing the objection is entitled to object. If the objections were filed by a person entitled to object, the commissioner shall:

(1) Select a hearing date which shall be no more than 30 days after the last date of opportunity to object.

(2) Serve an order for hearing in the form and manner required by part 1400.5600, except those in part 1400.5600, subpart 3 which shall not apply. In no event shall such an order be served less than 20 days prior to the hearing.

(3) Mail a copy of the order for hearing to all persons who filed objections and all local units of government in which all or a part of the operation is located.

(4) Publish notice of subject, time, date, and place of the hearing at least once prior to the hearing in a newspaper which must be both a legal newspaper, within the meaning of Minnesota Statutes, section 331.02, and circulated in the locality of the proposed mining operation.

If the objections were filed by a person not entitled to object, the commissioner shall notify the person in writing by mail of the determination giving reasons for it.

C. The commissioner may hold a hearing on the proposed application without receipt of objections if the commissioner deems it necessary to protect public health, safety, and welfare.

D. Within 120 days after the close of the hearing record, or 90 days after service of the hearing examiner's report whichever comes later, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 3. Determination without hearing. Determination without hearing:

A. If, within 30 days after the last publication required by part 6131.0280, no objections to an application are received from persons entitled to object, the commissioner within 120 days, may without hearing process the application in accordance with the following:

(1) grant the permit to mine with or without modifications or conditions;

(2) deny the permit to mine stating reasons therefor; or

(3) request in writing that the applicant provide additional information.

B. If the commissioner has made a request for additional information within 120 days after receiving the information, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 4. Hearing upon demand of applicant. If the commissioner processes an application without a hearing, the applicant may, within 30 days after mailed notice of the commissioner's order on the application, file with the commissioner a demand for hearing pursuant to Minnesota Statutes, chapter 14. The application shall thereupon be fully heard on notice.

Within 120 days after the close of the hearing record or 90 days after service of the hearing examiner's report, whichever comes later, the commissioner shall grant the permit to mine with or without modifications or conditions or deny the permit to mine stating reasons therefor.

Subp. 5. Review of annual report. After granting a permit to mine, the commissioner shall review the annual report required by part 6131.0160, to determine if it complies with the provisions of the permit to mine and parts 6131.0010 to 6131, 0340. Upon completion of this review, the commissioner shall inform the permittee regarding compliance of the report with the permit to mine and parts 6131.0010 to 6131.0340.

6131.0200 VARIANCE PROCEDURES.

Subpart 1. Application for variance. A proceeding for requesting a variance from parts 6131.0010 to 6131.0340 is commenced when the permit applicant or permittee files an application for a variance with the commissioner. The application shall include information necessary for the commissioner to determine that the proposed variance is consistent with the general welfare and the goals of parts 6131.0010 to 6131.0340.

Subp. 2. Determination by commissioner. Within 30 days after receipt of the application, the commissioner shall determine whether the proposed variance constitutes a substantial change from the requirements of parts 6131.0010 to 6131.0340.

If the commissioner determines that a substantial change, would result, the applicant shall follow the procedures for permit to mine applications in part 6131.0190.

If the commissioner determines that there would be no substantial change, the commissioner shall without a hearing allow the variance with or without additional terms or conditions which are consistent with parts 6131.0010 to 6131.0340, or deny the application stating reasons therefor.

Subp. 3. Demand for hearing. If the commissioner processes the application without a hearing, pursuant to subpart 2, the applicant may file with the commissioner a demand for hearing on the decision pursuant to part 6131.0190, subpart 4.

Subp. 4. Simultaneous filing of applications. Applications for variance from parts 6131.0010 to 6131.0340 may be filed simultaneously with an application for a permit to mine, provided that the advertisement contains all information required for applications for permits to mine and for variance.

6131.0210 AMENDMENTS.

Subpart 1. Application for amendment. A proceeding for requesting an amendment of a permit to mine is commenced when the permittee files an application for an amendment with the commissioner. The application shall include information necessary for the commissioner to determine that the proposed amendment meets the lawful requirements and parts 6131.0010 to 6131.0340.

Subp. 2. Determination by commissioner. Within 30 days after receipt of the application, the commissioner shall determine whether the proposed amendment constitutes a substantial change in the permit to mine.

If the commissioner determines that a substantial change would occur, the applicant shall follow the procedures for permit to mine applications in part 6131.0190.

If the commissioner determines that there would be no substantial change, the commissioner shall without a hearing allow the amendment with or without additional terms or conditions which are consistent with parts 6131.0010 to 6131.0340, or deny the applications stating reasons therefor.

Subp. 3. Demand for hearing. If the commissioner processes the application without a hearing pursuant to subpart 2, the applicant may file with the commissioner a demand for hearing on the decision pursuant to part 6131.0190, subpart 4.

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6131.0220 CANCELLATION OF PERMIT.

Subpart 1. Cancellation at request of permittee. A proceeding to cancel a permit to mine at the request of the permittee is commenced when a permittee files a written request with the commissioner. The request shall identify the permittee and give reasons for the cancellation.

Within 30 days after the receipt of a request, the commissioner shall determine whether cancellation would have a significant adverse effect on any public interest relating to the goals of parts 6131.0010 to 6131.0340.

If the commissioner determines that the cancellation has such an adverse effect, the permittee shall publish an advertisement pursuant to part 6131.0280 and the commissioner shall proceed as if an application for a permit to mine pursuant to part 6131.0190 had been received.

If the commissioner determines that the cancellation shall not have such adverse effect, the permit may be canceled with or without conditions.

Subp. 2. Cancellation with consent of permittee. A proceeding to cancel a permit to mine with the consent of the permittee is commenced when the commissioner serves the permittee with a written request giving reasons for the cancellation.

If no reply or an affirmative reply is filed with the commissioner within 30 days, procedures pursuant to subpart 1 shall be commenced except that the commissioner shall publish an advertisement pursuant to part 6131.0280.

If a negative reply is filed with the commissioner within 30 days, the permit to mine will continue in effect or a proceeding to revoke the permit to mine pursuant to part 6131.0220, subpart 2 shall be commenced.

6131.0230 REVOCATION OR MODIFICATION.

Subpart 1. Commencement of proceedings. A proceeding to revoke or modify a permit to mine, to require a performance bond, or to assess a civil penalty shall be commenced by serving upon the permittee:

A. a notice and order for hearing in the form and manner under part 1400.5600;

B. a proposed order revoking or modifying the permit to mine, requiring a performance bond, or assessing a civil penalty; and

C. a statement of the measures, if any, required to correct the situation and the time available therefor.

If conditions that provided the grounds for the action are corrected to the commissioner's satisfaction, within a period, established by the commissioner, of not less than 15 days after the notice, or as appropriate, approved measures are taken to ensure that the conditions do not recur, the proceedings shall be canceled.

Subp. 2. Hearing prior to determination. The commissioner shall hold a hearing prior to the determination to revoke or modify a permit to mine, require a performance bond, or assess a civil penalty if, within 15 days after commencement of the proceeding, any permittee serves an answer on the commissioner and all other parties. If an answer is served, the commissioner, without further notice, shall hold the hearing at the time and place specified in the order for hearing. No hearing shall be held less than 30 days after commencement of the proceeding.

An answer shall contain a written statement of the defenses to each violation alleged in the order for hearing, and a specific admission, denial, or explanation of each fact alleged in the order for hearing, or, if the permittee is without knowledge thereof, a statement to that effect.

Allegations of a complaint not answered shall be deemed to have been admitted.

If an answer contains an admission to an alleged fact, no hearing shall be held on that fact and the allegation shall prevail.

Failure of a permittee to serve an answer, pursuant to subpart 2, item A or to appear at the hearing constitutes a waiver of a hearing on the allegations of the order for hearing and the contents of the proposed order. The waiver authorizes the commissioner, without further notice to the permittee and without proceeding further with the hearing, to adopt the proposed order, or that much as is applicable if the proposed order is in the alternative or if there have been correction measures attempted. The order shall be the commissioner's final decision on the matter.

If the permittee appears at the hearing the commissioner, in reaching a final decision, shall not be bound by the proposed order.

6131.0240 SUSPENSION.

The permit to mine may be suspended by the commissioner, pursuant to Minnesota Statutes, section 93.481, subdivision 4, clause (d). The commissioner's order suspending the permit to mine for the specified period, once served, constitutes the commissioner's final decision on the matter.

6131.0250 DEACTIVATION AND RELEASE OF PERMITTEE.

Subpart 1. Deactivation. The commissioner shall review the deactivation plan, pursuant to part 6131.0170, to determine if it complies with the requirements of the permit to mine and parts 6131.0010 to 6131.0340, in the same manner as if the commissioner had received an application for an amendment pursuant to part 6131.0210.

Subp. 2. Release. A proceeding to release the permittee from responsibility on any portion of a deactivated mining area is commenced when the permittee submits a request for release pursuant to part 6131.0180.

The commissioner shall review the request and determine if all terms and conditions of applicable provisions of parts 6131.0010 to 6131.0340, the permit to mine, and the approved deactivation plan have been satisfied; and that it is not necessary to defer the release until other portions of the mining area have been deactivated.

Within 270 days after receipt of the request the commissioner shall release the permittee with or without modifications or conditions, or deny the request stating reasons therefor.

6131.0260 ASSIGNMENT OF PERMIT.

Pursuant to Minnesota Statutes, section 93.481, subdivision 5, the commissioner shall allow the assignment of a permit to mine only if the commissioner determines that the assignee will perform all outstanding obligations of the act, parts 6131.0010 to 6131.0340, and the permit to mine.

6131.0270 HEARING PROCEDURES.

Procedures pursuant to parts 1400.5100 to 1400.8500, shall apply to any contested case hearing under parts 6131.0010 to 6131.0340, except as otherwise provided in Minnesota Statutes, sections 93.44 to 93.51 and parts 6131.0010 to 6131.0340.

6131.0280 PUBLICATION.

When an advertisement is required, it shall be published once each week for four successive weeks in a legal newspaper, pursuant to Minnesota Statutes, section 331.02, which is circulated in the locality of the proposed mining operation. This advertisement shall contain:

A. a statement and map indicating the location and boundaries of the mining area;

B. the names of all surface owners of record within the mining area;

C. the schedule for accomplishing what is being proposed;

D. a notice of the deadline date for filing objections; and

E. the following information:

(1) if application is made for a permit to mine, a description of the proposed mining operation including the general kinds of reclamation or restoration measures to be undertaken pursuant to the reclamation plan;

(2) if an amendment to a permit to mine is requested, a description of the purpose and nature of the proposed amendment;

(3) if a cancellation of a permit to mine is requested, an explanation of the request for cancellation and the consequences of allowing such a request; or

(4) if a variance from parts 6131.0010 to 6131.0340 is requested, a description of the purpose and nature of the requested variance and a description of the proposed alternative means which will be used to meet the goals and comply with the requirements of parts 6131.0010 to 6131.0340.

6131.0290 VARIANCE STANDARDS.

Subpart 1. Granting of variance. The commissioner shall grant a variance from the requirements of parts 6131.0010 to 6131.0340 upon application by a permit applicant or permittee, if it is determined that:

A. a variance is consistent with the general welfare and general purposes of parts 6131.0010 to 6131.0340;

B. by reason of exceptional circumstances, the strict enforcement of the reclamation requirements would cause undue hardship or strict conformity with the requirements of parts 6131.0010 to 6131.0340 would be unreasonable or not feasible; and

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.

C. acceptable alternative means of accomplishing the goals, pursuant to parts 6131.0100 to 6131.0130, have been provided by the permit applicant or permittee.

Subp. 2. Conditional granting. The commissioner shall grant a variance upon such conditions as shall be necessary for the prevention, control, or correction of adverse environmental effects, consistent with the requirements of parts 6131.0010 to 6131.0340 and Minnesota Statutes.

6131.0300 REVOCATION OR MODIFICATION AUTHORITY.

The commissioner may revoke a permit to mine or modify any of its terms or conditions, pursuant to Minnesota Statutes, section 93.481, subdivision 4. A permittee shall not be considered to have commenced substantial construction of plant facilities unless erection of the primary plant facilities has begun. Planning, securing capital, purchasing land and materials, and otherwise preparing for construction are not sufficient.

6131.0310 PERFORMANCE BONDS.

Subpart 1. Need for bond. At any time during the pendency of a permit application, during the mining operation, or following the completion of mining but prior to the release of the permittee, the commissioner:

A. shall require the operator to furnish a performance bond if the commissioner determines that the operator has failed to:

(1) perform any part of a reclamation measure required by the permit to mine or any amendment or modification thereto;

(2) comply with a provision of parts 6131.0010 to 6131.0340; or

(3) perform any research required, pursuant to Minnesota Statutes, sections 93.44 to 93.51; or

B. may require the operator to furnish a performance bond if there is reasonable doubt that the operator will be financially able to comply with the requirements of the permit to mine or parts 6131.0010 to 6131.0340.

Subp. 2. Amount of bond. The amount of a performance bond shall be determined by the commissioner and shall be equal to the estimated cost, to the Department of Natural Resources, of satisfactorily accomplishing reclamation of all lands disturbed and unreclaimed up to the date of annual bond review.

Subp. 3. Conditions of bond. A performance bond required pursuant to this part shall be conditioned upon the performance by the operator within a time period established by the commissioner of all actions necessary to correct the deficiency or noncompliance for which reason the bond is required. For the purpose of the bond, "performance" shall mean the accomplishment as determined by the commissioner of all actions required under the bond. The bond shall also provide that the surety or a successor or assign is not released in any way from liability thereunder by any amendment of the terms or conditions of the permit to mine; provided that, regardless of amendment, the surety shall be liable for no more than the amount specified in the bond. The need for and amount of all bonds shall be reviewed annually.

Subp. 4. Other security and assurance. Whenever an operator is required to furnish a performance bond pursuant to this part, the operator may, in lieu thereof:

A. Submit as security to the commissioner for deposit with the state treasurer, assignable bonds or notes of the United States in a sum equal, at their par value, to the amount of the required performance bond.

B. Give a lien against a real or personal property as its wholesale value in lieu of a bond. The property must remain in the state for the duration of the agreement and be managed and repaired by the permittee as necessary to maintain its value. Failure to maintain value shall allow the commissioner to modify or revoke the permit to mine, or to require bonds or notes to be deposited as a replacement bond. The commissioner shall accept such property as assurance if it is determined, by the commissioner, that no other liens exist on said property; the wholesale value is adequate to cover reclamation costs; and sufficient market exists, such that, the sale of said property can occur rapidly.

