

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1256 05.0004.0700

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 2-27-86
DATE FOR REVIEW 3-7-86
DATE DUE 3-13-86

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

Approved 3-12-86 JMM Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 3-12 Revisor approved 2.27.86
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 2.25.86 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 5.14.84 + comments

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency contains small biz statement

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

✓ Mailing list Certificate

✓ Publication in State Register
12.16.85 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

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

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

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of ~~Mailing~~ Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: THOMAS J. KALITOWSKI, Executive Director
Minnesota Pollution Control Agency

DATE: 3/12/86

ATTN: JOCELYN F. OLSON
Special Assistant Attorney General

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: Proposed Minnesota Rules Governing Section 401 Certification Minn. Rules, Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules Minn. Rules 7001.0010 and 7001.0020

The above-referenced rule has been approved as to its legality by the Attorney General on March 12, 1986.

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:pmf

Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1256

AG copy

Minnesota Pollution Control Agency

Adopted Rules Relating to Processing 401 Certifications and Other Amendments

Rules as Adopted

7001.0010 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Permit.** "Permit" means a discharge, emission, and disposal authorization; a construction, installation, or operation authorization; and other agency authorizations designated "permit" in Minnesota Statutes, chapters 115 and 116, including Minnesota Statutes, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4a; 116.081; and 116.091. "Permit" does not include an "order," "variance," or "stipulation agreement" as defined in part 7000.0100 and does not include a "certification." However, the exclusion of "certification" from the definition of "permit" shall not in any way be considered to affect the applicability of parts 7001.0010 to 7001.0210 to the processing of certifications by the agency under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

Subp. 4. [Unchanged.]

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to the following:

A. to J. [Unchanged.]

K. The processing of certifications under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

7001.1400 APPLICABILITY.

Parts 7001.1400 to 7001.1470 govern the processing of certifications by the agency under section 401 of the Clean Water Act, United States Code, title 33, section 1341

(hereinafter "section 401 certifications"). Parts 7001.0010 to 7001.0210 apply to the processing of section 401 certifications except as specifically otherwise provided in parts 7001.1400 to 7001.1470. In applying parts 7001.0010 to 7001.0210 to the processing of section 401 certifications, the word "permit" shall be construed to mean "section 401 certification" and the term "permittee" shall be construed to mean "certificate holder." Parts 7000.0100 to 7000.1600, 7001.0010 to 7001.0210, and 7001.1400 to 7001.1470 shall be construed to complement each other.

7001.1410 DEFINITIONS.

Subpart 1. **Scope.** The definitions in Minnesota Statutes, section 115.01 apply to the terms used in parts 7001.1400 to 7001.1470 unless those terms are defined in this part.

As used in parts 7001.1400 to 7001.1470, the terms in subparts 2 to 4 have the meanings given them.

Subp. 2. **Director.** "Director" means the director of the Minnesota Pollution Control Agency.

Subp. 3. **Clean Water Act.** "Clean Water Act" means the federal Water Pollution Control Act, as amended, commonly referred to as the Clean Water Act, United States Code, title 33, sections 1251 et seq.

Subp. 4. **National pollutant discharge elimination system.** "National pollutant discharge elimination system" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under sections 307, 318, 402, and 405 of the Clean Water Act, United States Code, title 33, sections 1317, 1328, 1342, and 1345.

7001.1420 REQUIREMENT TO APPLY FOR CERTIFICATION.

Any person who is required by section 401 of the Clean Water Act, United States Code, title 33, section 1341, to obtain a certification from the state of Minnesota shall make application to the agency.

7001.1430 APPLICATION DEADLINES.

Part 7001.0040, subparts 1 and 2 apply to applications for issuance, modification, revocation and reissuance, or reissuance of a section 401 certification, except that the time period referenced in part 7001.0040, subpart 1, shall be 90 days instead of 180 days.

7001.1440 PUBLIC NOTICE OF APPLICATION AND PRELIMINARY DETERMINATION.

Subpart 1. **Public notice required.** Except as provided in subpart 2, the director shall prepare and issue public notices in accordance with the requirements of part 7001.0100, subpart 4, except that the public comment period shall be established by the director on a case-by-case basis after considering the scope, nature, and potential impacts on water quality of the project. In no event shall the public comment period be less than ten days.

Subp. 2. **Exception.** The director is not required to prepare and distribute a public notice pursuant to part 7001.0100, subpart 4, if the director finds that a federal agency or department has prepared and distributed or will prepare and distribute a public notice concerning a section 401 certification in accordance with the public notice requirements applicable to the federal agency or department under federal statutes or regulations, so long as the notice is actually prepared and distributed.

7001.1450 FINAL DETERMINATION.

Subpart 1. **Action required.** The agency shall make final determinations with respect to section 401 certifications by taking one of the following actions:

A. Issue, reissue, revoke and reissue, or modify a section 401 certification in accordance with part 7001.0140, subpart 1 and upon making a finding that the discharge which is the subject of the section 401 certification will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, United States Code, title 33, sections 1311, 1312, 1313, 1316,

and 1317.

B. Deny or revoke a section 401 certification upon making the findings set forth in part 7001.0140, subpart 2 or the findings set forth in subpart 2.

C. Waive the agency's authority to issue a section 401 certification in accordance with part 7001.1460.

Subp. 2. **Denial of certification required.** The agency shall deny a section 401 certification if the agency finds that the issuance will result in a discharge of a radiological, chemical, or biological warfare agent.

7001.1460 WAIVER.

With respect to the discharge that is the subject of the application, the agency is considered to have waived its authority to issue a section 401 certification under the following circumstances:

A. If the agency notifies the applicant in writing that it is waiving the agency's authority to certify the project. If issuance of the waiver is conditional, the notification shall specify the conditions that must be met.

B. If the agency fails or refuses to make a final determination on an application for a section 401 certification within one year after receipt of the application and the agency's failure or refusal to act is not a result of the applicant's failure or refusal to cure a deficiency in the application as required by the director pursuant to part 7001.0090.

7001.1470 TERMS AND CONDITIONS OF SECTION 401 CERTIFICATIONS.

Subpart 1. **General terms required.** A section 401 certification issued by the agency shall include the following:

A. The name and address of the certificate holder.

B. A statement that the agency has examined the section 401 certification application and any other information furnished by the applicant and bases its certification upon an evaluation of this information that is relevant to water quality considerations.

C. A statement that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards.

D. The terms and conditions in part 7001.0150, except that the provisions of part 7001.0150, subpart 1 do not apply to section 401 certifications. In addition to the special conditions in part 7001.0150, subpart 2, a section 401 certification shall contain the special conditions described in subpart 2.

Subp. 2. **NPDES conditions.** A section 401 certification shall contain the special conditions described in part 7001.1080, subparts 2 to 9, which conditions shall be established in the same manner as special conditions are established under part 7001.1080 for national pollutant discharge elimination system permits.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 12 1986 9:47 A.M.
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
3/12 1986
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
ASSISTANT ATTORNEY GENERAL

Minnesota Pollution Control Agency

Proposed Rules Relating to Processing 401 Certifications and Other Amendments

Rules as Proposed

7001.0010 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Permit.** "Permit" means a discharge, emission, and disposal authorization; a construction, installation, or operation authorization; and other agency authorizations designated "permit" in Minnesota Statutes, chapters 115 and 116, including Minnesota Statutes, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4a; 116.081; and 116.091. "Permit" does not include an "order," "variance," or "stipulation agreement" as defined in part 7000.0100 and does not include a "certification." However, the exclusion of "certification" from the definition of "permit" shall not in any way be considered to affect the applicability of parts 7001.0010 to 7001.0210 to the processing of certifications by the agency under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

Subp. 4. [Unchanged.]