C. Submit other security or assurances as may be acceptable to the commissioner.

The permittee shall submit an agreement authorizing the commissioner to collect or sell the bonds, notes, property, or other security or assurance so submitted or deposited, upon the same conditions as would constitute a default under a performance bond. The acceptance of United States bonds, notes, a lien on property, or other security or assurance, in lieu of a performance bond, shall have the same force and effect as if a performance bond has been furnished.

Subp. 5. Return of security or assurance to permittee. When it is determined during the annual bond review that security is no longer necessary, any bonds, notes, lien, or other security or assurance deposited pursuant to part 6131.0310 shall be returned to the permittee.

Subp. 6. Access to mining areas after forfeiture. Upon forfeiture of a bond the permittee shall allow access to the

commissioner and his or her designated contractors into all mining areas for the purpose of reclaiming all lands disturbed and unreclaimed.

6131.0320 CIVIL PENALTIES.

Subpart 1. Amount. If any person violates any provision of Minnesota Statutes, sections 93.44 to 93.51, parts 6131.0010 to 6131.0340, or any permit to mine issued thereunder, the commissioner may order imposition of a civil penalty of not more than $1,000 per day for each violation of each provision or the same provision in more than one portion of the mining area.

Subp. 2. Determining the amount. In determining the amount of a penalty, the commissioner shall consider the severity of the violation, the need to deter future violations, and the magnitude of potential or actual gains resulting from the violation.

Subp. 3. Collection. The commissioner shall collect any assessed civil penalty in the same manner as any other debt owed the state.

6131.0330 SUSPENSION OF PERMIT.

The commissioner may suspend all or any part of a permit to mine pursuant to Minnesota Statutes, section 93.481, subdivision 4. Any suspension ordered pursuant to this part shall be for such period and upon such terms as the commissioner deems appropriate to correct the conditions which necessitated suspension.

6131.0340 INSPECTION OF MINING AREA.

The permittee shall allow the commissioner to inspect all mining operations and records needed to monitor compliance with the permit to mine and parts 6131.0010 to 6131.0340 after reasonable prior notice.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after 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 emergency rule will be published in the manner provided for adopted rules under § 14.18.

Housing Finance Agency

Adopted Rules Governing the Market Rate Elderly Shallow Subsidy Rental Program

The rules proposed and published at *State Register*, Volume 9, Number 11, pages 549-551, September 10, 1984 (9 S.R. 549) are adopted as proposed.

Housing Finance Agency

Adopted Rules Governing the Rental Rehabilitation Program

The rules proposed and published at *State Register*, Volume 9, Number 11, pages 552-554, September 10, 1984 (9 S.R. 552) are adopted as proposed.

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Department of Human Services

Adopted Emergency Rules Governing Prior Authorization for Health Services and Second Surgical Opinion as a Condition for MA and GMC Reimbursement

The rules proposed and published at *State Register*, Volume 9, Number 10, pages 500-505, September 3, 1984 (9 S.R. 500) are adopted with the following modifications:

Emergency Rules as Adopted

9505.5010 [Emergency] DEFINITIONS.

Subp. 3. Consultant. "Consultant" means an individual who is licensed or registered according to state law or meets the credentials established by the respective professional organization in an area of health care or medical service; is under contract with the Department of Human Services; is endorsed by a professional organization; advises the department whether to approve, deny, or modify prior authorization requests in his or her area of expertise; advises and recommends about policies on health services; and performs other duties as assigned.

9505.5020 [Emergency] PRIOR AUTHORIZATION CRITERIA, REQUIREMENTS, AND RESPONSIBILITIES.

Subpart 1. Prior authorization required. Except as provided in subpart 2, a provider shall obtain prior authorization as a condition of medical assistance and general assistance medical care program reimbursement for health services designated in subpart 4. A provider who ~~offers~~ furnishes health services without complying with the prior authorization requirements of parts 9505.5000 to 9505.5020 [Emergency] shall not be reimbursed. A physician, hospital, or other provider who is denied reimbursement because of failure to comply with parts 9505.5000 to 9505.5020 [Emergency] shall not seek payment from the recipient and the recipient shall not be liable for payment of the service for which reimbursement is denied. Prior authorization shall assure the provider reimbursement for the approved health service only if the service is given during a time the person is a recipient and if the provider meets the requirements of other rules applicable to the medical assistance and general assistance medical care programs.

Subp. 4. Department responsibilities. If the information submitted by the provider does not meet the requirements of subpart 6, the department shall notify the provider of what is necessary to complete the request and the time limit for its submission. If the department does not receive the requested information within 15 working days of the postmarked date on which the notice was sent to the provider, the request for prior authorization shall be denied. The department shall send the provider, within 15 working days of receipt of all the information required in subpart 3, a notice of the action taken on the request for prior authorization. If the prior authorization request is denied, the department shall send the recipient within the same time period a copy of the notice sent to the provider and a statement of the recipient's right to appeal as provided in Minnesota Statutes, section 256.045.

The department shall annually publish in the last issue of the *State Register* for October a list of health services that require prior authorization. In addition, the department shall publish any revision of the list at least ~~30~~ 45 days before the effective date if the revision imposes a prior authorization requirement on a health service. When a list is published, the department shall send each provider a copy of the list.

In addition to the list published in the *State Register*, prior authorization is required for health services to be provided outside of Minnesota~~, for health services which are considered investigative, for newly developed or modified medical supplies or equipment, and for health services which are comparable to services provided in a skilled nursing or other facility, but which are provded in a recipient's home~~. A health service that is provided to a Minnesota resident outside of Minnesota but within the recipient's local trade area and that does not require prior authorization when it is provided to a Minnesota resident within Minnesota shall be exempt from the prior authorization requirement.

Subp. 5. Criteria for selecting health services subject to the prior authorization requirement. The commissioner shall use the criteria in items A to ~~G~~ H to determine which health services shall be subject to the prior authorization requirement.

H. The health service is comparable to a service provided in a skilled nursing or other facility but which is provided in a recipient's home.

9505.5030 [Emergency] SECOND OPINION SURGERY REQUIREMENT.

Subpart 1. Surgical procedures requiring second opinion. Except as provided in subpart 2, second surgical opinions shall be required for medical assistance and general assistance medical care recipients for inpatient and outpatient surgical procedures according to the list published in the *State Register* under Minnesota Statutes, section 256B.02, subdivision 8. Publication shall occur annually in the last issue of the *State Register* for the month of October. In addition, the department shall publish

any revision of the list at least ~~30~~ 45 days before the effective date if the revision imposes a second surgical opinion requirement. The department shall send each provider a copy of the published list or a revision of the published list.

Subp. 2. Exemptions. The circumstances in items A to E are exempt from the requirement of a second surgical opinion provided that the requirements of subpart 11 are met.

E. The recipient has good cause for not obtaining a second opinion. Good cause refers to circumstances beyond the recipient's control. Examples are illness of the recipient, illness of a family member requiring the presence of the recipient, weather conditions that prohibit safe travel, or the unavailability of transportation.

Subp. 3. Criteria to determine when second opinion is required. The commissioner shall use the criteria given in items A to F to determine the surgical procedures that shall be subject to the second surgical opinion requirement.

D. A surgical procedure and associated care ~~has~~ have costs that are demonstrated by statistical evidence to exceed the average.

Subp. 5. Second or third opinion by a physician. The physician who initially recommends surgery shall provide to the recipient in need of a second or third surgical opinion, the names of at least two other physicians who are qualified to render a second or third opinion, or the name of an appropriate medical referral resource service, and information about the consequences of failing to obtain a second or third opinion. The recommending physician and the physician named to render a second or third opinion or the medical referral resource service shall have no common financial interest ~~with~~ or referral relationship ~~to the physician named to render a second or third opinion, or the medical referral resource service~~ resulting in a financial gain. The physician who gives a second or third opinion must be a provider.

APPLICATION. ~~Notwithstanding any rule or law to the contrary,~~ Upon the expiration of the emergency amendments to Minnesota Rules, parts 9500.0980; 9500.1070, subparts 4, items A, and B, subitems (1) and (5); 6, items A, subitem (3); B, subitem (3); C, subitem (1); D, subitem (1), and that part of subitem (2) which reads: "The medical assistance program will pay for multiple family group-psychotherapy or group-psychotherapy for up to two hours per week for a ten-week period";' 7, item A; 10, item E, subitems (1), (2), (3), and (4); 16, item A; and 18, item B; and that part of subpart 19, item D, which reads: "Prior authorization must be obtained on any services for which payment is claimed under this section,"; and 9505.1020, subpart 4, items Q and R, the permanent parts amended are reinstated.

Department of Human Services

Extension of Temporary Rule Governing the Determination of Welfare Payment Rates for Nursing Homes Under the Title XIX Program 12 MCAR §§ 2.05001-2.05016 (Temporary)

Notice of Continuation of Temporary Rules

Notice is hereby given that the above-entitled temporary rule which was effective on July 1, 1983 and published in the *State Register* on September 12, 1983 and continued in effect for an additional 180 days according to Laws of Minnesota, 1983, chapter 199, section 16 by publishing notice in the *State Register* on May 21, 1984 is continued in effect for an additional 180 days according to Laws of Minnesota, 1983, chapter 199, section 16.

This means that the above-entitled temporary rule will be in effect until June 19, 1985 unless it is superseded by permanent rules or legislative action.

November 13, 1984

Leonard W. Levine
Commissioner of Human Services

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Department of Public Safety
Driver and Vehicle Services Division

Adopted Rules Relating to Drivers License and Motor Vehicle Registration Records

The rules proposed and published at *State Register*, Volume 8, Number 47, pages 2465-2466, May 21, 1984 (8 S.R. 2465) are adopted as proposed.

Department of Public Safety
State Patrol Division

Adopted Rules Governing Requirements for Motor Vehicle Lighting Devices, Safety Glazing Materials, and Towing Devices

The rules proposed and published at *State Register*, Volume 8, Number 47, pages 2467-2477, May 21, 1984 (8 S.R. 2467) are adopted with the following modifications:

Rules as Adopted

7425.2100 INCORPORATIONS BY REFERENCE OF STANDARDS FOR LIGHTING DEVICES.

Subpart 1. Incorporations by reference. Each of the following standards, recommended practices, and regulations are incorporated by reference for the lighting device indicated:

Subp. 2. Availability of SAE standards. The SAE standards and recommended practices incorporated by reference in subpart 1 are available for inspection and copying at the Hill Reference Library, 80 W. Fourth Street, St. Paul, Minnesota 55102.

Subp. 3. Frequency of changes to SAE standards. The SAE standards and recommended practices incorporated by reference in subpart 1 are not subject to frequent changes.

7425.2300 IDENTIFICATION AND MARKING REQUIREMENTS.

Subp. 3. Nonfederally regulated lighting equipment; incorporation by reference. Nonfederally regulated lighting equipment must be marked according to SAE recommended practice J759 MAR82, "Lighting Identification Code-J759 MAR82," 1983 SAE Handbook, published by Society of Automotive Engineers, Inc. (Warrendale, PA, 1983), specifying permanent markings to identify device manufacturer, model, year, and functions. This recommended practice is hereby incorporated by reference. The SAE recommended practice J759 MAR82 is available for copying and inspection at the Hill Reference Library, 80 W. Fourth Street, St. Paul, Minnesota 55102. It is not subject to frequent change.

7425.2500 SPECIFICATIONS FOR INDIVIDUAL LIGHTING DEVICES.

Subp. 4. Electric emergency lantern. Electric emergency lanterns, when placed on any clean, dry, paved road surface, must not trip or slide in a 40 mile-per-hour wind. To test these devices, three sample lanterns regularly marketed and sold must be chilled at a temperature of minus 20 degrees Fahrenheit for 12 hours, after which they must be placed in operation for 12 hours. Failure of two of the three samples to operate or to meet the intensity requirements of SAE standard J596 for electric emergency lanterns, incorporated by reference in part 7425.2100, subpart 1, item L, during the test is an automatic rejection.

Subp. 11. Installation of flashing warning lamp. The installation recommendations in SAE standard J595b for flashing warning lamps, incorporated by reference at part 7425.2100, subpart 1, item O, on authorized emergency vehicles are not mandatory for law enforcement vehicles when determined not practicable by the affected law enforcement agency.

7425.2600 NONSTANDARD LIGHTING DEVICES.

Subp. 3. Emergency vehicle flashing white lamp. An emergency vehicle flashing white lamp, that may be used by an authorized emergency vehicle to display a flashing white light in addition to a flashing red light, does not include flashing headlamps during times when the headlamps are required for visibility. The flash rate, duration, and intensity must follow the SAE standard J595b incorporated by reference at part 7425.2100, subpart 1, item N, or SAE recommended practice J845 incorporated by reference at part 7425.2100, subpart 1, item QQ, as applicable to emergency vehicle warning lamps, except that when used as a traffic signal priority device it must flash as authorized by the commissioner. The white light must be at

least four times the intensity required for a red warning light in SAE standard J595b or SAE recommended practice J845, as applicable to the lamp type.

Subp. 6. Volunteer fireman lamp. A volunteer fireman lamp, providing a single steady-burning red light mounted facing forward on the front of a vehicle, must follow the performance requirements for stop lamps, incorporated by reference in part 7425.2100, subpart 1, item NN, or in effect at the time of manufacture. This type of lamp does not include a reflex reflector.

7425.6000 SPECIFICATIONS FOR TRAILER AND SEMITRAILER TOWING DEVICES; INCORPORATIONS BY REFERENCE.

Subp. 2. Nonfederally regulated towing devices. Nonfederally regulated towing devices must comply with the performance, identification, and installation requirements of the regulations in item A, B, or C which are all incorporated by reference, as applicable according to the vehicle type and weight and the towing method.

A. Hitches and couplings for trailers and semitrailers with a gross vehicle weight rating of 10,000 pounds or less must comply with the requirements in VESC regulation V-5, "Minimum Requirements for Motor Vehicle Connecting Devices and Towing Methods," revised July 1977, Vehicle Equipment Safety Commission (Washington, D.C., 1977), which is hereby incorporated by reference. VESC regulation V-5 is available through the Minitex interlibrary loan system. It is not subject to frequent change.

B. Towbars and fifth wheel connecting devices for semitrailers with a gross vehicle weight rating of 30,000 pounds or less and towbar connections not covered by VESC regulation V-5 must comply with the requirement in VESC regulation VESC-19, "Performance Requirements for Fifth Wheel Vehicle Connecting Devices and Towing Methods," approved July 1980 by the VESC-19 Committee, Vehicle Equipment Safety Commission (Alexandria, VA, 1980) which is hereby incorporated by reference. VESC regulation VESC-19 is available through the Minitex interlibrary loan system. It is not subject to frequent change.