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to the following:

A. to J. [Unchanged.]

K. The processing of certifications under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

Rules as Proposed (all new material)

7001.1400 APPLICABILITY.

Parts 7001.1400 to 7001.1470 govern the processing of certifications by the agency under section 401 of the Clean

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Water Act, United States Code, title 33, section 1341 (hereinafter "section 401 certifications"). Parts 7001.0010 to 7001.0210 apply to the processing of section 401 certifications except as specifically otherwise provided in parts 7001.1400 to 7001.1470. In applying parts 7001.0010 to 7001.0210 to the processing of section 401 certifications, the word "permit" shall be construed to mean "section 401 certification" and the term "permittee" shall be construed to mean "certificate holder." Parts 7000.0100 to 7000.1600, 7001.0010 to 7001.0210, and 7001.1400 to 7001.1470 shall be construed to complement each other.

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As used in parts 7001.1400 to 7001.1470, the terms in subparts 2 to 4 have the meanings given them.

Subp. 2. **Director.** "Director" means the director of the Minnesota Pollution Control Agency.

Subp. 3. **Clean Water Act.** "Clean Water Act" means the federal Water Pollution Control Act, as amended, commonly referred to as the Clean Water Act, United States Code, title 33, sections 1251 et seq.

Subp. 4. **National pollutant discharge elimination system.** "National pollutant discharge elimination system" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under sections 307, 318, 402, and 405 of the Clean Water Act, United States Code, title 33, sections 1317, 1328, 1342, and 1345.

7001.1420 REQUIREMENT TO APPLY FOR CERTIFICATION.

Any person who is required by section 401 of the Clean Water Act, United States Code, title 33, section 1341, to obtain a certification from the state of Minnesota shall make application to the agency.

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7001.1430 APPLICATION DEADLINES.

Part 7001.0040, subparts 1 and 2 apply to applications for issuance, modification, revocation and reissuance, or reissuance of a section 401 certification, except that the time period referenced in part 7001.0040, subpart 1, shall be 90 days instead of 180 days.

7001.1440 PUBLIC NOTICE OF APPLICATION AND PRELIMINARY DETERMINATION.

Subpart 1. **Public notice required.** Except as provided in subpart 2, the director shall prepare and issue public notices in accordance with the requirements of part 7001.0100, subpart 4, except that the public comment period shall be established by the director on a case-by-case basis after considering the scope, nature, and potential impacts on water quality of the project. In no event shall the public comment period be less than ten days.

Subp. 2. **Exception.** The director is not required to prepare and distribute a public notice pursuant to part 7001.0100, subpart 4, if the director finds that a federal agency or department has prepared and distributed or will prepare and distribute a public notice concerning a section 401 certification in accordance with the public notice requirements applicable to the federal agency or department under federal statutes or regulations, so long as the notice is actually prepared and distributed.

7001.1450 FINAL DETERMINATION.

Subpart 1. **Action required.** The agency shall make final determinations with respect to section 401 certifications by taking one of the following actions:

A. Issue, reissue, revoke and reissue, or modify a section 401 certification in accordance with part 7001.0140, subpart 1 and upon making a finding that the discharge which is the subject of the section 401 certification will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, United States Code, title 33, sections 1311, 1312, 1313, 1316,

FILED IN THE REVISOR OF STATUTES OFFICE BY:

and 1317.

B. Deny or revoke a section 401 certification upon making the findings set forth in part 7001.0140, subpart 2 or the findings set forth in subpart 2.

C. Waive the agency's authority to issue a section 401 certification in accordance with part 7001.1460.

Subp. 2. **Denial of certification required.** The agency shall deny a section 401 certification if the agency finds that the issuance will result in a discharge of a radiological, chemical, or biological warfare agent.

7001.1460 WAIVER.

With respect to the discharge that is the subject of the application, the agency is considered to have waived its authority to issue a section 401 certification under the following circumstances:

A. If the agency notifies the applicant in writing that it is waiving the agency's authority to certify the project. If issuance of the waiver is conditional, the notification shall specify the conditions that must be met.

B. If the agency fails or refuses to make a final determination on an application for a section 401 certification within one year after receipt of the application and the agency's failure or refusal to act is not a result of the applicant's failure or refusal to cure a deficiency in the application as required by the director pursuant to part 7001.0090.

7001.1470 TERMS AND CONDITIONS OF SECTION 401 CERTIFICATIONS.

Subpart 1. **General terms required.** A section 401 certification issued by the agency shall include the following:

A. The name and address of the certificate holder.

B. A statement that the agency has examined the section 401 certification application and any other information furnished by the applicant and bases its certification upon an evaluation of this information that is relevant to water quality considerations.

FILED IN THE OFFICE OF THE REVISOR OF STATUTES OFFICE BY:

C. A statement that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards.

D. The terms and conditions in part 7001.0150, except that the provisions of part 7001.0150, subpart 1 do not apply to section 401 certifications. In addition to the special conditions in part 7001.0150, subpart 2, a section 401 certification shall contain the special conditions described in subpart 2.

Subp. 2. **NPDES conditions.** A section 401 certification shall contain the special conditions described in part 7001.1080, subparts 2 to 9, which conditions shall be established in the same manner as special conditions are established under part 7001.1080 for national pollutant discharge elimination system permits.

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD869

Agency: Minnesota Pollution Control Agency

Division:

Agency Contact: Curtis Sparks

Minnesota Rules: Parts 7001.0010; 7001.0020; 7001.1400 to 7001.1470

Title: Proposed Rules Relating to Processing 401 Certifications and Other Amendments

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

David S. Niss
Assistant Revisor
Phone: 297-2948
Date: November 27, 1985

APPROVED AS TO FORM AND LEGALITY
3/12 1986
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Minnesota Rules Governing Section 401 Certification Minn. Rules, Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules Minn. Rules 7001.0010 and 7001.0020

ORDER ADOPTING RULES

Notice of the Minnesota Pollution Control Agency's intent to adopt the above-entitled rule amendments without a public hearing was published in the State Register on December 16, 1985 and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. § 14.14 (Supp. 1985) and to interested persons, on December 16, 1985. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, reviewing and considering the comments, and after determining the need for and reasonableness of the above-captioned rule amendments.

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules Parts 7001.1400 to 7001.1470 and associated amendments to permit rules Minn. Rules 7001.0010 and 7001.0020, establishing procedures related to Section 401 Certification, are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. §§ 115.03, subd. 1(e) and 116.07, subd. 3 (Supp. 1985).

Duane A Dahlberg
Duane Dahlberg
Chairman

Thomas J. Kalitowski
Executive Director

Dated: February 25, 1986

Tuesday, June 12
District D
Regina High School
Room 116
4225 Third Av. S.
Minneapolis, Mn. 55409

Wednesday, June 13
District E
South High School
Room 101
3131-19th Av. S.
Minneapolis, Mn. 55407

Thursday, June 14
District F
Hennepin County Government Center
Meeting Room A—Level A
300 S. Sixth St.
Minneapolis, Mn. 55487

Monday, June 18
District G
Fridley City Hall
Classroom—Basement Level
6431 University Av.
Fridley, Mn. 55432

Tuesday, June 19
District H
Brooklyn Center City Hall
Council Chambers
6301 Shingle Creek Parkway
Brooklyn Center, Minnesota 55430

Monday, June 25
District K
West St. Paul City Hall
Conference Room
1616 Humboldt Ave.
West. St. Paul, Mn. 55118

Tuesday, June 26
District L
White Bear Lake City Hall
Council Chambers, North Bldg.
4820 Cook Av.
White Bear Lake, Mn. 55110

Wednesday, June 27
District M
Hopkins City Hall
Council Chambers
1010 First St. S.
Hopkins, Mn. 55343

Thursday, June 28
District N
Burnsville City Hall
Council Chambers
1313 E. Hwy. 13
Burnsville, Mn.55337

Pollution Control Agency

Outside Opinion Sought Regarding Implementation of a Procedural Rule for Section 401 Certification Actions

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) is seeking information and opinions from sources outside the Agency on the development of a procedural rule for actions required under Section 401 of the Clean Water Act. The rule addresses the procedures for reviewing, acting upon, and the conditions of Section 401 Certifications. Interested persons or groups may submit statements of information or opinions orally or in writing. Written comments received by June 7, 1984, will become a part of the rulemaking record on this matter. Written comments should be submitted to Mary Kimlinger, Minnesota Pollution Control Agency, Division of Water Quality, 1935 West County Road B-2, Roseville, Minnesota 55113, or by telephone at (612) 296-7232.