Department of Human Services

Adopted Emergency Rules Relating to General Assistance

The rules proposed and published at *State Register*, Volume 9, Number 13, pages 640-643, September 24, 1984 (9 S.R. 640) are adopted with the following modifications:

Emergency Rules as Adopted

9555.3410 [Emergency] DEFINITIONS.

Subpart 1. Scope. The definitions in parts 9555.3400 ~~[Emergency]~~ and 9500.0500 to 9500.0610 apply to this part.

Subp. 2. AFDC. "AFDC" means the federally aided program of aid to families with dependent children.

Subp. 3. Household. "Household" means persons with whom the general assistance applicant or recipient resides. Only the following persons shall be included in the household:

A. the applicant or recipient;

B. responsible relatives of the applicant or recipient;

C. the spouse of the responsible relative;

D. the minor children of the responsible relative and of his or her spouse.

Subp. 4. Household countable income. "Household countable income" means monthly net earned and unearned income of all members of a household, excluding the applicant or recipient. Household countable income shall not include income that is exempt or disregarded under the general assistance program or benefits received by a responsible relative under the supplemental security income program, the social security disability program, a worker's compensation program, the Minnesota supplemental aid program, or other benefits based on the responsible relative's disability.

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Subp. 5. State participation. "State participation" means state aid to local agencies for general assistance expenditures as specified in Minnesota Statutes, section 256D.03, subdivision 2.

9555.3411 [Emergency] APPLICABILITY.

Parts 9555.3410 to 9555.3412 [Emergency] establish the state standards of assistance, the reduced standards of assistance, and the monthly payment under the general assistance program, and shall be read together with parts 9500.0500 to 9500.0610 and 9555.3400 to 9555.3409 ~~[Emergency]~~ for purposes of administering the general assistance program. To the extent that parts 9555.3410 to 9555.3412 [Emergency] conflict with parts 9500.0500 to 9500.0610 or 9555.3400 to 9555.3409 ~~[Emergency]~~, parts 9555.3410 to 9555.3412 [Emergency] shall prevail.

9555.3412 [Emergency] ASSISTANCE STANDARDS, PAYMENT, AND STATE PARTICIPATION.

Subpart 1. Full state assistance standard, payment, and state participation. The full state assistance standard must be computed as follows:

A. The full state assistance standard must be the combined minimum standards for shelter and basic needs that were in effect under the general assistance program on February 1, 1983. Except as in subparts 2 and 3, the full state assistance standard must be the minimum amount used to calculate the monthly payment to the assistance unit. The full state assistance standards are:

Full State Assistance Standards

Number of Persons in Assistance Unit	1	2	3	4	5	6	7	8	9	10
Assistance Standard	$199	$260	$305	$343	$381	$424	$452	$488	$519	$548

If the assistance unit contains more than ten persons, the full state assistance standard is $28 for each additional person. The full state assistance standard shall be based on the number of persons in the assistance unit.

B. Except as in subparts 2 and 3, the monthly payment to an assistance unit must be the difference between the full state assistance standard, or the local agency standard as in subpart 4, and the assistance unit's countable and seasonal income.

C. Except as in subparts 2 and 3, the full state assistance standard minus the assistance unit's countable and seasonal income shall be used to determine the amount of state participation in the monthly payment.

Subp. 2. Reduced state assistance standard, payment, and state participation. The reduced state assistance standard shall be used to calculate the monthly payment to an assistance unit as follows:

A. The reduced state assistance standard for an assistance unit composed of one person who resides with a responsible relative receiving general assistance shall be the first adult standard in AFDC.

B. The reduced state assistance standard for an assistance unit composed of one person who resides with a responsible relative who is receiving AFDC shall be:

(1) if the applicant or recipient is a spouse of the responsible relative, the AFDC standard for a second adult; or

(2) if the applicant or recipient is not a spouse of the responsible relative, the AFDC standard for an additional child if he or she were added to the AFDC grant.

C. The monthly payment to an assistance unit covered under item A or B must be the difference between the applicable reduced state assistance standard or the local agency standard as in subpart 4 and the assistance unit's countable and seasonal income.

D. The reduced state assistance standard for an assistance unit composed of one person who is not exempt from the work registration requirements under part 9555.3403 ~~[Emergency]~~, ~~subdivision~~ subpart 11, item A, B, H, I, or J, who resides with a responsible relative, and who is not provided for under item A or B, shall be determined by:

(1) Calculating the AFDC standard applicable to the household. The applicant or recipient is considered a child in determining the AFDC standard applicable to the household.

(2) Subtracting household countable income from the standard in subitem (1). If the income of a household member who is not a responsible relative exceeds the AFDC standard applicable to that person, the excess shall be disregarded in determining household countable income.

(3) The reduced state assistance standard is the amount calculated in subitem (2) or the full state assistance standard as in subpart 1, whichever is less.

(4) When more than one assistance unit resides with a responsible relative common to each assistance unit, the reduced state assistance standard as in subitem (3) or the local agency standard as in subpart 4 shall be divided equally among the assistance units to determine the reduced state assistance standard for each assistance unit.

E. The monthly payment to an assistance unit covered under item D must be the reduced state assistance standard as in item D, subitem (3) or (4) or the local agency standard as in subpart 4, minus the countable and seasonal income of the assistance unit.

F. The difference between the applicable reduced state assistance standard and the assistance unit's countable and seasonal income shall be used to determine the amount of state participation in the monthly payment.

Subp. 3. State assistance standard and payment. The state assistance standard and payment for an assistance unit living in a nursing home, state hospital, or dwelling with a negotiated rate must be as follows:

A. The state assistance standard for an assistance unit living in a nursing home, state hospital, or dwelling with a negotiated rate must be the clothing and personal needs allowance that has been established for medical assistance recipients under Minnesota Statutes, section 256B.35, subdivision 1.

B. The monthly payment for an assistance unit living in a nursing home, state hospital, or dwelling with a negotiated rate must be determined by calculating the sum of the negotiated rate and either the clothing and personal needs allowance paid to the person as in item A or the local agency standard as in subpart 4. The monthly payment shall be the difference between this amount and the assistance unit's countable and seasonal income.

C. The sum of the negotiated rate and the clothing and personal needs allowance minus the assistance unit's countable and seasonal income shall be used to determine the amount of state participation in the monthly payment.

Subp. 4. Payment in excess of standards. A local agency may establish a monthly payment in excess of the state assistance standards in subpart 1, 2, or 3 and may provide special need items. The local agency shall pay the full cost of the excess and the special need items.

Subp. 5. Countable income. The countable income of a recipient's spouse or parent is the spouse's or parent's monthly net earned and unearned income that is not exempt or disregarded under the general assistance program.

A. When a spouse or parent of a recipient is eligible to be included in the recipient's assistance unit and chooses not to ~~be included~~ apply for or receive general assistance, the spouse's or parent's countable income available to the assistance unit shall be calculated as follows:

~~A.~~ (1) calculate the assistance standard applicable to the parent or spouse who chooses not to ~~be included in the assistance unit~~ apply for or receive general assistance. The applicable assistance standard for each of those persons shall be the full state assistance standard for one person or the local agency standard as in subpart 4, for one person;

~~B.~~ (2) subtract the amount calculated in item A from the spouse's or parent's countable income;

~~C.~~ (3) the difference calculated in item B shall be considered countable income available to the assistance unit.

The provisions of subpart 2 shall not apply to the remaining members of an assistance unit covered by the provisions of this subpart ~~5~~.

~~Subp. 6. Unmarried couple with minor child. Countable income of an unmarried couple with a minor child in common shall be determined as follows:~~

~~A.~~ B. When an unmarried couple has a minor child in common and the minor child's paternity has been legally established, relative responsibility extends from each parent to the child.

~~B.~~ If the unmarried couple reside together, the minor child shall be included in the assistance unit of the parent who applies first for general assistance. If both parents apply for general assistance at the same time, the parents must choose which assistance unit shall include the minor child. The countable income available for the support of the minor child shall be calculated as follows:

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.

(1) calculate the full state assistance standard or the local agency standard as in subpart 4 for the assistance unit which contains the minor child;

(2) calculate the full state assistance standard or the local agency standard as in subpart 4 for the assistance unit in subitem (1), excluding the minor child;

(3) subtract the amount calculated in subitem (2) from the amount calculated in subitem (1);

(4) calculate the full state assistance standard or the local agency standard as in subpart 4 for the assistance unit that does not contain the minor child;

(5) calculate the countable income of the assistance unit which does not contain the minor child;

(6) subtract the amount calculated in subitem (4) from the amount of countable income calculated in subitem (5);

(7) any excess countable income from the subtraction in subitem (6) up to and including the amount calculated in subitem (3) shall be considered countable income available to the assistance unit which contains the minor child.

~~Subp. 7. Verification of household income.~~ C. If the assistance unit is covered by subpart 2, item D, or this subpart ~~5~~, and if the responsible relative refuses or is unable to provide verification concerning his or her income, the assistance unit shall be ineligible for general assistance, except that when the assistance unit is subject to the provisions of item B, only the minor child shall be ineligible. The period of ineligibility shall continue until the responsible relative provides the verification or until the assistance unit is no longer subject to subpart 2, item D, or this subpart ~~5~~.

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.

Ethical Practices Board

1985 Nonelection Year Campaign Expenditure and Contribution Limits

In accordance with Minn. Stat. §§ 10A.25, 10A.255, and 10A.27, the following nonelection year campaign expenditure and contribution limits will be applicable in calendar year 1985:

Office sought or held	Nonelection year contribution limits: From individual, political com. or political fund	Nonelection year contribution limits: From political party, in aggregate	Nonelection year expenditure limits
Governor and Lt. Governor	$12,000	$60,000	$254,160
Attorney General	$ 2,000	$10,000	$ 42,360
Secretary of State	$ 1,000	$ 5,000	$ 21,180
State Treasurer	$ 1,000	$ 5,000	$ 21,180
State Auditor	$ 1,000	$ 5,000	$ 21,180
State Senator	$ 300	$ 1,500	$ 6,354
State Representative	$ 150	$ 750	$ 3,355
Elective Judgeships	no limit	no limit	no limit

Department of Finance

Notice of Maximum Interest Rate on Municipal Obligations, December, 1984

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Gordon M. Donhowe, announced today that the maximum interest rate for municipal obligations in the month of December will be twelve (12) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to thirteen (13) percent per annum.

For further information, contact:

Peter Sausen, Director
Debt Management
State of Minnesota
Department of Finance
(612) 296-8372

Department of Health
Division of Environmental Health

Outside Opinion Sought Concerning Fees for Various Licenses and Services and Rules Concerning Boarding and Lodging Establishments Which Supervise the Administration of Medications to Residents

NOTICE IS HEREBY GIVEN that the Department of Health is seeking information or opinions from persons or groups in preparing and amending the rules governing the following fees:

food, beverage and lodging establishment license fees
manufactured home park and recreational camping area license fees
x-ray equipment registration fees
master and journeyman plumbers license fees
fees for review and approval of water supply construction plans (proposed new fees)

In addition, the Department of Health intends to amend the rules for boarding and lodging facilities to allow such facilities to supervise the administration of medications and to adopt a separate license fee for such facilities.

The adoption of these fees and rule revision is authorized by Minn. Stat., Chaps. 144, 157 and 326.

The Department of Health requests information and comments concerning the proposed fees and rule revisions including comment on the issue of whether or not these fees are likely to have a qualitative or quantitative impact upon small business as defined in Minn. Stat., § 14.115. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Pauline M. Bouchard
Division of Environmental Health
Minnesota Department of Health
717 Delaware Street S.E.—P.O. Box 9441
Minneapolis, Minnesota 55440

Oral statements will be received during regular business hours at 612/623-5320. All statements of information and comment shall become part of the rulemaking record.

Department of Health
Health Resources Division

Outside Opinion Sought Regarding Proposed Rules Governing Determination of Economic Impact in Credentialing of Human Services Occupations

Notice is hereby given that the Minnesota Department of Health is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the standards to be used in determining the overall cost effectiveness and economic impact of credentialing a human services occupation. The promulgation of these rules is

authorized by Minnesota Statutes, section 214.13, which requires the agency to establish procedures for the identification of human services occupations not now credentialed by the State and to promulgate by rule standards and procedures relating to the credentialing of persons in the affected occupations.

The Minnesota Department of Health requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements or information or comment orally or in writing. Written statements should be addressed to: Norman Hanson, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Oral statements will be received during regular business hours over the telephone at 623-5443 and in person at the above address.

All statements of information and comment shall be accepted until December 31, 1984. Any written material received by the Minnesota Department of Health shall become part of the record in the event that the rules are promulgated.

Metropolitan Council

Notice of Review Schedule for Capital Improvement Program Portion of the Recreation Open Space Development Guide/Policy Plan

Minnesota Statutes Section 473.147, Subdivision 1, requires that the Metropolitan Council's Regional Recreation Open Space Policy Plan ". . . include a five-year Capital Improvement Program, which shall be revised periodically and shall establish criteria and priorities for the allocation of funds for such acquisition and development." Policy 12 (page 28) of this policy plan states that "the Council will prepare the five-year capital improvement program for regional recreation open space from master plan information and needs identified in the system planning process. The capital improvement program will be completely revised in each even-numbered year. The allocation of available funds will be revised on a system-wide basis each year."

The Council has adopted an Investment Framework that provides for a comprehensive Council analysis of capital financing for all regional systems. Regional Recreation Open Space is one of these systems. The Council reviews the individual and cumulative effect of the planned expenditures on the Metropolitan Region.

The capital improvement program (CIP) for recreation open space reflects the current status of the system and directs its development in the immediate future. The included table delineates expenditures for FY 1986 and 1987.

The following is a tentative schedule for review of the CIP:

November 13, 1984	Metropolitan Parks and Open Space Commission recommends revised CIP for public hearing
November 19	Metropolitan Systems Committee recommends revised CIP to Metropolitan Council for public hearing on January 7, 1985
November 29	Metropolitan Council adopts the revised CIP for public hearing and sets hearing for Jan. 7, 1985 before the Metropolitan Systems Committee
January 7, 1985	Public hearing before Metropolitan Systems Committee
January 21	Hearing record closes (10 business days)
January 28	Metropolitan Parks and Open Space Commission reviews hearing report and recommended final draft; commission recommends revised CIP for Council approval
February 4	Metropolitan Systems Committee reviews hearing report and recommends final draft of revised CIP to Metropolitan Council
February 14	Council adopts final draft of revised Capital Improvement Program

This schedule is tentative and subject to change. A subsequent notice of public hearing will be published. If you have questions regarding the schedule or amendment, call Jack Mauritz of the Council's Parks and Open Space staff at 291-6602.