Future announcements concerning activities on this subject will be published in the *State Register* and/or mailed to those persons who have participated by written comment or have requested to be placed on a mailing list by contacting Mary Kimlinger at the address or telephone number listed above.

May 3, 1984

Sandra S. Gardebring
Executive Director

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Governing Section 401 Certifications, Minn. Rules Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

It is hereby ordered this 23rd day of October, 1985, that Notice of Intent to Adopt Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and be published in the State Register.

for Barbara Lindsay Sims

THOMAS J. KALITOWSKI
Executive Director

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Thomas J. Kalitowski, do hereby certify that I am the Executive Director of the Minnesota Pollution Control Agency (Agency), an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Agency duly and properly called and held on the 22nd day of October, 1985, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Executive Director of the Minnesota Pollution Control Agency (Agency) is hereby granted the authority and directed to sign an order of the Agency directing that notice be given of the Agency's intent to adopt without a public hearing the attached Minn. Rules Parts 7001.1400 to 7001.1470 and associated amendments to the Agency's permit rules, Minn. Rules Parts 7001.0010 and 7001.0020, to sign the notice thereof, and to perform any acts incidental thereto.

BE IT FURTHER RESOLVED, that prior to publishing the proposed rules in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required in Minn. Stat. §14.07, subd. 2 (1984).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Director is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules and rule amendments as well as perform any acts incidental thereto, including but not limited to signing an order for hearing and notice of hearing as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of October, 1985.

THOMAS J. KALITOWSKI
Executive Director

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Governing Section 401 Certifications, Minn. Rules Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends, without a public hearing, to adopt Minn. Rules 7001.1400 to 7001.1470, Section 401 Certification Rules, and associated amendments to the Agency's Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020.

The proposed rules, if adopted, will establish procedural and substantive requirements for certifications processed by the Agency under Section 401 of the Clean Water Act, 33 U.S.C. §1341 (1983). The proposed rules are authorized by Minn. Stat. §115.03 (1984). A copy of the proposed rules is enclosed. One free copy of the rules is available on request from the Agency. Please contact the person whose name and address appears below.

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

Lou Flynn
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7355

Interested persons have until 4:30 p.m. on January 17, 1986, to submit comments on the proposed rules. Comments should be submitted to Lou Flynn at the address stated above. The proposed rules may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed rules.

Unless the Agency receives twenty-five written requests for a public hearing on the proposed rules during the comment period, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§14.131 - 14.20 (Supp. 1985). If a person desires to request a public hearing, the Agency requests

that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

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

You are hereby advised, pursuant to Minn. Stat. §14.115 (Supp. 1985), "Small business considerations in rulemaking," that the proposed amendments may affect small businesses. However, the proposed rules are generally procedural in nature; the substantive requirements for the protection of water quality are already applicable to discharges subject to Section 401 certification requirements. Based on the Agency's experience with using procedures similar to those embodied in the proposed rules in the past, the procedures do not impose a hardship on small businesses.

for Barbara Lindsay Sims

THOMAS J. KALITOWSKI
Executive Director

Dated: December 2, 1985

Minnesota Pollution Control Agency

Proposed Rules Relating to Processing 401 Certifications and Other Amendments

Rules as Proposed

7001.0010 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Permit.** "Permit" means a discharge, emission, and disposal authorization; a construction, installation, or operation authorization; and other agency authorizations designated "permit" in Minnesota Statutes, chapters 115 and 116, including Minnesota Statutes, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4a; 116.081; and 116.091. "Permit" does not include an "order," "variance," or "stipulation agreement" as defined in part 7000.0100 and does not include a "certification." However, the exclusion of "certification" from the definition of "permit" shall not in any way be considered to affect the applicability of parts 7001.0010 to 7001.0210 to the processing of certifications by the agency under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

Subp. 4. [Unchanged.]

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to the following:

A. to J. [Unchanged.]

K. The processing of certifications under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

Rules as Proposed (all new material)

7001.1400 APPLICABILITY.

Parts 7001.1400 to 7001.1470 govern the processing of certifications by the agency under section 401 of the Clean

DSN

Water Act, United States Code, title 33, section 1341 (hereinafter "section 401 certifications"). Parts 7001.0010 to 7001.0210 apply to the processing of section 401 certifications except as specifically otherwise provided in parts 7001.1400 to 7001.1470. In applying parts 7001.0010 to 7001.0210 to the processing of section 401 certifications, the word "permit" shall be construed to mean "section 401 certification" and the term "permittee" shall be construed to mean "certificate holder." Parts 7000.0100 to 7000.1600, 7001.0010 to 7001.0210, and 7001.1400 to 7001.1470 shall be construed to complement each other.

7001.1410 DEFINITIONS.

Subpart 1. Scope. The definitions in Minnesota Statutes, section 115.01 apply to the terms used in parts 7001.1400 to 7001.1470 unless those terms are defined in this part.

As used in parts 7001.1400 to 7001.1470, the terms in subparts 2 to 4 have the meanings given them.

Subp. 2. Director. "Director" means the director of the Minnesota Pollution Control Agency.

Subp. 3. Clean Water Act. "Clean Water Act" means the federal Water Pollution Control Act, as amended, commonly referred to as the Clean Water Act, United States Code, title 33, sections 1251 et seq.

Subp. 4. National pollutant discharge elimination system. "National pollutant discharge elimination system" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under sections 307, 318, 402, and 405 of the Clean Water Act, United States Code, title 33, sections 1317, 1328, 1342, and 1345.

7001.1420 REQUIREMENT TO APPLY FOR CERTIFICATION.

Any person who is required by section 401 of the Clean Water Act, United States Code, title 33, section 1341, to obtain a certification from the state of Minnesota shall make application to the agency.

7001.1430 APPLICATION DEADLINES.

Part 7001.0040, subparts 1 and 2 apply to applications for issuance, modification, revocation and reissuance, or reissuance of a section 401 certification, except that the time period referenced in part 7001.0040, subpart 1, shall be 90 days instead of 180 days.

7001.1440 PUBLIC NOTICE OF APPLICATION AND PRELIMINARY DETERMINATION.

Subpart 1. **Public notice required.** Except as provided in subpart 2, the director shall prepare and issue public notices in accordance with the requirements of part 7001.0100, subpart 4, except that the public comment period shall be established by the director on a case-by-case basis after considering the scope, nature, and potential impacts on water quality of the project. In no event shall the public comment period be less than ten days.

Subp. 2. **Exception.** The director is not required to prepare and distribute a public notice pursuant to part 7001.0100, subpart 4, if the director finds that a federal agency or department has prepared and distributed or will prepare and distribute a public notice concerning a section 401 certification in accordance with the public notice requirements applicable to the federal agency or department under federal statutes or regulations, so long as the notice is actually prepared and distributed.

7001.1450 FINAL DETERMINATION.

Subpart 1. **Action required.** The agency shall make final determinations with respect to section 401 certifications by taking one of the following actions:

A. Issue, reissue, revoke and reissue, or modify a section 401 certification in accordance with part 7001.0140, subpart 1 and upon making a finding that the discharge which is the subject of the section 401 certification will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, United States Code, title 33, sections 1311, 1312, 1313, 1316,

and 1317.

B. Deny or revoke a section 401 certification upon making the findings set forth in part 7001.0140, subpart 2 or the findings set forth in subpart 2.

C. Waive the agency's authority to issue a section 401 certification in accordance with part 7001.1460.

Subp. 2. **Denial of certification required.** The agency shall deny a section 401 certification if the agency finds that the issuance will result in a discharge of a radiological, chemical, or biological warfare agent.

7001.1460 WAIVER.

With respect to the discharge that is the subject of the application, the agency is considered to have waived its authority to issue a section 401 certification under the following circumstances:

A. If the agency notifies the applicant in writing that it is waiving the agency's authority to certify the project. If issuance of the waiver is conditional, the notification shall specify the conditions that must be met.

B. If the agency fails or refuses to make a final determination on an application for a section 401 certification within one year after receipt of the application and the agency's failure or refusal to act is not a result of the applicant's failure or refusal to cure a deficiency in the application as required by the director pursuant to part 7001.0090.

7001.1470 TERMS AND CONDITIONS OF SECTION 401 CERTIFICATIONS.

Subpart 1. **General terms required.** A section 401 certification issued by the agency shall include the following:

A. The name and address of the certificate holder.

B. A statement that the agency has examined the section 401 certification application and any other information furnished by the applicant and bases its certification upon an evaluation of this information that is relevant to water quality considerations.

C. A statement that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards.

D. The terms and conditions in part 7001.0150, except that the provisions of part 7001.0150, subpart 1 do not apply to section 401 certifications. In addition to the special conditions in part 7001.0150, subpart 2, a section 401 certification shall contain the special conditions described in subpart 2.

Subp. 2. **NPDES conditions.** A section 401 certification shall contain the special conditions described in part 7001.1080, subparts 2 to 9, which conditions shall be established in the same manner as special conditions are established under part 7001.1080 for national pollutant discharge elimination system permits.

C. D. Besadny, Secretary WDNR, Box 7921 Madison Wisc 53707
Attn: Michael Cain

Colonel Joseph Briggs, USA Cof Eng. St Paul Dist. 1135 USPO + Custom House St Paul 55101
Attn: ~~Char Hanger~~ — Planning — Pete Fisher
— Operations — Harrold F. Taggatz
Regulatory Functions — Char Hanger

~~— USA Cof Eng — Detroit District~~

Charles H. Sutfin, Director, Water Division, EPA region V
Chicago

Administrative Secretary to the Board
Kenneth F. Plumb, Federal Energy Regulatory Commission,
Washington D.C. 20426

District Engineer, USA Cof Eng, Detroit District
PO Box 1027 Detroit, Mich.
48231