Metropolitan Council Program on Aging

Notice of Review Schedule of Scott County Service Delivery Study

In compliance with its adopted Area Plan for the use of federal Older Americans Act Funds, the Program on Aging of the Metropolitan Council has recently finished a study of services for older people in Scott County. A draft plan based on this

study is in review. Once adopted by the Metropolitan Council, the plan will be used by the Council's Advisory Committee on Aging as a guide in allocating OAA, Title-III funds in Scott County. It is hoped that the plan will also be used by other funding organizations and service providers in their development of services for older people in Scott County.

The following is a tentative schedule for review of the plan.

November 28	Advisory Committee on Aging hold Public Hearing
December 28	Advisory Committee on Aging review public comments and adopts plan.
January 10	Metropolitan Community Development Committee reviews and adopts plan.
January 24	Metropolitan Council adopts final plan.

This schedule is tentative and subject to change. If you have any questions regarding the schedule or the plan, call Hall Freshley of the Council's Program on Aging staff at 291-6467.

Office of the Secretary of State

Notice of Unscheduled Vacancies in Multi-member State Agencies

Notice is hereby given to the public that unscheduled vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0497, subd. 4. Application forms may be obtained from the Office of the Secretary of State. The office is temporarily located in Mechanic Arts High School building but mail should be addressed to 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is December 25, 1984.

WASTE MANAGEMENT BOARD has 1 vacancy open for a member who is a resident of the 6th Congressional District in accordance with boundaries existing January 1, 1980. The board evaluates and acquires sites for hazardous waste facilities; encourages private sector to develop hazardous waste facilities; develops hazardous waste management plan; reviews petitions for Solid Waste Management Districts; administers solid waste management project grants and loans. Members are appointed by the Governor and confirmed by the Senate. Bi-weekly meetings; members receive $50 per diem plus expenses. For specific information contact the Waste Management Board, 123 Thorson Bldg., 7323 58th Ave. N., Crystal 55428; (612) 536-0816.

COUNCIL ON BLACK MINNESOTANS has 1 vacancy open for a public member. The council makes recommendations to the Governor and legislature to improve the economic and social conditions of Black Minnesotans; serves as a referral agency and liaison to federal, state and local governments and private organizations on matters relating to Blacks; studies solutions to problems of Blacks in employment, human rights, health, housing, social welfare and other areas; reviews applications for federal grants which will have primary effect on Black Minnesotans. Members are appointed by the Governor and shall be broadly representative of the Black community. For specific information contact the Council on Back Minnesotans, 504 Rice St., St. Paul 55103; (612) 297-3708.

TEMPORARY JOINT UNDERWRITING ASSOCIATION has 6 vacancies open for 3 public members and 3 health care providers. The association provides medical malpractice insurance coverage to any licensed health care provider unable to obtain this insurance through ordinary methods. Every personal injury liability insurer in the state shall be a member as condition of obtaining and retaining a license to write insurance in Minnesota. Public members are appointed by the Governor and health care providers are appointed by the Commissioner of Commerce. Members receive $35 per diem. For specific information contact the Temporary Joint Underwriting Association, Dept. of Commerce, John F. Apitz, 500 Metro Square Bldg., St. Paul 55101; (612) 297-1118.

This is the corrected version of the HUMAN SERVICES OCCUPATIONS ADVISORY COUNCIL that was published in the November 19, 1984 issue, Volume 9, Number 21 of the *State Register*.

HUMAN SERVICES OCCUPATIONS ADVISORY COUNCIL has 13 vacancies open for: 4 members representing currently licensed or registered human services occupations; 2 members representing human services occupations which are not currently registered; 2 members representing licensed health care facilities which can include a health maintenance organization as defined in section 62D.02; 1 member representing the higher education coordinating board; 1 member representing the state planning agency; 1 member representing a third party payor to health care costs; 2 members representing the public. The council shall assist the Commissioner of Health in formulating policies and rules regarding the credentialing of human services occupations by the state. Members are appointed by the Commissioner of Health. Members receive $35 per diem plus expenses. Quarterly meetings at the Dept. of Health. For specific information contact the Human Services Occupations Advisory Council, Norman Hanson, Dept. of Health, 717 Delaware St. S.E., Mpls 55440; (612) 623-5443.

Department of Transportation

Petition of the County of Chisago for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the Councy Board of Chisago County has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a resurfacing project on CSAH 9 from CSAH 15 to the East Limits of Harris (10.3 miles).

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9914 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit design speeds of 36 and 37 MPH instead of the required design speed of 40 miles per hour.

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.

November 26, 1984

Richard P. Braun
Commissioner of Transportation

Advisory Council for Vocational Education

Notice of Meeting

The Minnesota State Advisory Council for Vocational Education will meet at 1:00 p.m. on Monday, December 10, 1984 in Room 155 of the Earle Brown Center, 1890 Buford Avenue, on the Saint Paul Campus of the University of Minnesota. The public is welcomed. Inquiries regarding the meeting may be directed to the Council Offices at 612/377-6100.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Commodities contracts with an estimated value of $5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
55-103-03395	Automatic Scrubber	Moose Lake State Hospital	Moose Lake	Contact buyer
Sch. 183	Traffic Cones	Transportation	Various	Contact buyer

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
Contract	Presorting Mail by Zip Code	Revenue	St. Paul	Contact buyer
04-511-22706	Purchase of Photocopy Machine Rebid	Agriculture	St. Paul	Contact buyer
69-000-01002	Purchase of Photocopy Machine	Teachers Retirement Association	St. Paul	Contact buyer
79-200 PC	Portland Cement	Transportation	Bemidji	Contact buyer
79-350 PC	Portland Cement	Transportation		Contact buyer
26-073-17059	Purchase of Microfilm Reader/Printer	St. Cloud State University	St. Cloud	Contact buyer
Contract	Ribbons—Typewriter & Adding Machines	Central Stores	Same	100,000-110,000
79-250 WS	Washed Sand	Transportation	Pick up	Contact buyer
79-500-02785	Wiring for Telephones	Transportation	Mpls., Mn	Contact buyer
27-156-43590	Furnish & Install Motorized Blinds	Normandale Community College	Bloomington	Contact buyer
79-600 RM	Ready Mix Concrete	Transportation	Rochester	Contact buyer
21-602-83876	Furnish & Install Van Lift		Minneapolis	Contact buyer
29-000-36907	PBX Telephone System	Natural Resources	St. Paul	Contact buyer
34-000-04485	Open Space Office System	MN Housing Finance	St. Paul	Contact buyer
02-515-44940	Furnish and Install Partitions	Documents	St. Paul	Contact buyer
79-750 RM	Ready-Mix	Transportation	St. Paul	Contact buyer
Contract	Computer Output-to-Microfilm	Various	Various	300,000-400,000
79-000-44521	Rental of Photocopy Machine	Transportation	St. Paul	Contact buyer
02-310-13443	Steam Traps-Rebid	St. Cloud State University	St. Cloud	Contact buyer
79-000-44870	Extended Memory Board	Transportation	St. Paul	Contact buyer
79-000-44776	Transformer Bases	Transportation	St. Paul	Contact buyer
79-000-44503 etc.	Rotary Snowblower	Transportation	Various	Contact buyer
Contract	Paper Towels, Tissues, etc.	Various	Various	500,000-525,000
32-100-12087	Purchase of Graphics Terminals	Pollution Control	Roseville	Contact buyer
79-000-44829	Hollow-Metal Doors & Frames	Transportation	Various	Contact buyer
Contract	Liquid Calcium Chloride	Transportation	Various	6,000-7,500
29-002-10276	Timbers	Natural Resources	Ely	Contact buyer
29-000-36987	Lease of Photocopy Machines	Natural Resources	St. Paul	Contact buyer
29-005-07465	Lumber	Natural Resources	Preston	Contact buyer
78-550-04761	Lumber	MN Correctional	Lino Lakes	Contact buyer
Contract	Plastic Bindings	Various	Various	5,500-6,000
21-200-08887-8	Purchase of Card Reader & Printer	Economic Security	St. Paul	Contact buyer
79-050-15977	Controllers	Transportation	St. Paul	Contact buyer
21-200-08967, 3969	Employer's Statement of Account	Economic Security	St. Paul	Contact buyer
07-700-32830, 4156	Vehicle Accident Report Folders	Economic Security	St. Paul	Contact buyer
21-200-08974, 4060	Statement on Ability to and Availability for Work	Economic Security	St. Paul	Contact buyer
78-620-20612	Repair & Reinstall Pump in Well	MN Correctional Facility	Stillwater	Contact buyer

Contact 296-6152 for referral to specific buyers.

Department of Corrections
Minnesota Correctional Facility—Stillwater

Request for Proposals to Provide Sales Brochures

Notice is hereby given that the Minnesota Correctional Facility, Industry Division—Stillwater, is requesting proposals to develop attractive sales brochures. The sales brochures will be 4 pages, 4-color pictures with complete specifications on farm wagons, manure spreaders, and gravity boxes. Transparencies, layout, will be provided. Ad copy approval will be determined by Industry Sales Department—Stillwater. The estimated cost will not exceed $8,000.00. The time frame to complete the project shall be from January 15, 1985, to April 15, 1985. Proposals must be submitted by 4:30 p.m., December 24, 1984, to: Thomas Moerke, Industry Sales Manager. Please contact Mr. Moerke at (612) 439-1910, extension 325, if interested.

Department of Energy and Economic Development
Energy Division
Alternative Energy Engineering

Request for Proposals for Development of Fiber Fuel Standard Specifications from Mechanical or Chemical Engineers

Proposals are requested from a mechanical or chemical engineer/s to work with the Energy Division of the Minnesota Department of Energy and Economic Development, other State agencies, the fiber fuel industry, fiber fuel users, and another contractor, on a project to develop fiber fuel standard specifications for existing burner equipment.

The objective of this program is to provide the users of fiber fuel burners and fuels with consumer information.

Specifically, it will:

—Describe the burner and fuel problems encountered by users.

—Analyze the burner and fuel characteristics which are causing the most significant problems and recommend steps users can take to avoid problems.

—Report on burner manufacturer equipment demonstrations.

—Evaluate engineering designs and fuel handling ability of different burners.

—Sample fuel producers repeatedly, testing for important and problem characteristics.

—Publish fiber fuel standard specifications and analysis for existing burner equipment.

—Explore the concept of performance bonding of standards.

Funding for this study has been provided by the Minnesota Legislature.

The work scope and project are outlined in the RFP document.

The formal RFP may be requested and inquiries should be directed to:

S. Michael Holly
Alternative Energy Engineer
Minnesota Department of Energy and Economic Development
Energy Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

It is anticipated that the activity to accomplish these services will not exceed a total cost to the State of $30,800. The deadline for submission of completed proposals will be 4:30 p.m., December 26, 1984.

This notice does not obligate the State to complete the project. The State reserves the right to cancel this solicitation if it is considered to be in the best interest of the State.

Department of Energy and Economic Development
Energy Division
Alternative Energy Engineering

Request for Proposals for Development of Fiber Fuel Standard Specifications Program to Provide Consumer Information

Proposals are requested from organizations to work with the Energy Division of the Minnesota Department of Energy and Economic Development, other State agencies, the fiber fuel industry and a contract engineer, on a project to develop a program for fiber fuel standard specifications development.

The objective of this program is to provide users of fiber fuel burners and fuels with consumer information. Specifically, it will:

—Raise matching funding from other government and industry sources to broaden the scope and output of the project.

—Refine a glossary of terms for the fiber fuel industry.

—Sample fuel producers repeatedly, testing for important and problem characteristics.

—Prepare Users' Manual.

Funding for this study has been provided by the Minnesota Legislature.

The work scope and project are outlined in the RFP document.

The formal RFP may be requested and inquiries should be directed to:

S. Michael Holly
Alternative Energy Engineer
Minnesota Department of Energy and Economic Development
Energy Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

It is anticipated that the activity to accomplish these services will not exceed a total cost to the State of $16,500. The deadline for submission of completed proposals will be 4:30 p.m., December 26, 1984.

This notice does not obligate the State to complete the project. The State reserves the right to cancel this solicitation if it is considered to be in the best interest of the State.

Department of Energy and Economic Development
Office of Development Resources

Request for Proposals to Study and Recommend Feasibility Options for Potential Development of a Canadian Business or Manufacturing Facilities in Minnesota

The Minnesota Department of Energy and Economic Development is requesting proposals from qualified individuals interested in assisting the Department establish a Canadian reverse investment action plan. This request does not obligate the State to complete the project and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

Proposals are being requested to address the following major project activities:

1. Recommend specific provinces or cities which may have the most promise for reverse investment.

2. Identify specific economic sectors or industries which would have the highest likelihood of expanding or investing in Minnesota.

3. Propose an action which would coordinate consultant services and MN DEED Staff to maximize Canadian Reinvestment in Minnesota.

It is estimated that the cost of the study need not approach, but shall not exceed $35,000. Proposals should be received by MN DEED no later than 4:30 p.m., December 20, 1984.

The formal Request for Proposal may be requested and inquiries should be directed to:

Harry Rosefelt
Development Resources Division
MN Department of Energy and Economic Development
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-5010

Department of Human Services
Long Term Care Rates Management Division

Request for Proposals Governing Case Mix Reimbursement Methodologies for Intermediate Care Facilities For Mentally Retarded Persons (ICF/MR) and Day Training and Habilitation Agencies

This request is for proposals for developing a long term care reimbursement system for community-based intermediate care facilities for the mentally retarded (ICF/MR) and day training and habilitation agencies based on the case mix and developmental needs of the resident/client receiving care and training in those facilities and agencies. The Minnesota Department of Human Services intends to develop and implement a new reimbursement system by June 30, 1986. The project will include the development of appropriate measurement of resident/client progress, the development of case mix reimbursement methodologies, and the development of a comprehensive implementation strategy.

This request for proposals does not obligate the state to complete the project and the state reserves the right to cancel the solicitation if it is considered to be in its best interests.

The estimated cost of this project is not to exceed $200,000. All proposals must be submitted no later than December 31, 1984. Three copies of the proposal must be submitted and sealed in a mailing envelope or package with the responder's name and address clearly marked on the outside. Each copy of the proposal must be signed by an authorized member of the firm or person making the bid. Prices and terms of the proposal as stated by the respondent must be valid for the length of the project.