~~Commander, US Coast Guard, St. Louis Mo.~~
~~Attn: Bridge Section~~

COMMANDER (obr)
SECOND COAST GUARD DISTRICT
1430 OLIVE ST.
ST LOUIS, MO 63103

SUITE 515
1500 NORTH WILSON BLVD
ARLINGTON VA 22209 1

AM INSURANCE ASSOC
ATTN FRED McGARVEY
230 W MONROE ST
CHICAGO IL 60606 1

AM LUNG ASSN RAMSEY COUNTY
BARBARA L HUGHES MNG DIR
614 PORTLAND AVE
ST PAUL MN 55102 1

AMERICAN CRYSTAL SUGAR
ATTN W W BARR MGR ENV CONTR
101 N THIRD ST
MOORHEAD MN 56560 1

AMOCO PIPELINE CO
C W BERGSTROM DIV CHIEF ENG
2200 S MAIN ST
LOMBARD IL 60148 1

ANOKA CO COMM HEALTH & SOC SERV DEPT
ATTN GERTRUDE M JAMES
COURTHOUSE 4TH FL
ANOKA MN 55303 1

API INC
ATTN TERRY WOLD
2366 ROSE PLACE
ST PAUL MN 55113 1

ARMOUR & COMPANY
ATTN ROBERT J SHERMAN
CONAGRA CENTER
ONE CENTRAL PARK PLAZA
OMAHA NE 68102-1679 1

ASHLAND PETROLEUM COMPANY
ATTN RICHARD HETLAND
P O BOX 9
ST PAUL PARK MN 55071 1

ASSN OF MN COUNTIES
SUITE 300
555 PARK STREET
ST PAUL MN 55103 1

BOX 68
DURAND WI 54736 1

BARR ENGINEERING
7803 GLENROY RD
SUITE 100
MINNEAPOLIS MN 55435 1

BENDIX
ENVIR & PROCESS INST DIV
P O DRAWER 831
LEWISBURG W VA 24901 1

BRUCE E BENSON
ZONING OFFICER
COURTHOUSE
CARLTON MN 55718 1

BIO-CLEAN INC
RUSS LOWTHIAN
7900 XERXES AVE S
SUITE 902
BLOOMINGTON MN 55431 1

BLACK & VEATCH/MICHIGAN
ATTN ENVIRONMENTAL SPECIAL
200 RENAISSANCE CE #1220
DETROIT MI 48243 1

BLANDIN PAPER COMPANY
ATTN W J LICKE
115 FIRST STREET S W
GRAND RAPIDS MN 55744 1

BLANDIN WOOD PRODUCTS CO
ATTN CURT R FIRMAN
WAFERBOARD PLANT SITE BOX N
GRAND RAPIDS MN 55744 1

BOISE CASCADE CORPORATION
ATTN MR RUSS SUMMER
ENVIRONMENTAL ENGINEER
INT'L FALLS MN 56649 1

BOLTON & MENK INC
ATTN THOMAS A ROUSHAR
515 N FRONT ST
MANKATO MN 56001 1

GRANT ATTORNEY AT LAW
ATTN JOHN M BROEKER
2850 METRO DRIVE SUITE 800
MINNEAPOLIS MN 55420

CITY OF BROOKLYN CENTER
ATTN PATTY PAGE
6301 SHINGLE CREEK PKWY
BROOKLYN CE MN 55430

BILL BUDD
4270 JEFFERSON STREET
EXCELSIOR MN 55331

ROBERT S BURK
4344 IDS CENTER
MINNEAPOLIS MN 55402 1

BURLINGTON NORTHERN RLRD CO
9401 INDIAN CREEK PKWY
P O BOX 29136
OVERLAND PARK, KS 66201 1

BURLINGTON NORTHERN
LAW DEPARTMENT
176 EAST FIFTH STREET
ST PAUL MN 55101 1

CALC
ATTN PAM BARBOUR
122 W FRANKLIN AVE RM 302
MINNEAPOLIS MN 55404 1

CENEX
ATTN RALPH SCHLETTY
BOX 43089
ST PAUL MN 55164 1

DAVID CERA
2010 JERSEY AVE SO
ST LOUIS PARK MN 55426 1

CHAMPION INT'L CORP
KATHLEEN M BENNETT
DR OF REG AFFAIRS
ONE CHAMPION PLAZA
STAMFORD CN 06921 1

MARK W BELICZKY E P
MGR REG & LEG AFFAIRS
8275 NORTH HIGH ST
COLUMBUS OH 43085 2

CITIZENS FOR BETTER ENVIR
ATTN LEALLAN ESTREM
SUITE #201
1515 E LAKE ST
MINNEAPOLIS MN 55407 2

COLOR-AD PACKAGING INC
ATTN MICHAEL S KECKEISEN
3600 ALABAMA AVE
MINNEAPOLIS MN 55146 2

COMM HEALTH SERV BRD
ATTN BRUCE T ROWE
325 LAKE AVENUE S SUITE 604
DULUTH MN 55802 2

CONSULTING ENGINEERS DIV
SUITE 200
7200 HEMLOCK LANE N
MAPLE GROVE MN 55369 2

CONWED CORP PATENT COR
CYNTHIA L WEBER
444 CEDAR ST
P O BOX 64237
ST PAUL MN 55164 2

COOPERATIVE POWER ASSOC
ATTN WILLIAM KAUL
14615 LONE OAK ROAD
EDEN PRAIRIE MN 55344 2

COOPERATIVE POWER ASSOC
ATTN SCOTT SCHULER
14615 LONE OAK ROAD
EDEN PRAIRIE MN 55344 2

CORNELIUS CO
JERRY DIRKS
1 CORNELIUS PLACE
HIGHWAY 10 W
ANOKA MN 55303 2

DONALD B CRASSWELLER
LAW OFFICES
1000 ALWORTH BUILDING
DULUTH MN 55802 2

ATTN JOHN HERMAN
TEN SOUTH FIFTH ST
SUITE 930
MINNEAPOLIS MN 55401 2

MARK DAHL
500 MISSION RD
BLOOMINGTON MN 55420 2

DAIRYLAND POWER COOP
ATTN THOMAS A STEELE
P O BOX 817
2615 EAST AVENUE S
LA CROSSE WI 54601 2

DAKOTA COUNTY ATTORNEY
ROBERT F CAROLAN
1560 HIGHWAY 55
HASTINGS MN 55033 2

DAMES & MOORE
ATTN LARRY ANNEN
1550 NW HWY
PARK RIDGE IL 60068 2

DAMES & MOORE
ATTN GEORGE NICHOLAS
1550 NW HWY
PARK RIDGE IL 60068 2

DAVID BRASLAU ASSOCIATES
1313 5TH STREET S E #322
MINNEAPOLIS MN 55414 2

TOM LEHMAN
SUITE #388
HALL OF THE STATES
444 NORTH CAPITOL STREET
WASHINGTON D C 20001 2

DELANEY THOMPSON & SOLUM
ATTN ERIC W INGVALDSON
700 GALAXY BLDG
330 SECOND AVE SO
MINNEAPOLIS MN 55401 2

DEPT OF ARMY
JOHN AULBACH II 2 LT MSC
U S ARMY ENV HYGIENE AGENCY
FITZSIMONS ARMY MED CENTER
AURORA CO 80045 2

2200 FIRST BANK PLACE E
MINNEAPOLIS MN 55402 2

DORSEY & WHITNEY
ATTN BECKY A COMSTOCK
2200 FIRST BANK PLACE EAST
MINNEAPOLIS MN 55402 2

DORSEY LAW FIRM
ATTN MARK KASTOR
2200 FIRST BANK PLACE E
MINNEAPOLIS MN 55402 2

DULUTH MISSABE & IRON
RANGE RAILWAY CO
210 MISSABE BLDG
DULUTH MN 55802

E I DU PONT DE NEMOURS CO
ATTN MARILYN MOONEY
LEGAL DEPT (D7082)
1007 MARKET STREET
WILMINGTON DE 19898

ENVIR ENG & POLLUTION
CONTROL/3M 21-2W-06
DAVID M BENFORADO P E
P O BOX 33331
ST PAUL MN 55133

ENVIR RESEARCH GROUP
ATTN SALES & MARKETING
P O BOX 70006
135 STATE ST
ST PAUL MN 55107

ENVIRONMENTAL ENGINEERING
& POLLUTION CONTROL/3M
ATTN THOMAS ZOSEL
P O BOX 33331
ST PAUL MN 55133

ENVIRONMENTAL HEALTH
RON SPONG
DAKOTA CNTY GOV CENTER
1560 HWY 55
HASTINGS MN 55033

ENVIRONMENTAL TASK FORCE
1346 CONNECTICUT AVE N W
SUITE 730
WASHINGTON D C 20036

OFFICE OF PUBLIC AFFAIRS
230 S DEARBORN ST
CHICAGO IL 60604 3

EPA REGION V
ATTN DAVE ULLRICH
230 S DEARBORN ST
CHICAGO IL 60604 3

M NEAL ERDAHL
14900 61ST ST N
STILLWATER MN 55082 3

DOUG EWALD
15025 HIGHLAND TRAIL
MINNETONKA MN 55345 3

ERN-NORTH CENTRAL INC
ATTN SUSAN HOGLUND
SUITE 200 835 STERLING AVE
PALATINE IL 60067 3

FINANCE & COMMERCE
THE DAILY BUSINESS NEWS
615 SOUTH 7TH STREET
MINNEAPOLIS MN 55415 3

FMC CORP
NORTHERN ORDINANCE DIV
DOUGLAS HILDRE
4800 E RIVER ROAD
MINNEAPOLIS MN 55421 3

CONRAD M FREDIN
ATTORNEY AT LAW
811 FIRST NAT BANK BLDG
DULUTH MN 55802 3

FRUNDT FRUNDT & JOHNSON
117 WEST 5TH STREET
BLUE EARTH MN 56013 3

GENERAL MILLS INC
ATTN DONALD J THIMSEN
P O BOX 1113
MINNEAPOLIS MN 55440 3

GEO A HORMEL & CO
ATTN KEVIN C JONES
BOX 800
AUSTIN MN 55912 3

GNB INC
EVERETT MILTON
P O BOX 64100
ST PAUL MN 55164-0100 3

GOULD INC
PORTABLE BATTERY DIVISION
ATTN DOUGLAS ROBAHM
931 VANDALIA ST
ST PAUL MN 55114 3

D E GRAMMER
4410 E 4TH AVE
HIBBING MN 55746 3

HAMLINE U LAW SCHOOL
PUBLIC INTEREST CLINIC
ATTN BARBARA JOHNSON
ST PAUL MN 55104 3

HAMLINE U SCHOOL OF LAW
PUBLIC INTEREST AD
ADVOCACY CLINIC
ST PAUL MN 55104 3

ELLSWORTH HARPOLE
727 15TH AVE S E #41
MINNEAPOLIS MN 55414 3

J WILLIAM HAUN P E
SUITE 343
13911 RUDGEDALE DR
MINNETONKA MN 55343 3

HEALTH & SOCIAL SERVICES
ATTN ROBERT HUTCHISON
COURTHOUSE 4TH FLOOR
ANOKA MN 55303 3

MICHAEL HENNEN
4608 ALDRICH AVE S
MINNEAPOLIS MN 55409 3

DYKE WILLIAMS
HENNEPIN PARKS
3800 CTY RD 24
MAPLE PLAIN MN 55359

HENNINGSON DURHAM & RICH
ATTN DALE MCMICHAEL
300 PARKDALE 1 BLDG
5401 GAMBLE DRIVE
MINNEAPOLIS MN 55416

HESSIAN MCKASY & SODERBERG
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4700 IDS CENTER
MINNEAPOLIS MN 55402

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470 PILLSBURY CENTER
MINNEAPOLIS MN 55402

PAUL J HUBER LTD
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ST PAUL MN 55104

IBM CORPORATION
ATTN J P HARMON
DEPT 713/BLDG 658-D
ROCHESTER MN 55901

INDUST HEALTH ENG ASSOC INC
ATTN KNOWLTON J CAPLAN
P O BOX 9342
MINNEAPOLIS MN 55440

INDUSTRIAL FABRICATORS CO
P O BOX 1561
JACKSON TN 38301

INTERNATIONAL ECO SOCIETY
ATTN R J F KRAMER
1471 BARCLAY STREET
ST PAUL MN 55106

INTERSTATE POWER CO
PRESIDENT
1000 MAIN ST
DUBUQUE IA 52001

ATTN STEVEN N WILLIAMS
HENRY A WALLACE BLDG
DES MOINES IA 50319 4

ISAAK WALTON LEAGUE
MATTIE PETERSON
4370 WOODDALE AVE
ST LOUIS PARK MN 55424 4

ISAAK WALTON LEAGUE
RUTH SAARI
5412 FRANCE AVE SO APT H
EDINA MN 55410 4

IZAAK WALTON LEAGUE
MN DIVISION
P O BOX 24070
EDINA MN 55424 4
changed on disk 12-10

JONES HAUGH & SMITH INC
515 SOUTH WASHINGTON
ALBERT LEA MN 56007 4

KFIL RADIO
ATTN ERNIE HAIN
P O BOX 377
PRESTON MN 55965 4

KIMBERLY-CLARK CORP
ATTN LYNN A BRANBERG
401 N LAKE STREET
NEENAH WI 54956 4

KOPPERS COMPANY INC
ATTN JORDAN M DERN
1201 KOPPERS BLDG
PITTSBURGH PA 15219 4

KSTP AM RADIO
ATTN J B ECKERT
3415 UNIVERSITY AVE
ST PAUL MN 55114 4

AL KURKI
2904 W 3RD ST
DULUTH MN 55806 4

ATTN JOHN E DRAWZ
1100 FIRST NAT BANK BLDG
MINNEAPOLIS MN 55402 4

LAKE MINNETONKA CONS DIST
402 E LAKE ST
WAYZATA MN 55391 4

LAKE SUPERIOR
INDUSTRIAL BUREAU
1408 ALWORTH BLDG
DULUTH MN 55802 4

LAND O LAKES
ATTN JAMES A BOSCH
4001 LEXINGTON AVE N
ARDEN HILLS MN 55112 4

LEAGUE OF MINNESOTA CITIES
ATTN DON SLATER
183 UNIVERSITY AVE EAST
ST PAUL MN 55101 4

STEVEN LEBEAU
623 S 9TH ST APT 6
MINNEAPOLIS MN 55404 4

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LITTON INDUSTRIES
ATTN NATALIE GAULL
P O BOX 9461
MINNEAPOLIS MN 55420 4