For a copy of a more detailed explanation of this request for proposals contact:

Long Term Care Rates Management Division
Department of Human Services
4th Floor, Centennial Office Building
Saint Paul, MN 55155
612/297-1698

SUPREME COURT

Decisions of the Supreme Court Filed Wednesday, November 21, 1984

Compiled by Wayne O. Tschimperle, Clerk

C7-83-1533, C0-83-1535 Ronald Frankfurth, Relator, (C0-83-1535); v. Sunstar Foods, Inc., and Liberty Mutual Insurance Company; Sunstar Foods Inc. and Home Insurance Company; Armour and Company, Self-Insured, Relator (C7-83-1533); Prudential Insurance Company, State Treasurer, Custodian of the Special Compensation Fund. Workers' Compensation Court of Appeals.

Affirmed. Todd, J.

CX-83-862 State of Minnesota, Appellant, v. Paul Leroy Blom. Dakota County.

Penetration of the vagina is not required for the act of cunnilingus to constitute "sexual penetration" under Minn. Stat. §§ 609.341, subd. 12, and 609.342 (1982).

Appeal dismissed. Scott, J.

C2-83-855 State of Minnesota v. Richard Donald Johanson, Appellant. Ramsey County.

Defendant received a fair trial and was properly found guilty of aggravated assault.

Affirmed. Wahl, J.

C2-82-1574, C8-83-861 Town & Country State Bank of Newport, Appellant, (C2-82-1574); Plaintiff (C8-83-861); v. First State Bank of St. Paul; v. Heritage State Bank, Appellant, (C8-83-861); Richard G. Freitag, et al. Ramsey County.

The findings of the triers of fact on whether the collecting bank acted in good faith towards the payor banks in collapsing a check kite were decided in accordance with a correct legal definition of good faith and are supported by the evidence.

The final payment provisions of Minn. Stat. §§ 336.4-213 and 336.4-302 (1982) (which are part of Article 4 of the Uniform Commercial Code dealing with Bank Collections) are not limited by the holder in due course and reliance requirements of Minn. Stat. § 336.3-418 (1982) (which is part of Article 3 of the Code dealing with Commercial Paper).

The trial court did not err in refusing to apply collateral estoppel to the good faith issue in the severed trial involving a different payor bank.

The presenting bank did not breach its warranty of presentment under Minn. Stat. § 336.4-207 (1982) by presenting kited checks to payor bank. Nor may the payor bank rely on Minn. Stat. § 336.3-511(2) (1982), an Article 3 provision, to excuse its untimely dishonor of a kited check.

Affirmed. Simonett, J.

C1-83-1897 Norman Hengemuhle, Relator, v. Long Prairie Jaycees; and State Treasurer, Custodian of the Special Compensation Fund. Workers' Compensation Court of Appeals.

The standard of review of the Workers' Compensation Court of Appeals of findings of the compensation judge, as provided by the 1983 legislative amendments, apply to cases pending on July 1, 1983, the effective date of the amendments.

Under the 1983 amendments, the Workers' Compensation Court of Appeals may no longer disregard the findings of the compensation judge. Instead, the court of appeals determines whether those findings are "unsupported by substantial evidence in view of the entire record as submitted."

In this case, the findings of the compensation judge, although affirmed by the Workers' Compensation Court of Appeals, are, on review by the Supreme Court, found to be manifestly contrary to the evidence and are reversed. The case is remanded to the Workers' Compensation Court of Appeals for further proceedings on the issue of permanent total disability.

Reversed and remanded. Simonett, J.

C3-83-704 State of Minnesota v. Gary Leon Marshall, Appellant, Hennepin County.

Defendant was properly charged by indictment with two counts of murder in the second degree—one alleging intentional murder, the other felony murder—and defendant's conviction of felony murder was not barred by so-called "merger doctrine."

Affirmed. Kelley, J.

ERRATA

Department of Human Services

Proposed Rules Governing Hospital Admission Certification

Notice of Hearing

The public hearing date for the Department of Human Services rule governing Hospital Admission Certification was transposed when printed in the November 12, 1984 issue of the *State Register*, page 1027. The hearing date in that issue of the *State Register* was incorrectly printed as December 31, 1984 not December 13, 1984 as intended. Since the Department mailed over 500 Notices of Hearing listing the December 13, 1984 hearing date, to rectify the problems caused by the printing

error, the Department of Human Services will hold two public hearings. One public hearing will be on December 13, 1984 and the other on December 31, 1984. Both hearings will be in the Veteran's Service Building, Room D, commencing at 9:00 a.m.

Board of Optometry

Proposed Rules Governing Continuing Education and Licensure

Correction of Previous Publication

A typographical error appeared in the October 1, 1984 issue of the *State Register* (9 SR 692) in part 6500.2100, subpart 2D. Item D should read as follows:

D. pass the written competence examination required of new licensees under Minnesota Statutes, section 148.57, subdivision 1. This item applies only to licensure granted in the other state after July 31, 1973.

State of Minnesota
State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

(612) 297-3000
(toll-free # for MN:
1-800-652-9747)

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court and Tax Court decisions.

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STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Rules
for Peatland Reclamation

FINDINGS OF FACT AND CONCLUSIONS

1. The proposed rules were noticed for adoption without public hearing on December 3, 1984, by publication in the State Register and by mail as required by Minnesota Statutes, section 14.21.

2. Five persons requested a hearing. The only specific comment received that can be dealt with in the rule was from Great Lakes Gas Transmission Company.

3. The company asked that the rules require the permit applicant to be aware of pipeline easements on the area to be mined and that notice of that ownership be included in the publication requirements. It is found that these are valid proprietary and safety concerns. The rules should be modified to reflect them, as follows:

Part 6131.0150, subpart 4(B)(3)-(5)

Insert the underlined words and delete the crossed out words:

(3) surface ownership of record and ownership of easements above, on, or below the surface within the mining area; ~~and~~

(4) all underground uses of the property including pipelines and cables; and

p. 13

~~(4)~~ (5) exclusion and avoidance areas pursuant to part 6131.0100, subparts 2 and 3.

Part 6131.0280, item B

Insert the underlined words:

B. the names of all surface owners of record and owners of easements above, on, or below the surface within the mining area;

4. In the proposed rule, in the first line of part 6131.0100, subpart 3, the colon after "allowed only" is a typographic error and should be deleted.

5. In the proposed rule, at part 6131.0120, subpart 2, item A, second line, the revisor inadvertently dropped a "not", changing "but not limited to" to "but limited to". Department editing did not notice the typo.

The "not" should be restored, because it provides a broader array of reclamation options to the operator and landowner. It is not a substantial change, because it does not introduce new subject matter or change the scope of coverage of the rules, and provides an increased degree of freedom to those regulated.

6. With these changes, the rules are needed and reasonable and should be adopted.

Dated June 25, 1985

for JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINERALS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES FOR PEATLAND RECLAMATION

STATEMENT OF NEED AND REASONABLENESS

DECEMBER 3, 1984

STATEMENT OF NEED AND REASONABLENESS

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INTRODUCTION

Minnesota's peatlands are a product of an interaction among plants, topography, climate, and water. In wetland communities the lack of oxygen in the water-saturated environment limits the ability of microorganisms to digest dead plant material. As a result, plant material which ordinarily decomposes in an upland environment, accumulates faster than it can decay. This partially decomposed plant material is called peat.

Peatlands are valuable resources providing many uses including horticulture, agriculture, forestry, energy, industrial chemicals, recreation, scientific study and preservation, wildlife habitat, and water filtration. Minnesota contains approximately 7,000,000 acres of peatlands (approximately 50% of which are state-owned or administered). These occur throughout Minnesota except in the extreme southwestern and southeastern corners of the state. The largest contiguous areas of peatland occur in the northern part of the state in St. Louis, Koochiching, Beltrami, Lake of the Woods, Aitkin, Itasca, and Roseau counties.

Peat has been mined in Minnesota for use by horticultural industries for more than 20 years. Horticultural peat is usually composed of moss plant material. It is primarily used as a soil amendment by homeowners, nurseries, greenhouses, and landscape gardeners. Horticultural peat is also used in potting soils, growing mixtures, and as a medium for growing mushrooms and worms. Another potential use for Minnesota peat is as an energy source. Energy peat is typically composed of reed-sedge plant material. Peat has been used for energy extensively in Europe and is now being evaluated in Minnesota.

In Minnesota approximately 1,500 acres of peatland are currently under production for horticultural (950 acres) and energy (530 acres) purposes. An

additional 6,600 acres (2,800 horticulture and 3,800 energy) of peatlands are contemplated for development by existing peat producers in the state.

A peat mining operation may disturb large areas through removal of vegetation, ditching, and the subsequent mining and processing of the peat. The hydrology of large areas is thus disrupted and land surfaces are exposed to water and wind erosion. Upon termination of mining, vast areas of land could remain with little or no vegetative cover. In order to minimize the environmental impacts associated with peat mining as well as to provide for the ultimate reclamation of mined areas, the legislature authorized the DNR to promulgate rules for the mining and reclamation of peatlands.

Minnesota Statutes, sections 93.44 - 93.51 (1982 and Supp. 1983), entitled the Mineland Reclamation Act, direct the Commissioner of Natural Resources to adopt rules providing for the reclamation of lands disturbed by the mining of metallic minerals and peat. The law declares that it is the policy of the state, through mineland reclamation, to control the adverse environmental effects of mining, to preserve natural resources, and to encourage land use planning. The law further declares as policy the promotion of the orderly development of mining, the encouragement of good mining practices, and the recognition and identification of the beneficial aspects of mining (Minnesota Statutes, section 93.44 (Supp. 1983)).

The Mineland Reclamation Act was originally passed in 1969 and was the legislative response to Minnesota's nearly 100 year old iron mining industry (Laws 1969, chapter 744). Because natural iron ore and taconite ore mining have had an enormous economic, social, and environmental impact on the state,

the original act was directed strictly to metallic minerals. Rules relating to the reclamation of iron and taconite mining areas were subsequently promulgated.

In 1983 the Mineland Reclamation Act was amended to include provisions for the reclamation of lands affected by peat mining and directing the Commissioner of Natural Resources to promulgate rules therefor (Laws 1983, chapter 270). As a result of the 1983 amendment, these rules, relating solely to the mining of peat, have been developed. Because the act requires the rules to be prospective in nature, they will apply only to those portions of mining operations conducted subsequent to the date of promulgation.

The Mineland Reclamation Act also directs the Commissioner of Natural Resources to conduct a study and survey to determine the extent to which regulation of peat mining is necessary to protect the interest of the general public. The DNR has gathered information on peat mining operations in Minnesota, Michigan, Maine, South Carolina, Canada, Sweden, Finland, and Ireland. From this study and survey, it was determined that:

(1) Peat mining can result in the disturbance of large land areas.

(2) In North America some abandoned peat mining areas do not support vegetative cover or provide for a subsequent land use.

(3) Reclamation is a common practice in European countries where peat has been mined for many decades.

(4) Peatland reclamation in European countries is most often achieved through agricultural methods or by reforestation; both require post-mining management.

(5) Not all the existing operators in Minnesota have plans for the reclamation of their mining areas.

Peat mining in Minnesota, to date, has not resulted in substantial environmental impacts. However, given the interest shown by existing and potential peat operators, it is possible that peat mining in Minnesota will proceed on a substantially larger scale than in the past. Based upon the potential for a significant increase in the acreage of peatlands opened for mining and upon the legislative mandate to promulgate rules, the department has prepared these rules for the reclamation of mined peatlands.

GENERAL PROVISIONS

6131.0010 DEFINITIONS.

This section contains two types of definitions; those terms that appear and are defined in Minnesota Statutes, sections 93.44 - 93.51, and those terms that are used in the proposed rules which may not be generally recognized and accepted, and to which special and specific meanings are attached for the purposes of the rules.

Subpart 1. "Auxiliary facilities" is defined to include every alteration to the natural environment associated with the mining operation because all such areas should be subject to reclamation. Common carrier facilities are excluded because their usefulness is not related to only a single mining operation nor will they necessarily terminate operations upon termination of the permit to mine.

Subpart 2. "Beneficiating plants" is defined in order to clarify that the applicability of these rules extends to processing and fabricating facilities located in the state, and because the term is included in the definition of "mining area".

Subpart 3. "Commissioner" is defined in Minnesota Statutes, section 93.46, subdivision 8.

Subpart 4. "Deactivation" is defined because it represents the final stage of reclamation.

Subpart 5. "Hereafter" is defined to explain the point at which the proposed

rules become effective and to assist the commissioner in identifying those portions of a mining operation to which the rules apply.

Subpart 6. "Mine plot" is defined because it represents a particular type of land within the "mining area" and it is used to define the upper size limit for which a permit will be issued.

Subpart 7. "Mining area" or "area subjected to mining" are defined in Minnesota Statutes, section 93.46, subdivision 2.

Subpart 8. "Natural Resources" is defined in Minnesota Statutes, section 116B. 02, subdivision 4 (1982).

Subpart 9. "Operating life of the mine" is defined to clarify the term for which a permit will be issued. It is consistent with Minnesota Statutes, section 93.481, subdivision 3 (1982).

Subpart 10. "Operator" is defined in Minnesota Statutes, section 93.46, subdivision 6.

Subpart 11. "Peat" is defined to specifically identify the resource which the rules address.

Subpart 12. "Peat mining" is defined in Minnesota Statutes, section 93.461 (a).

Subpart 13. "Permit to mine" or "mining permit" is defined because it describes the legal instrument that prescribes the terms and conditions under which a mining operation may be conducted, and constitutes the authorization by the commissioner to conduct such a mining operation.

Subpart 14. "Progressive reclamation" is defined because it identifies a standard of success by which reclamation processes and scheduling will be evaluated.

Subpart 15. "Protected waters" is defined because the term has specific meaning according to the statute cited in the rules.

Subpart 16. "Reclamation" is defined because it provides the basis for determining the degree to which the terms and conditions of the permit to mine have been met.

Subpart 17. "Stockpile" is defined because it is used in a specific manner which might be misunderstood if not defined.

6131.0020 PURPOSE AND POLICY.

The first paragraph of this section cites the enacting legislation for these proposed rules, and contains a number of policy statements on which the rules are based. These policy statements consist of recitation and amplification of state policy as declared in the statute.

The second paragraph of this section acknowledges the limited information available regarding the ability to reclaim large contiguous areas of mined

peatlands. The legislative direction to prepare these rules was basically a response to peat mining proposals made during the mid 1970's. These proposals, had they been implemented, would have led to the development of extremely large acreages of peat, up to 200,000 acres in the case of one proposed operation. The large-scale mining proposals of the mid 1970's were not implemented and at present their immediate implementation appears unlikely. Therefore, these rules have been directed toward peat mining operations anticipated to exist in the near future in Minnesota. Based on past experience it is reasonable to assume that large-scale mining proposals might again be made. This portion of the rules is intended to alert future developers of large-scale peat mining operations that additional information will be necessary before these rules can be directly applied, or amended so as to apply, to their mining proposals.

The third paragraph of the purpose and policy section expresses the department's conclusion that reclamation of mined peatlands can best be achieved by developing permitting standards on a site specific basis. Each peatland contains unique characteristics that will influence it's development and subsequent reclamation. Such characteristics include the type of peat, depth of peat, surface and groundwater regime and surrounding land uses.

The variety of mining methods available will also greatly affect the reclamation options for a mined peatland. For example, it is likely that a wet mining method will result in a final landform dominated by open water areas. Such an area would be suited to a wildlife habitat reclamation option. On the other hand, a milled peat area may be successfully maintained in either a wet or dry post-mining condition and be a candidate for wildlife, farming or forestry reclamation options.

Because of the extreme diversity in peatlands and mining methods available, it is reasonable that specific reclamation permitting conditions are developed on a site specific basis. To facilitate this approach, the rules establish a framework within which reclamation permits can be developed. These broad guidelines afford the flexibility necessary to accommodate the needs of specific mine sites and mining methods. The terms of individual permits to mine will detail specific reclamation requirements that will ensure the accomplishment of the reclamation plan. These permit requirements will remain unchanged during the life of the operation unless amendments are proposed by the permittee and granted by the commissioner.

6131.0030 SCOPE.

Subpart 1. This section is a recitation of Minnesota Statutes, section 93.461 (c), defining the levels of peat production that are outside the scope of these rules. Ambiguities in the statutory language were clarified by establishing that only after an operation reached 40 acres would a permit be required. This adds clarity to the intent that peat mining operations less than 40 acres in size should be excluded from the rules.

Subpart 2. Minnesota Statutes, section 93.461 (b) provides that no permit to mine is required of a person mining peat until 180 days following promulgation of these rules. Minnesota Statutes, section 93.481, subdivision 1 provides that existing mining operations may continue during the pendancy of the application for the permit to mine.

Subpart 3. Minnesota Statutes, section 93.481, subdivision 1 requires that no person shall carry out a new mining operation or reactivate an inactive mining operation until receiving a permit to mine.

Subpart 4. Minnesota Statutes, section 93.47, subdivision 3 requires the commissioner to identify areas that cannot be reclaimed in a satisfactory manner by existing technology. The department established the Peat Program in 1976 to study Minnesota's peat resources and predict the impacts that might result if they were mined. One of the recommendations in the "Minnesota Peat Program Final Report" (Minnesota Department of Natural Resources, 1981, page 86) was the development of guidelines relating to the maximum size for peat leases on state lands. The recommended size limit was 3,000 acres, recognizing that "Leases for larger-scale development should not be granted until the technological, economic, and environmental feasibility is well documented both conceptually and by demonstration." This size limit of 3,000 acres was, according to the report, partially based on "...Extensive water quality and quantity monitoring and vegetation and wildlife studies..." which "...suggest that environmental impacts of mining and other uses may be successfully mitigated on lease tracts of this size." The report also concludes that economically viable mining operations can be conducted within this 3,000 acre limit, and gives examples of the European experience which substantiates this determination. Since the 3,000 acre limit was based on environmental considerations, it is reasonable to extend this limit to all lands regardless of ownership.

To gain more information on mine plot size, site visits were made to peat mining areas around the world during the summer of 1984. Inspection tours in

Canada, Finland, Sweden, Ireland, and the U.S. revealed that most operations were much less than 3,000 acres in size, and none approached the 200,000 acre size proposed for a Minnesota operation during the mid 1970's.

A survey conducted during 1984 revealed that environmental impacts associated with peat mining appear minor although the long term impacts of large-scale mining have not been quantified. Both the site visits and survey results further support the 3,000 acre size restriction.

Subpart 5. This section is a recitation of Minnesota Statutes, section 93.481, subdivision 3 which states that the term of a permit to mine shall be for the period determined necessary by the commissioner to complete the proposed mining operation. To aid the commissioner in this determination, information provided in the permit application must be utilized.

Subpart 6. Minnesota Statutes, section 93.47, subdivision 3 extends these rules to those portions of an operation conducted subsequent to the promulgation of the rules. This subpart clarifies that all portions of new operations, and any part of existing operations which might be used or created after promulgation shall comply with the rules. This subpart acknowledges that some portions of existing operations might be in violation of the siting section of the rules, and concludes that it would be unreasonable to resite such portions.

Subpart 7. Rules, statutes, and ordinances combine to make up the body of law applicable to peat mining. The commissioner neither intends nor has the authority to prevent the enforcement of laws which are applicable or which are

more restrictive in a specific instance. As a matter of law, these rules apply regardless of the existence of a less stringent standard adopted by another unit of government.

Subpart 8. This is a recitation of a portion of Minnesota Statutes, section 93.47, subdivision 3 and relates to authorization from various governmental entities which may be in existence prior to the issuance of a permit to mine. It is included to provide a complete understanding of how these rules relate to authorization already obtained by the operator.

PEATLAND RECLAMATION STANDARDS

6131.0100 SITING.

The fundamental purpose for adopting rules relating to the siting of mining operations is that peat mining operations may be large facilities which use considerable quantities of land very intensively. Accordingly, the potential for land use conflicts between mining areas and adjacent lands is significant. The types of impacts and disturbances associated with peat mining are, for the most part, inconsistent with residential, wilderness, and most types of recreational uses. The potential for land use conflict is amplified by the facts that: 1) The peat resource yet to be mined is enormous; 2) New mining operations may require new employees, possibly attracting greater populations to the mining regions; and 3) Peat mining is carried out in a part of Minnesota which is generally popular as a recreational region. The rules relating to siting are an attempt to avoid future land use conflicts between mining operations and adjacent areas.

Subpart 1., the goal statement, merely recognizes that conflicts between mining areas and adjacent non-compatible land uses should be avoided through proper siting of facilities. It is reasonable to avoid such conflicts.

Subpart 2., "Requirements; exclusion areas for mining", contains a description of areas in which no peat mining shall be conducted, except under the circumstance of a state or national emergency. Peat mining is prohibited in these exclusion areas because, in the case of formally designated areas, such mining would diminish and possibly destroy the very qualities which caused these areas to be designated in the first place. Moreover, the law directs the commissioner to identify areas or types of areas which cannot be satisfactorily reclaimed under the rules, and further, prohibits the commissioner

from issuing permits to mine such unreclaimable areas. The areas designated as exclusion areas represent areas which, through the determination of the commissioner, cannot be satisfactorily reclaimed.

The areas listed in subpart 2., items A. to G. were established through formal actions at the state or federal level, so their designation is significant and their protection therefore is important. The setbacks listed are taken from existing DNR policy.

Subpart 2. H. provides for a minimal separation of mining operations and certain adjacent land uses which involve the presence of people. These separations serve to protect the public health and safety and to prevent individuals from unknowingly traveling onto possibly hazardous mining properties. In addition, the separations provide a buffer between inconsistent land uses, thereby diminishing the intrusion of the effects of mining onto adjacent lands. Such separations are consistent with those found in zoning ordinances, and are reasonable to adopt.

Subpart 2. I. simply acknowledges that areas which merit special consideration that are not currently recognized may in the future be added as exclusion areas for mining. This is reasonable, in that over time, conditions can change, requiring new or modified land management techniques and objectives.

Subpart 3., "Requirements; avoidance areas for mining", contains a description of areas in which mining is prohibited, except in two cases. The first case is where peat mining will enhance the existing use of an area. For example, peat mining on a small-scale may be an effective management tool within a

wildlife refuge and it is reasonable that peat mining should be allowed in such a case. The second case is where no reasonable or prudent alternative exists. If such a situation arises on state-owned lands, it is reasonable that the affected area be replaced in kind.

In subpart 3. A., lands within the boundaries of Peatland Protection Management Areas are listed as avoidance areas for mining. Peatland Protection Management Areas contain the core areas and watershed protection areas of the ecologically significant peatlands described in "Recommendations for the Protection of Ecologically Significant Peatlands in Minnesota" (Minnesota Department of Natural Resources, under preparation).

Identification and evaluation of the state's ecologically significant peatlands greater than 3,000 acres began in 1978 as part of the DNR's Peat Program. In 1981, 22 peatland complexes were identified as candidate areas for protection. Legislation passed in 1983 (Laws of Minnesota 1983, chapter 301, section 22) directed the department to review the information compiled on these 22 candidate peatlands and make recommendations regarding their protection. The publication, "Preliminary Report on Protection of Ecologically Significant Peatlands in Minnesota" (Minnesota Department of Natural Resources, June 1984) was a summary of the information compiled through June 1984 about these peatlands. The final report entitled "Recommendations for the Protection of Ecologically Significant Peatlands in Minnesota" will be used to draft peatland protection legislation for the 1985 legislative session. Promulgation of the peatland reclamation rules will be completed before a final legislative decision is reached on the protection of the ecologically significant peatlands in Minnesota. If such legislation

affords these areas more protection than do these rules, then the law will supercede these rules.

The rationale for protecting the areas listed in subpart 3. B. to E. is basically resource value, however, the prohibition of peat mining within these areas is not absolute. It is reasonable to avoid disturbing areas which have been specifically designated or are generally recognized, on the basis of their high natural resource value, as areas deserving protection and special management, when reasonable alternatives to using such areas exist.

6131.0110 MINE DESIGN.

Subpart 1. A peat mining operation results in a substantial disturbance of the physical environment through the removal and movement of large quantities of materials. Land disturbances of this magnitude have great potential for environmental impacts and land use conflicts. These activities can significantly disrupt the surface hydrology and drainage patterns of the mining area. Erodable surfaces are exposed, leading to both wind and water erosion. The terrain is drastically modified, creating land and water forms uncharacteristic of the premining conditions.

The purpose of the mine design standards, as reflected in the goal statement in subpart 1., is to minimize this potential degradation and to prescribe certain standards which will facilitate effective reclamation of the mining area.

Subpart 2. A. In order that the commissioner has a clear understanding of how

and when reclamation will be achieved, knowledge of how mining is expected to proceed is essential. The manner in which mining will be conducted will have a significant impact on the success of the reclamation plan. Therefore, it is reasonable that mine designs be reviewed and approved prior to their implementation. The following items contained in subpart 2. A. (1) to (3) address mine design criteria that relates to efficient reclamation of the mining area.

Subpart 2. A. (1). In some instances it may be possible to develop a mine in a series of mine plots, each having a relatively short operating life. In other cases the entire mining area may remain open throughout the life of the operation, in order to efficiently remove the resource. Wherever possible, the development of mining in a series of plots is encouraged. Mining in this manner makes areas available for reclamation earlier and more continuously throughout the life of the operation, thus reducing the magnitude of reclamation required when mining ceases.

Subpart 2. A. (2). When mining can be conducted by utilizing a series of plots, it is reasonable to schedule activities in a manner which allows progressive reclamation. Progressive reclamation is simply the initiation of reclamation practices on an area as soon as resource removal has been completed. Where the area can be mined in a series of mine plots, progressive reclamation will encourage early and continuous reclamation resulting in the prompt and continuous conversion to the approved post-mining use.

Subpart 2. A. (3). Because of the high water tables characteristic of peatlands, it is likely that some portions of a mining area will eventually be covered with water. It is reasonable that mining areas be designed so that

such water bodies will be stable and not fluctuate significantly in size and depth. Such fluctuations could be detrimental to the development of a protective vegetative cover and the establishment of approved post-mining uses.

Subpart 2. B. It is necessary that adjacent peat mining operations do not exceed, in size, an area which is too large to be reclaimed or otherwise represents a significant environmental hazard. Because of the diversity in the kinds of operations and the types of peatlands which might be involved, the need for and extent of separations will be evaluated on a site specific basis. To aid the commissioner in making a determination, site related criteria itemized in subpart 2. B. (1) to (5) will be utilized.

Subpart 2. B. (1). It is reasonable that mine plot sizes be considered since it is the cumulative size of these areas which must be evaluated to determine if undesirable impacts would result. In general, it is more difficult to reclaim large drastically disturbed areas than small ones.

Subpart 2. B. (2). It is reasonable to consider the success of a separation in mitigating impacts since this is its intended function.

Subpart 2. B. (3). It is reasonable to consider the proposed reclamation plan for the mining area since this may affect the need for or extent of separations. Separations may also provide a seed source to abandoned mine plots which could facilitate natural revegetation.

Subpart 2. B. (4). It is reasonable to consider the economic impacts and the loss of potentially valuable peat resources associated with separations.

Minimizing the size of separations could reduce environmental disruption by limiting overall disturbance to fewer areas.

Subpart 2. B. (5). Ownership patterns may dictate that the only reasonably available lands for development are adjacent to existing or proposed operations. It is reasonable that decisions made regarding separations should recognize this fact.

Subpart 2. C. Many peat mining methods require dewatering of the mining area. Minnesota Statutes, section 93.47, subdivision 2 requires the commissioner to consider mining's effect on the environment, future utilization of the land, and protection of natural resources (including erosion control and prevention of bank slumping) in the formulation of the rules. Items listed in subpart 2. C. (1) to (3) are necessary and reasonable means of addressing these concerns.

Subpart 2. C. (1). If levels of protected waters were lowered, undesirable impacts on the waterbody and its ecosystem are likely to result. It is reasonable that the mine design ensure the maintenance of surrounding protected water levels.

Subpart 2. C. (2). Similarly, mine dewatering may change the characteristics and reduce the value of adjacent unmined peat resources. It is reasonable that the mine design address this problem and offer protection to adjacent undisturbed peatlands.

Subpart 2. C. (3). The requirement that ditches be constructed in a manner which avoids erosion and bank slumping is essential to protect the environment.

Subp. 2. D. Unlike metallic mineral mining which generates large quantities of waste material, peat mining generates only small quantities of waste by-products. Predominant among these are wood piles, mainly tree stumps and roots, and unusable peat. Wood waste material is generally windrowed within or adjacent to the mine plot. At one of the mining operations inspected during 1984, permanent disposal of this material was accomplished by burning. Peat wastes were observed at many sites. When generated by a dry mining method, this material was generally piled at the site. Under wet harvesting methods, peat wastes are often in the form of a slurry and are pumped into holding ponds. Holding ponds like those observed in Vancouver, British Columbia are intermittently saturated and dehydrated, supporting little or no vegetation. It is reasonable to require the proper disposal and reclamation of these types of mine wastes.