ROBERT LOCKYEAR
14900 61ST ST N
STILLWATER MN 55082 4

M & M PROTECT CONSULTANTS
ATTN WM R HOYT
1500 NORTH STAR CENTER
MINNEAPOLIS MN 55402 4

2400 WYCLIFF STREET
ST PAUL MN 55114

MAYO CLINIC FOUNDATION
DAVID N FASS
HEMATOLOGY RESEARCH
ROCHESTER MN 55901

MEEB/REEC
CAROL LANGER REG COORD
UNIVERSITY OF MN MORRIS
PE ANNEX RM 32
MORRIS MN 56267

MIDLAND GLASS COMPANY
DONALD F HENNEN
PLANT MANAGER
P O BOX 69
SHAKOPEE MN 55379

CITY OF MILTONA
ATTN KEVIN LEE CLERK
MILTONA MN 56354

MINNEAPOLIS TRIBUNE
ATTN BOB FRANKLIN
425 PORTLAND AVE
MINNEAPOLIS MN 55488

MINNEGASCO
PAUL DENEKA
DR LAB & ENVIRON PRGMS
601 W 61ST ST
MINNEAPOLIS MN 55419

MINNEGASCO
GEORGE MASTOR
LEGAL DIVISION
201 SOUTH 7TH STREET
MINNEAPOLIS MN 55402

MINNESOTA FARMERS UNION
ATTN MARK McAFEE
1717 UNIVERSITY
ST PAUL MN 55104

THE MINNESOTA PROJECT
ATTN LONI KEMP
2222 ELM STREET S E
MINNEAPOLIS MN 55414

ATTN LOREN L JOHNSON
BOX 1318
GRAND FORKS ND 58201 5

MN AGRI GROWTH COUNCIL
8030 CEDAR AVE S
SUITE 213
BLOOMINGTON MN 55420 5

MN ASSOC HEALTH CARE FAC
ATTN RICK CARTER
2850 METRO DRIVE SUITE 429
MINNEAPOLIS MN 55420 5

MN CHAPTER OF ABC
ATTN DONALD E MONTGOMERY
6300 WALKER ST SUITE 109
MINNEAPOLIS MN 55416 5

MN COUN TROUT UNLIMITED
DAVE KOLBERT CHAIRMAN
2675 E RIVER ROAD
ROCHESTER MN 55901 5

MN ENV QUALITY BOARD
GREG LARSON
550 CEDAR STREET
ST PAUL MN 55101 5

MN MOTOR TRANSPORT ASSOC
ATTN JAMES N DENN
1821 UNIVERSITY RM 134N
ST PAUL MN 55104 5

MN MULTI HOUSING ASSOC
ATTN JOHN G HORNER
3100 W LAKE ST
MINNEAPOLIS MN 55416 5

MN NEWSPAPER ASSOC
845 6TH ST SUITE 400
MINNEAPOLIS MN 55402 5

MN RETAIL MERCHANTS ASSOC
ATTN JOHN E VAN DOORN
180 METRO SQUARE BLDG
ST PAUL MN 55101 5

ATTN PETE GATES
P O BOX 66568
AMF O'HARE IL 60666 5

MOSS FLAHERTY CLARKSON &
FLETCHER LAW OFFICES
1200 PILLSBURY CTR
200 S 6TH ST
MINNEAPOLIS MN 55402 5

MOTORCYCLE INDUSTRY COUNCIL
1235 JEFFERSON DAVIS HWY
SUITE 1410
ARLINGTON VA 22202 5

MPIRG
ATTN JAMES MILLER
2412 UNIVERSITY AVE S E
MINNEAPOLIS MN 55414 5

MPIRG
ATTN KENNETH PETERSON
2412 UNIVERSITY AVE S E
MINNEAPOLIS MN 55414 5

NAT'L SOLID WASTE MGMT ASSN
MARY AYDE
4649 BLOOMINGTON AVE S
MINNEAPOLIS MN 55407 5

NAT'L RENDERERS ASSOC INC
ATTN WILLIAM H PROKOP
2250 EAST DEVON AVE
DES PLAINES IL 60018 5

NCASI
ATTN REID MINER
CENTRAL LAKE ST REG CE
WESTERN MICHIGAN UNIV
KALAMAZOO MI 49008 5

NE IMPROVEMENT COUN
KAREN VARIAN
722 36½ AVE N E
MINNEAPOLIS MN 55418 5

NORTH STAR STEEL CO
ATTN R A GARVEY
1678 RED ROCK RD
P O BOX 43189
ST PAUL MN 55164 5

ATTN JOSEPH D BIZZANO JR
414 NICOLLET MALL
MINNEAPOLIS MN 55401

NORTHERN STATES POWER CO
ATTN G V WELK MGR
REG COMPL & SERV
414 NICOLLET MALL
MINNEAPOLIS MN 55401

OFFICE OF ADMIN HEARINGS
ATTN SAM RUHLE
400 SUMMIT BANK BLDG
310 S FOURTH AVE
MINNEAPOLIS MN 55415

OGLEBAY NORTON CO
HENRY CHISHOLM
P O BOX 6508
CLEVELAND OHIO 44101

OLSON GUNN & SERAN LTD
ATTN WAYNE H OLSON
315 PEAVEY BLDG
730 SECOND AVE S
MINNEAPOLIS MN 55402

PAUL WEIR CO
ATTN MARY VACULA
20 NORTH WACKER DR
CHICAGO IL 60606

PERRY GRUBB ASSOC INC
ATTN CHARLES R SINGER
771 HARDING ST N E
MINNEAPOLIS MN 55413

PHILLIPS LEGIS SERVICES
459 RICE ST
ST PAUL MN 55103

PICKANDS MATHER & CO
ATTN THOMAS W HAYES
SUITE 811-200 W SUPERIOR ST
DULUTH MN 55802

PICKANDS MATHER & CO
ATTN CHUCK HOFFMAN
SUITE 811-200 W SUPERIOR ST
DULUTH MN 55802

ATTN T J MANTHEY
1100 SUPERIOR AVE N E
CLEVELAND OH 44114 6

THE PILLSBURY COMPANY
ATTN MAHLON SCHNEIDER
MS 3726
THE PILLSBURY CENTER
MPLS MN 55402 6

THE PILLSBURY COMPANY
ATTN CARL A SMITH - MS3750
THE PILLSBURY CENTER
MINNEAPOLIS MN 55402 6

THOMAS M POLT
ATTORNEY AT LAW
MCCARTHY BLDG
EYOTA MN 55934 6

POPHAM HAIK LAW FIRM
ATTN G ROBERT JOHNSON
4344 IDS CENTER
MINNEAPOLIS MN 55402 6

POTLATCH CORPORATION
ATTN ARCHIE D CHELSETH
BOX 510
CLOQUET MN 55720 6

PUBLIC AFFAIRS INFORMATION
STATE REGULATORY DIV
1024 10TH ST SUITE 300
SACRAMENTO CA 95814 6

PULP & PAPER
ATTN PAULA IRONS
500 HOWARD ST
SAN FRANCISCO CA 94105 6

R C CONSULTANTS OF ANOKA
JAMES D WOLVERTON P E
10666 UNIVERSITY AVE N W
COON RAPIDS MN 55433 6

RAMSEY CO ENVIR HEALTH
ATTN DOUGLAS WOOD
1910 W CO RD B
ROSEVILLE MN 55113 6

R R 1 BOX 419
STEWARTVILLE MN 55976 6

REGION NINE DEVELP COMM
ATTN LYNNETTE RENNEKE WIEST
410 S 5TH ST P O BOX 3367
MANKATO MN 56001 6

NEWS EDITOR
REGISTER-MIRROR
P O BOX 3253
MINNEAPOLIS MN 55403 6

RELIANCE UNIVERSAL INC
ATTN PAUL H WALKER
ROBTSON RESEARCH & DVLP CE
4730 CRITTENDEN DR
LOUISVILLE KY 40209 6

RICE COUNTY PLANNING OFF
610 N W 20TH ST
P O BOX 40
FARIBAULT MN 55021 6

HEDIA RIEKE
2100 28TH AVE S
MINNEAPOLIS MN 55406 6

ROBT J PUGLEASA CO INC
ATTN GENE A BROWN
61 BEDFORD ST S E
MINNEAPOLIS MN 55414 6

CHAMBER OF COMMERCE
TOM CASEY
212 1ST AVE S W
ROCHESTER MN 55901 6

ROCHESTER PUBLIC UTILITIES
ATTN JOSEPH HENSEL
506 FIRST AVE N E
BOX 6057
ROCHESTER MN 55901 6

ROOSEVELT JR HIGH
MARK GUGISBERG
650 N E MAIN ST
BLAINE MN 55434 6

SARGENT & LUNDY ENGINEERS
55 EAST MONROE ST
CHICAGO IL 60603 6

A B SCHAEFER JR
14900 61ST ST N
STILLWATER MN 55082 6

FOREST SEYMOUR
4537 33RD AVE S
MINNEAPOLIS MN 55406 6

SF&A REPORTING SERVICES
KRIS ANNE MONTEITH
1101 15TH ST N W
WASHINGTON D C 20005 6

SHELDAHL
ATTN DAVID MILLER
N HWY 3
NORTHFIELD MN 55057 6

SHELL ENGINEERING & ASSOC
1804 VANDIVER DR
P O BOX 548
COLUMBIA MO 65205 6

THE SHERWIN-WILLIAMS CO
ATTN D A COHAGAN
101 PROSPECT AVE N W
CLEVELAND OH 44115 6

SIERRA CLUB-PROJ ENV
NELSON FRENCH
BOYD PLACE SUITE N
2929 4TH AVE S
MINNEAPOLIS MN 55408 6

BETTY SIMS
2149 GOODRICH AVE
ST PAUL MN 55105 6

ST PAUL FIRE DEPT
RUSS POLANSKY
101 E 10TH STREET
ST PAUL MN 55101 6

ATTN DR PAUL J COX
555 CEDAR ST
ST PAUL MN 55101 7

STEARNS COUNTY PLAN DEPT
ATTN KENNETH HOPKE
BOX 604
ST CLOUD MN 56301 7

EDWIN E STERLING
3920 39TH AVE S
MINNEAPOLIS MN 55406 7

STOLPESTAD BROWN & SMITH
ATTN GARY GANDRUD
2000 N CENTRAL TOWER
445 MINNESOTA ST
ST PAUL MN 55101 7

TECH SALES CO
ATTN DON REGER
4329 NICOLLET AVE S
MINNEAPOLIS MN 55409 7

TENNECO INC
ATTN B J WHITLEY CEP
1100 MILAM BLDG
HOUSTON TX 77001 7

THERMO-KING
R SCHOENBORN CORP LIB
314 W 90TH ST
MINNEAPOLIS MN 55420 7

U OF M
CINDY A McCOMAS
ROOM W-163 BOYNTON
410 CHURCH ST S E
MINNEAPOLIS MN 55455 7

U OF M PHYSICAL PLANT DEPT
ATTN ROBERT SILVAGNI
200 SHOPS BLDG
319 15TH AVE S E
MINNEAPOLIS MN 55455 7

U OF M
ATTN ROBERT SNYDER
248 CLASSROOM OFFICE BLDG
1994 BUFORD AVE
ST PAUL MN 55108 7

ATTN C E VAN DYK
OLD RIDGEBURY RD
DANBURY CT 06810 7

UNITED POWER ASSOC
ATTN REYNOLD S RAHKO
PROJECTS COORD DIV
ELK RIVER MN 55330 7

UNITED POWER ASSOC
ATTN DAN MCCONNON
ENV & LAND DIV
ELK RIVER MN 55330 7

VAN HOVEN CO INC
ATTN ED VAN HOVEN JR
BOX 56
SO ST PAUL MN 55075 7

RON WALLACE
1790 DAYTON AVE
ST PAUL MN 55104 7

WASH CO COMMUNITY
HEALTH SERVICES
ATTN TOM DELLENBACH
2000 INDUSTRIAL BLVD
STILLWATER MN 55082 7

B J WHITLEY JR
1100 MILAM BLDG
P O BOX 2511
HOUSTON TX 77001 7

WILLIAM MITCHELL COLLEGE
OF LAW
ATTN PROF MARCIA GELPE
875 SUMMIT AVE
ST PAUL MN 55102 7

CITY OF WINONA
ATTN ROBERT J BOLLANT
4TH & LAFAYETTE ST
WINONA MN 55987 7

WINTHROP WEINSTINE &
SEXTON
1800 CONWED TOWER
444 CEDAR ST
ST PAUL MNN 55101 7

JOHN FINDLEY
BRAUN ENVIRONMENTAL LAB
6800 S COUNTY RD 18
MINNEAPOLIS MN 55435 WQ

CHEMFIX INC
ATTN H HUDSON BUZBEE
1675 AIRLINE HWY
P O BOX 1572
KENNER LA 70063 WQ

ECRDC
119 SOUTH LAKE STREET
MORA MN 55051 WQ

ENV HYDROLOGY & ENG
3416 UNIVERSITY AVE SE
MINNEAPOLIS MN 55414 W&HZ

BARBARA KNAPP
9508 BRUNSWICK CIRCLE
BLOOMINGTON MN 55438 WQ

DAVID MARQUETTE
MARSH & McLENNAN
1500 NORTHSTAR CENTER
MINNEAPOLIS MN 55402 WQ

METRO AIRPORTS COMM
ATTN DIR OF OPERATIONS
6040 28TH AVE S
MINNEAPOLIS MN 55450 WQ

MINNEAPOLIS AUDUBON
ATTN STEVEN BUCHANAN
4552 ALDRICH AVE S
MINNEAPOLIS MN 55409 WQ

JOHN NORDENSON
85 JEWEL LANE
PLYMOUTH MN 55447 WQ

TWIN CITIES ASSN OF METAL
FINISHERS
ATTN PHIL KLEIN
2222 PILLSBURY AVE SO
MINNEAPOLIS MN 55404 SHW-WQ

UNION OIL COMPANY OF CA
ATTN DIANE DUNCAN
P O BOX 7600
LOS ANGELES CA 90051 WQ

UNIVERSITY OF MN
ATTN LASZLO FULOP
DIR OF PHYSICAL PLANNING
503 MORRILL HALL
MINNEAPOLIS MN 55455 WQ

WINONA DAILY NEWS
ATTN DON STUART
401 N FRANKLIN
WINONA MN 55987 WQ

DEPT OF AGRICULTURE
AGRONOMY SERVICES
ATTN GARY BRAUN
90 W PLATO BLVD
ST PAUL MN 55107

BRD OF ARCH ENG LAND SURV
AND LANDSCAPE ARCHITECTURE
ATTN LOWELL E TORSETH
500 METRO SQUARE
ST PAUL MN 55101

ATTORNEY GENERAL'S OFFICE
ANTITRUST DIVISION
2ND FLOOR FORD BLDG
117 UNIVERSITY AVE
ST PAUL MN 55155

MN DEPT ECONOMIC SECURITY
ATTN F JAMES RYBAK PHD
690 AM CE 150 E KELLOGG
ST PAUL MN 55101

DEPT OF EDUCATION
ATTN FREDRICK M CHRISTIANSEN
RM 911 CAPITOL SQ BLDG
ST PAUL MN 55101

DEPT OF ENERGY & ECON DVLPMT
ATTN MARK DAYTON
900 AMERICAN CENTER BLDG
150 E KELLOGG BLVD
ST PAUL MN 55101

DEPT OF ENERGY & ECON DVLPMT
ATTN CHARLES SCHAFFER
900 AMERICAN CENTER BLDG
150 E KELLOGG BLVD
ST PAUL MN 55101

MN DEPT OF HEALTH
ATTN JAMES WITKOWSKI
717 DELAWARE ST SE
MPLS MN 55440

MN DNR
JOHN OSTROWSKI SAFETY DIR
SOUTH SERVICE CENTER
1200 WARNER ROAD
ST PAUL MN 55106

LEGISLATIVE COMM ON
WASTE MANAGEMENT
ATTN SUE ROBERTSON
~~Room 46~~ Room 85
STATE CAPITOL

REVIEW ADMIN RULES
ATTN MARYANNE V HRUBY
ROOM 55
STATE OFFICE BLDG

MEEB CENTRAL OFFICE
ATTN RAY QUINN
BOX 5 CENTENNIAL BLDG
ST PAUL MN

METROPOLITAN COUNCIL
ATTN JOHN T HOEFT
300 METRO SQ BLDG
7TH ST & ROBERT ST
ST PAUL MN 55101

MN DOT DIRECTOR, ENV SERV
704 TRANSPORTATION BLDG
JOHN IRELAND BLVD
ST PAUL MN 55155

STATE PLANNING AGENCY
ATTN JACK DITMORE
ENV DIV 100 CAPITOL SQ BLDG
550 CEDAR ST
ST PAUL MN 55101

PRESS/MN GOVT REPORT
ATTN JEAN DAWSON
RM B12 CAPITOL BLDG
ST PAUL MN 55155

SENATE COUNCIL OFFICE
ATTN MARK J. HANSON
RM 480
STATE OFFICE BLDG
ST PAUL MN 55155

WATER RESOURCES BOARD
FIRST FLOOR
500 LAFAYETTE ROAD
ST PAUL MN 55146

MPCA HEARING NOTIFICATION MAILING LIST INTER OFFICE

Pollution Control Agency

Proposed Rules Relating to Processing 401 Certifications and Other Amendments

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends, without a public hearing, to adopt Minn. Rules 7001.1400 to 7001.1470, Section 401 Certification Rules, and associated amendments to the Agency's Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020.

The proposed rules, if adopted, will establish procedural and substantive requirements for certifications processed by the Agency under Section 401 of the Clean Water Act, 33 U.S.C. § 1341 (1983). The proposed rules are authorized by Minn. Stat. § 115.03 (1984). The proposed rules are published below. One free copy of the rules is available on request from the Agency. Please contact the person whose name and address appears below.

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

Lou Flynn
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7355

Interested prsons have until 4:30 p.m. on January 17, 1986, to submit comments on the proposed rules. Comments should be submitted to Lou Flynn at the address stated above. The proposed rules may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed rules.

Unless the Agency receives twenty-five written requests for a public hearing on the proposed rules during the comment period, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (Supp. 1985). If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

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