6131.0120 SITE RESTORATION.

The restoration of peat mining areas serves two primary functions: (1) The prevention or reduction of adverse environmental impacts; and (2) the promotion of a subsequent land use. The goal statement contained in subpart 1. is an iteration of these functions.

The result of peat mining activities is the creation of landforms and disturbed areas devoid of vegetation. These unvegetated areas often result in wind and water erosion, both of which have been and occasionally continue to be observed in peat mining areas. Conditions similar to dust storms can periodically be observed on windy days in some peat mining areas. Airborne particulates can cause several environmental and public health problems.

While this phenomenon is often unavoidable during active operations, it should not be allowed to continue when operations on a particular mining area have ceased. Similarly, surfaces of slopes, such as ditchbanks and shorelines, are susceptible to water erosion, which can cause stream sedimentation and other water quality impacts downstream from the mining area. Site restoration is, in effect, the stabilization of such surfaces by vegetation or by other measures. Restoration reduces the vulnerability of a mining area to erosion and thereby prevents or diminishes environmental impacts.

Restoration further provides that an area will be available for higher land use options in the future. These include timber and biomass production, wildlife habitat, and agriculture. Restoration also enhances the aesthetic appeal of an area. This is particularly true in northern Minnesota, where unvegetated mining areas are generally in stark contrast to surrounding undisturbed areas.

After mining has ceased, the mining area can be reclaimed for a variety of land uses as described in subpart 2. A. These land uses are reasonable and should be available options for reclamation. However, the continued and long-term success of these land uses is dependent on the long-term management of the area by the landowner. For example, a forest plantation may require careful control of the water level during seedling establishment as well as periodic fertilization and thinning. Likewise, a wildlife impoundment may require occasional drawdown to oxidize organic sediments. It is obvious that such land uses require comprehensive management that extends beyond the period for which the operator should be liable.

Maintenance of existing ditches and water control structures is also of vital concern to the success of these land uses. An important factor in maintenance is that of beaver control. Beavers are ubiquitous throughout Minnesota peatlands and they are notorious for the extent of flooding that can result from their activity. If uncontrolled, beavers could destroy reclamation efforts in as little as one season.

Post-mining land uses like those discussed in subpart 2. A. are viable reclamation options that require varying degrees of post-mining management. It is reasonable that the operator and the landowner reach an agreement before operations begin as to the ultimate reclamation of the land, the reclamation responsibilities of both parties, and a post-mining management plan that ensures long-term success. If no agreement is reached between the operator and the landowner, the operator must comply with the requirements set forth in subpart 2. B.

When an agreement is reached between the operator and the landowner, the post-mining management plan is developed jointly and submitted with the application for the permit to mine. Subpart 2. A. (1) to (8) contains a list of considerations for developing the post-mining management plan. The list is necessary to give direction to the applicant as to the content of the plan. It is reasonable that the post-mining management plan be compatible with site restoration goals, adjacent uses, and local land use plans. It is also reasonable that the plan consider the needs of the area, the productivity of the site, and projected land use trends. Lastly, it is further reasonable to protect public health and safety and avoid pollution of air and water. These are points that should be considered during the preparation of the post-mining management plan.

Subpart 2. B. applies to operators who have no post-mining management plan with the landowner and to those portions of a mining operation that are not included in a post-mining management plan in subpart 2. A. Subpart 2. B. states that all surfaces disturbed during the mining operation shall be stabilized with vegetation to control erosion and to enhance the land use quality and capability of the area. The establishment of vegetation on these surfaces is the most effective means of accomplishing these ends in a maintenance-free, self-perpetuating, and permanent manner. The use of vegetation on these surfaces also results in the mining area being reclaimed in a manner which is compatible with the surrounding area. It is reasonable to require that such surfaces be stabilized with vegetation to curtail environmental impacts associated with unvegetated lands and to ensure continued use of the area.

Subpart 2. B. (1) specifies that revegetation procedures begin as soon as possible during the first planting period following the point when the area is no longer scheduled for use. It is reasonable to require that revegetation begin promptly after the cessation of mining for the following reasons. First, prompt revegetation will reduce environmental impacts that may result from large areas of exposed surface. Such impacts may include air pollution from fugitive dust.

Second, prompt revegetation is consistent with the concept of progressive reclamation. Revegetating abandoned mine plots as the operation proceeds is reasonable and will enable the operator to apply acquired knowledge to the revegetation of subsequent mine plots. Observations further suggest that revegetation will be easier to achieve on a series of small mine plots rather than as one large block.

Third, observations of abandoned mine plots indicate that the timing of revegetation efforts may be critical to success. This is especially apparent on some mine plots where fibric sphagnum peat remains at the surface. If revegetation is not initiated promptly in these areas, it may be very difficult to establish any type of vegetation at a later date.

Subpart 2. B. (2) is a standard by which the success of revegetation efforts can be measured and provides a means to evaluate compliance with these rules. The particular standard of 75% cover after five growing seasons is based on field observations made in 1984 and is in general accepted by the peat mining industry and the scientific community and therefore considered reasonable. The requirement that vegetation be self-sustaining, and either regenerating or in a stage of natural succession is reasonable to ensure that it will provide permanent cover. The requirement that the vegetation be comprised of typical wetland species is to ensure a species diversity which is characteristic of the surrounding wetland areas.

It is reasonable to designate 5 years as a time when revegetation is determined to be successful or not successful. If the standards outlined in subpart 2. B. (2) are not met, remedial efforts must be initiated. It is prudent to correct an adverse situation at the earliest feasible point after which it develops, in order to prevent it from becoming more severe.

Subpart 2. B. (3) is a standard that applies to permanent open water areas. It is reasonable to require that open water areas have stable shorelines and a minimal fluctuation in water level. If these standards are not met, shorelines may be exposed to repeated wind and water erosion. Given the

unique setting of each mining area, the filling of a depression with water may be a gradual process that requires more than one year. To accommodate this natural phenomenon, 2. B. (3) allows that the filling process be complete and the water level stabilized within 5 years after the cessation of mining.

Subpart 2. C. discusses the amount of peat that will remain when mining ceases. Given the great diversity in the type of mining operation, the setting of the mining area, and the selected reclamation option, it is inappropriate to specify an amount of peat that applies generally to all operations. The amount of peat that remains will be determined at the time of permit application and will depend on the selected reclamation option and on the texture and type of the underlying soil. For example, if the landowner and the operator agree to a timber plantation after mining, there may be very specific requirements for the success of the plantation based on the type and depth of the peat as well as the nature of the underlying soil. In contrast, for a wildlife impoundment, it may be best to remove all peat within six inches of mineral soil. It is reasonable to address this question on a site by site basis when all pertinent information can be considered and a meaningful agreement reached.

Subpart 2. D. requires that plans to control post-mining water levels be implemented during deactivation. Water control, as discussed previously, is fundamental to the success of all reclamation options. Therefore, it is reasonable that detailed plans be required and that these plans be implemented during the deactivation process.

6131.0130 CLEANUP.

The purpose of this section is to ensure the cleanup of the mining area after activities have ceased and to eliminate the hazards created by mining. The specific goals listed in subpart 1. are reasonable means of achieving these purposes.

Subpart 2. A. requires that cleanup measures begin as soon as resource removal has been completed. At this time the machinery and manpower needed to accomplish the tasks will be available on the site. To delay the cleanup of facilities for which no further use exists, is unreasonable and could cause liability problems by becoming an attractive nuisance.

Subpart 2. B. requires that cleanup measures be conducted in a manner which aids in attaining the approved post-mining land use. Appropriate management during this initial period of site restoration is important to ultimate reclamation success.

Subpart 2. C. is included because mobile equipment and debris left on the site is normally not compatible with deactivation activities and principles, and its removal within one year is reasonable.

Subpart 2. D. is included because 3 years is a reasonable period in which to accomplish the requirements. The provision for extension was included because some of the facilities might have a future use, and their value helps ensure that they will be maintained. It is necessary to remove the facilities which are listed in order to limit access and remove hazards for safety reasons, and to promote the establishment of vegetation.

PERMIT REQUIREMENTS

6131.0140 THE PERMIT TO MINE PEAT.

Subpart 1. Because it is the policy of these rules (as stated in part 6131.0020) to negotiate a permit to mine based on site specific factors, a site visit is essential. It is reasonable that this be the first step in the application process for a permit to mine. The content of the permit application and other subjects related to the permitting process will be discussed at the preapplication conference. Every effort will be made to include other permitting authorities in this and subsequent meetings so that the applicant for a permit to mine will understand as fully as possible all requirements which must be met.

Subpart 2. is based on Minnesota Statutes, section 93.481, subdivision 1, which requires a permit to mine in order to conduct a peat mining operation.

Subpart 3. is based on Minnesota Statutes, section 93.481, subdivision 1 and is included to clarify that existing peat mining operations may continue production pending administrative action on permit applications, provided that such applications are made within 180 days of the effective date of these rules.

Subpart 4. is necessary since it is possible for peat mining operations to be carried out jointly by more than one person. Each such person may jointly participate in management decisions relating to the proposed mining operation. Therefore, it is essential that such persons be legally bound by the permit to the extent of their involvement.

6131.0150 PERMIT APPLICATIONS.

Subpart 1. requires that an application for a permit to mine be submitted in duplicate for use by the DNR's Hibbing and St. Paul offices. Portions of the required information may not be applicable for some operations. In these instances, the DNR will notify applicants accordingly.

Subpart 2. A. to D. requires documents that are necessary to determine the need for a performance bond. These documents are required by Minnesota Statutes, section 93.49.

Subpart 3. A. to D. requires information on the organizational structure of the applicant for a permit to mine. This information is required by Minnesota Statutes, section 93.481.

Subpart 4. A. is necessary because the commissioner will be making decisions involving the effect of mining on the environment. It is reasonable to request copies of environmental reports involving the proposed mining area for use by the commissioner and other DNR staff.

Subpart 4. B. Delineation of the mining area is necessary to inform the commissioner of the location and extent of lands which will be used for mining. The requirement of overlays to 7½ minute quadrangle maps is reasonable because overlays are an effective and simple way to present diverse types of information relating to a single area. Quadrangle maps are readily available and at a standard scale. The requirement that information be submitted for areas outside the mining area is necessary to determine the environmental setting of the mining area.

Subpart 4. B. (1). is necessary so that the commissioner can determine if and where a potential exists for the expansion of the mining operation to ensure that peat resources are not encumbered.

Subpart 4. B. (2). is necessary for the development and implementation of a reclamation plan for the mining area. Such information is essential for determining water appropriation and discharge locations which are major considerations in the mining and reclamation of a peat mining area.

Subpart 4. B. (3). is necessary because Minnesota Statutes, section 93.481, subdivision 1 (d) requires publication of the ownership of the mining area. It is reasonable to present ownership data on a map.

Subpart 4. B. (4). is necessary for siting purposes. Exclusion and avoidance areas are described in part 6131.0100. It is reasonable to present this information on a map.

Subpart 5. is necessary because Minnesota Statutes, section 93.481, subdivision 3 requires that a permit be issued for the operating life of the mine. Mining and reclamation maps and plans are a reasonable means to evaluate anticipated activities to be conducted during the term of the permit.

Subpart 5. A. requires maps and cross-sections because they are the most reasonable way to present the requested information. It is necessary that these maps and cross-sections contain information normally found on U.S.G.S. quadrangle maps because such information will facilitate the correlation of these maps to other required maps (see part 6131.0150, subpart 4, item B.)

Since there is a wide range in the size of mining operations, it is inappropriate to specify a scale for these maps that applies to all operations. It is reasonable that the applicant prepare these maps at a scale approved by the commissioner which is appropriate to the proposed mining operation.

Subpart 5. A. (1). is necessary to inform the commissioner of the location and type of the peat resource that will be mined under the permit to mine. This information is necessary for the commissioner to evaluate the proposed reclamation plan.

Subpart 5. A. (2). is necessary so that the commissioner will know where potential expansion of the mining operation or the development of surrounding mining operations may occur. Such information is reasonable to ensure wise use of the peat resource.

Subpart 5. A. (3). is necessary because the information required is the basis of the mining and reclamation plan. The requirement that the status of the features listed in 5. A. (3) (a) to (f) be shown at appropriate intervals will inform the commissioner as to the sequencing of mining and reclamation activities.

Subpart 5. A. (3) (a) to (f) are necessary because they are the basic features of the mining operation which require reclamation.

Subpart 5. B. is necessary because it describes the mining and reclamation plan proposed by the applicant.

Subpart 5. B. (1) (a) is necessary to provide information on the proposed sequence and schedule of mining and the types and amounts of peat that will be mined so that the commissioner may determine the term of the permit.

Subpart 5. B. (1) (b) requires a discussion of the beneficiating process. Such a requirement is reasonable since certain materials may require special handling. A discussion of waste disposal is necessary since Minnesota Statutes, section 93.47, subdivision 3 allow the commissioner to require the reclamation of disposed waste products.

Subpart 5. B. (2). is necessary to present the methods and schedules of reclamation so they can be evaluated and monitored by the commissioner.

Subpart 5. B. (3). is necessary to inform the commissioner of proposed research that may be used to demonstrate alternative reclamation procedures that meet the goals of the rules.

Subpart 6. is necessary to support the post-mining management plan, if required by part 6131.0120, subpart 2, item A.

Subpart 6. A. is necessary to document the landowner's experience in land management of the type required by the post-mining management plan.

Subpart 6. B. is necessary to document the reclamation responsibilities of both the operator and landowner. It is reasonable to require such information as it will ensure the long-term success of the reclamation.

6131.0160 ANNUAL REPORT.

Subpart 1. requires the permittee to submit an annual report describing the mining and reclamation activities performed during the past year as well as mining and reclamation activities anticipated for the upcoming year. The report in conjunction with yearly site visits is a reasonable method for the department to monitor compliance with the rules and permit to mine.

The annual report also serves as an opportunity for the permittee to inform the commissioner of any changes in the overall mining and reclamation plan. The permit to mine is granted for the operating life of the mine and is based on the permittee's best estimate of mining and reclamation activities at the beginning of the operation. It is not unusual for sales, product lines, and mining methods to change over a 20-25 year period such that modifications in the mining and reclamation plans are required. These changes can be brought to the commissioner's attention through the annual report.

Subpart 2. identifies the information required for the preceding calendar year that should be contained in the annual report. The law authorizing the rules requires that the commissioner evaluate on an annual basis the permittee's financial ability to perform reclamation obligations. Therefore, it is reasonable to request a statement documenting financial capability of the permittee. The remaining information requested (mining rate and activities, reclamation activities) is necessary in order to reasonably monitor mining and reclamation progress.

Subpart 3. identifies the information required for the upcoming calendar year that should be addressed by the annual report. The information requested is

generally similar to that developed by peat mining operators in the course of planning and conducting business activities. Such information (schedules and amounts of peat mined, types and amounts of process chemicals added, types and amounts of waste disposal, and reclamation activities) is necessary so that the commissioner can determine if the upcoming activities are consistent with the operator's permit to mine.

Subpart 4. requires that a map be submitted that depicts the status of mining, reclamation, and watershed modifications. It is reasonable to supplement the information requested in subparts 2. and 3. with a map that can be used in conjunction with the annual site visit. Some of the information requested is more easily described in map form than by written text. The map serves as a reasonable document for communicating some of the information required by the annual report.

6131.0170 PLAN FOR DEACTIVATION.

In subpart 1., the purpose of the deactivation plan is to provide the commissioner with detailed descriptions of how an area will be converted from mining to a subsequent land use. The general reclamation plans which were presented in the application for a permit to mine may need to be updated or modified based on experience gained during mining. The deactivation plan therefore provides the opportunity to develop, modify, and make final, the plan for completing reclamation of the mining area. Because of this plan's importance, it must be approved by the commissioner in the same manner as if the permit to mine were being amended.

Subpart 2. It is reasonable to require that the deactivation plan be submitted two years prior to the deactivation of any portion of a mining area as final reclamation responsibilities, such as the development of final topography and water management structures, should be an integral part of the last stages of mining. Two years will also allow sufficient time for the commissioner to review the plan and grant final approval, and give the permittee ample time to schedule final reclamation activities.

The requirement to submit annual reports is waived after approval of the deactivation plan because of the detailed level of information expected in the plan. Items in subpart 2. A. to E. list the information the plan must contain.

Subpart 2. A. It is reasonable to require detailed reclamation plans, schedules, and designs because it will be through these means that conversion from mining to a subsequent end use will be accomplished.

Subpart 2. B. It is reasonable to request information on soils since this will influence the type of vegetation the area will support.

Subpart 2. C. The water table will influence the success of vegetation and information describing it is therefore reasonable to request.

Subpart 2. D. Information describing water control structures such as ditches, settling ponds, dams, or weirs is essential, since these structures will regulate water levels. It is also reasonable to require information regarding maintenance of these structures, since their continual functioning may be crucial to the success of the subsequent end use.

Subpart 2. E. It is reasonable to require an update of the management agreement with the landowner, to ensure continued management of the area.

6131.0180 REQUEST FOR RELEASE.

Subpart 1. describes the purpose of the request for release. The request for release initiates the process by which a permittee is relieved of any further responsibility for all or part of a mining area. Information provided in a request for release is used to evaluate whether the permittee has completed all of the reclamation responsibilities required by the permit to mine. It is reasonable for the commissioner to make a careful examination of those portions of a mining area requested for release, since once release is granted the permittee has no further reclamation or financial obligations for those areas.

Subpart 2. identifies the information that should be contained in a request for release. If maintenance (subpart 2. A.) is necessary to ensure the continued success of the reclamation plan, then it is reasonable that such provisions be detailed to the commissioner. It is reasonable to have a record of ownership of the mining area and the remaining facilities (subpart 2. B.) so that it can be ascertained who ultimately has responsibility for the land and any facilities that remain after release from the permit. A final map of the reclaimed mining area (subpart 2. C.) is reasonable and necessary to evaluate whether the permittee has met the reclamation requirements of the permit to mine. The items listed in subpart 2. C. (1) to (4) are all important aspects of the permit to mine and should reasonably be identified and addressed in the request for release.

PROCEDURES AND STANDARDS

6131.0190-6131.0340

Minnesota Statutes, sections 93.44-93.51 list the various procedures which are associated with the reclamation of mined peatlands. These include: Permits to mine, variances, amendments, revocation, modification, suspension, cancellation, assignment, requiring a performance bond, appeal, and penalties for violation. In addition, these statutes outline specific procedures which the commissioner must follow, including time limits by which certain decisions or actions must be made or taken. The procedural portion of these rules (parts 6131.0190 - 6131.0340) are the same as those found in the rules for mining and reclamation of iron ore and taconite with the following exceptions: (1) the requirement to publish the names of mineral owners was deleted since peat mining is not expected to make the recovery of such minerals more difficult; and (2) numeric references were changed to conform to the numbering system of the peat rules.

Since no changes in the procedural portions were made by the legislature when the Mineland Reclamation Act was amended in 1983 to include mining of peat, it is reasonable to use the iron ore and taconite procedures (with the above noted exceptions) in the peat rules. In addition to the fact that the procedures are consistent with existing legislation, they have been proven effective in the iron ore and taconite permitting process.

The rules relating to mining and reclamation of iron and taconite underwent extensive review through a hearing process. Since they are now part of Minnesota Law via the rule promulgation process, it is not necessary to further address them in this statement of need and reasonableness.

SMALL BUSINESS CONSIDERATIONS IN THE RULEMAKING PROCESS

Minnesota Statutes, section 14.115 (supp. 1983) require that the DNR consider and incorporate rule language that reduces the impact of the rule on small businesses to the extent that doing so would not be contrary to statutory objectives that are the basis of the proposed rule. According to the definition of "small business" in Minnesota Statutes, section 14.115, subdivision 1, all existing peat mining operations in Minnesota are small businesses. However, it should be recognized that small businesses mining peat in Minnesota can have substantial acres of peatlands under production. It is likely that a peat mining operation in the state could have the maximum acres (3,000) of peatland under production and still fall within the statutory definition of a small business.

Reclamation needs are more dependent on the location, size, mining and processing methods, and products of the mining operation than on whether the operator fits the definition of a small business. Notwithstanding the fact that small businesses can conduct large peat mining operations, the rules were written to minimize, where reasonable, the compliance and reporting requirements that could be a burden to small businesses mining peat while at the same time providing for the wise development and reclamation of the state's peat resources.

Minnesota Statutes, section 14.115, subdivision 2 require the department to consider five methods for reducing the impact of the rules on small business. These are:

(1) the establishment of less stringent compliance or reporting requirements;

(2) the establishment of less stringent schedules or deadlines for compliance

or reporting requirements;

(3) the consolidation or simplification of compliance or reporting requirements;

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

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

The following is a discussion of how the rules have been written to accommodate these methods of reducing their impact on small businesses. As some of the methods are similar, they are grouped together for purposes of this discussion.

Methods 1, 2, and 3: Simplification of Compliance Schedules and Requirements.

As described in the purpose and policy section (part 6131.0020), these rules provide a framework within which specific permit compliance requirements will be determined. The mine design section (part 6131.0110, subpart 2.) provides an example. This subpart does not set forth requirements that may make it economically impossible for a small business but, instead, identifies four general guidelines that are reasonable for all peat mining operators to follow. The permit requirements necessary to achieve compliance with the mine design section will be less sophisticated for a small business conducting a small peat mining operation. For example, it is required that open water areas, upon abandonment, shall have stable shorelines and that water levels shall not fluctuate to expose large areas of land. For a small business mining peat, the size of open water areas upon abandonment will be correspondingly small. Therefore the mine design requirements to ensure stabilized

shorelines and minimal fluctuation of water levels will be proportionately reduced.

The site restoration section (part 6131.0120, subpart 2) identifies a number of reclamation options. These include a basic land stabilization option (planting vegetation on exposed soil surfaces) or more management intensive reclamation options such as timber production, biomass production, wildlife habitat, and agriculture. The latter four are considered more intensive options as they require continued land management to ensure their success. The basic land stabilization option will minimize the requirements of reclamation for small businesses. At the same time it provides for the stabilization of the land surface.

While the more intensive reclamation options are likely to be more difficult to achieve, one of these options, agriculture, may also be attractive to the small business peat operator. Currently there are some farmers that are either mining peat or plan to mine peat in conjunction with their farming activities. It is their intention to farm the mined peatland after some or all of the peat has been removed. Thus farming is a reasonable and cost effective land reclamation option for the farmer who practices peat mining as a means to improve the land and make it more suitable for farming in the future. For this reason, farming was included as a reclamation option.

Methods 1, 2, and 3: Simplification of Reporting Schedules and Requirements.

There are three reporting requirements in the rules. These are:

(1) the permit application;

(2) the annual report; and

(3) the plan for deactivation.

The department has reduced the reporting requirements as well as content requirements in these reports to a minimum while ensuring that adequate information is obtained for a reclamation permitting process. To further expedite the reporting procedures, the department is preparing a workbook for the permit application that will present to the applicant a step by step procedure for obtaining a permit to mine. In addition, DNR reclamation staff will hold a preapplication conference at the applicant's mine site in order to review with the applicant what information is necessary and where it can be obtained. This conference in conjunction with the workbook should streamline the application process by educating the applicant as to what information is required, why it is necessary, and where it may be obtained. This should eliminate costly and time consuming mistakes in submitting incorrect or unnecessary information.

A workbook will be developed for the annual report as well and DNR reclamation staff will be available to discuss its content requirements with the permittee on an annual basis. It is believed that at least a yearly report is reasonable in order that the department may be able to effectively monitor mining and reclamation success. To allow more than a year between submittal of reports (and associated field inspections) could result in the perpetuation of incorrect reclamation procedures (improper planting of vegetation) that could require intensive remedial efforts if not corrected immediately.

The plan for deactivation comes near the end of the mining operation. The department has not yet developed a workbook for the deactivation plan. However, it is the department's intention to do this and have workbooks

available for all applicants. Again, DNR reclamation staff will be available to assist in an explanation of the plan's requirements and thus simplify the reporting process.

Method 4: Establishment of Separate Performance Standards.

The rules do not contain separate performance standards for small businesses. As discussed earlier, the rules provide a context or framework in which permit design and operational standards are developed on a site specific basis. This permitting procedure should allow flexible but fair and effective standards to be applied to the small business operator.

The rules also incorporate a variance procedure that may be useful to the small business. By demonstrating to the department that strict enforcement of any portion of the rules would cause undue hardship or would be unreasonable or not feasible, and where the applicant (or permittee) provides an acceptable alternative to accomplishing the goals of the rules, the requirement of the rule may be waived. The rules are drafted with goal statements that parallel the design and reclamation requirements of each section. Thus with an understanding of the goal statements, the small business may propose alternative methods of complying with the rules. This variance procedure is contained within the procedural portion of the rules. As part of the metallic reclamation rules, the variance procedure has been used successfully by the small scram mining businesses.

Method 5: Exemption From Rules.

Minnesota Statutes, section 93.461 (c) exempts from compliance with the rules all peat mining operations 40 acres or less in size from which not more than

1,000 tons per year of air-dried peat are removed, unless the commissioner determines that there is potential for significant environmental effects from the peat mining operation.

Beyond this authorized exemption in the law, the rules do not contain any further exemptions except through the variance procedure described above. The department feels that further exemption is not necessary in light of the variance option as well as the fact that there are very few specific requirements in the rules. The development of permit requirements on a site specific basis takes into consideration the small business operator and should allow for an equitable and effective permitting program.

Effect of the Rules on Agricultural Lands.

Minnesota Statutes, section 14.11 require that the DNR consider the effect of the rules on agricultural lands. There will be little or no mining of peat on agricultural lands so these rules will have no effect. In addition, these rules do not apply to the agricultural use of peatlands.

Participation in Rulemaking.

In the preparation of these rules, the DNR has distributed preliminary drafts to all existing peat producers as well as potential peat developers the department has identified. DNR staff have visited all active mining operations in the state at least once to meet with the operators and landowners that will be affected by these rules. Some of their comments have been incorporated in subsequent drafts of the rules. Other comments and requests could not be incorporated as they would be contrary to the statutory objectives that are the basis of the proposed rulemaking procedure.

The peat mining industry in Minnesota and other interested parties have been informed at all stages in the rulemaking process. The Notice of Intent to Draft Rules was published in the State Register in August 1983. The Notice of Intent to Solicit Outside Information was published in May 1984. A copy of this notice and a preliminary draft of the rules were distributed to approximately 300 interested or affected parties. Based on comments received during the summer of 1984, a second draft was prepared and distributed again in October 1984. Finally, the Notice of Intent to Adopt Rules Without Public Hearing together with the final draft of the rules were published in the December 3, 1984 edition of the State Register. These were also distributed, along with the Statement of Need and Reasonableness, to all existing and potential peat producers in the state.

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STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Rules
for Peatland Reclamation

CERTIFICATE OF COMPLIANCE

I am familiar with the laws and rules of the state regarding the adoption of rules. I am aware of the steps the Department of Natural Resources has taken in adopting these rules. I certify that the Department has complied with the laws and rules.

Dated June 25, 1985.

A. W. Clapp III

A. W. CLAPP III
Special Assistant
Attorney General

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

DEANNA TRCKA, being first duly sworn upon oath, deposes and says:

That at the City of St. Paul, County and State aforementioned, on the 25th day of June, 1985, she served the attached

Letter re: Peatland Reclamation Rules

by depositing in the United States Mail at said City, a true and correct copy thereof, properly enveloped, with first class postage prepaid, and addressed to:

Mr. John Frank
Mr. Eugene Morabito

Great Lakes Gas Transmission Company
2100 Buhl Building
Detroit,Michigan 48226

Deanna Trcka
DEANNA TRCKA

Subscribed and sworn to before me
this 25 day of June, 1985

Linda K. Rogers
Notary Public

LINDA K. ROGERS
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Oct. 2, 1986

June 1985

Mr. John Frank
Mr. Eugene Morabito

Great Lakes Gas Transmission Company
2100 Buhl Building
Detroit, Michigan 48226

Re: Peatland Reclamation Rules

Gentlemen:

We are writing, as you requested, to let you know that the proposed rules, now in final form, have been submitted by the Department of Natural Resources to the attorney general's office for review for form and legality.

Enclosed is a copy of the Findings of Fact which tells you what changes were made from the rule as proposed.

If you wish to comment on the legality of the rules, you must get the comments to the attorney general within ten days, by writing or calling Office of the Attorney General, State Administration Building, St. Paul, MN 55155, telephone (612) 296-7030.

Yours very truly,

A. W. CLAPP III
Special Assistant
Attorney General

AWC:jo
Enclosure