You are hereby advised, pursuant to Minn. Stat. § 14.115 (Supp. 1985), "Small business considerations in rulemaking," that the proposed amendments may affect small businesses. However, the proposed rules are generally procedural in nature; the substantive requirements for the protection of water quality are already applicable to discharges subject to Section 401 certification requirements. Based on the Agency's experience with using procedures similar to those embodied in the proposed rules in the past, the procedures do not impose a hardship on small businesses.

Thomas J. Kalitowski
Executive Director

Rules as Proposed

7001.0010 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Permit.** "Permit" means a discharge, emission, and disposal authorization; a construction, installation, or operation authorization; and other agency authorizations designated "permit" in Minnesota Statutes, chapters 115 and 116, including Minnesota Statutes, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4a; 116.081; and 116.091. "Permit" does not include an

"order," "variance," or "stipulation agreement" as defined in part 7000.0100 and does not include a "certification." However, the exclusion of "certification" from the definition of "permit" shall not in any way be considered to affect the applicability of parts 7001.0010 to 7001.0210 to the processing of certifications by the agency under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

Subp. 4. [Unchanged.]

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to the following:

A. to J. [Unchanged.]

K. The processing of certifications under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

Rules as Proposed (all new material)

7001.1400 APPLICABILITY.

Parts 7001.1400 to 7001.1470 govern the processing of certifications by the agency under section 401 of the Clean Water Act, United States Code, title 33, section 1341 (hereinafter "section 401 certifications"). Parts 7001.0010 to 7001.0210 apply to the processing of section 401 certifications except as specifically otherwise provided in parts 7001.1400 to 7001.1470. In applying parts 7001.0010 to 7001.0210 to the processing of section 401 certifications, the word "permit" shall be construed to mean "section 401 certification" and the term "permittee" shall be construed to mean "certificate holder." Parts 7000.0100 to 7000.1600, 7001.0010 to 7001.0210, and 7001.1400 to 7001.1470 shall be construed to complement each other.

7001.1410 DEFINITIONS.

Subpart 1. **Scope.** The definitions in Minnesota Statutes, section 115.01 apply to the terms used in parts 7001.1400 to 7001.1470 unless those terms are defined in this part.

As used in parts 7001.1400 to 7001.1470, the terms in subparts 2 to 4 have the meanings given them.

Subp. 2. **Director.** "Director" means the director of the Minnesota Pollution Control Agency.

Subp. 3. **Clean Water Act.** "Clean Water Act" means the federal Water Pollution Control Act, as amended, commonly referred to as the Clean Water Act, United States Code, title 33, sections 1251 et seq.

Subp. 4. **National pollutant discharge elimination system.** "National pollutant discharge elimination system" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under sections 307, 318, 402, and 405 of the Clean Water Act, United States Code, title 33, sections 1317, 1328, 1342, and 1345.

7001.1420 REQUIREMENT TO APPLY FOR CERTIFICATION.

Any person who is required by section 401 of the Clean Water Act, United States Code, title 33, section 1341, to obtain a certification from the state of Minnesota shall make application to the agency.

7001.1430 APPLICATION DEADLINES.

Part 7001.0040, subparts 1 and 2 apply to applications for issuance, modification, revocation and reissuance, or reissuance of a section 401 certification, except that the time period referenced in part 7001.0040, subpart 1, shall be 90 days instead of 180 days.

7001.1440 PUBLIC NOTICE OF APPLICATION AND PRELIMINARY DETERMINATION.

Subpart 1. **Public notice required.** Except as provided in subpart 2, the director shall prepare and issue public notices in accordance with the requirements of part 7001.0100, subpart 4, except that the public comment period shall be established by the director on a case-by-case basis after considering the scope, nature, and potential impacts on water quality of the project. In no event shall the public comment period be less than ten days.

Subp. 2. **Exception.** The director is not required to prepare and distribute a public notice pursuant to part 7001.0100, subpart 4, if the director finds that a federal agency or department has prepared and distributed or will prepare and distribute a public notice

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.

concerning a section 401 certification in accordance with the public notice requirements applicable to the federal agency or department under federal statutes or regulations, so long as the notice is actually prepared and distributed.

7001.1450 FINAL DETERMINATION.

Subpart 1. **Action required.** The agency shall make final determinations with respect to section 401 certifications by taking one of the following actions:

A. Issue, reissue, revoke and reissue, or modify a section 401 certification in accordance with part 7001.0140, subpart 1 and upon making a finding that the discharge which is the subject of the section 401 certification will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, United States Code, title 33, sections 1311, 1312, 1313, 1316, and 1317.

B. Deny or revoke a section 401 certification upon making the findings set forth in part 7001.0140, subpart 2 or the findings set forth in subpart 2.

C. Waive the agency's authority to issue a section 401 certification in accordance with part 7001.1460.

Subp. 2. **Denial of certification required.** The agency shall deny a section 401 certification if the agency finds that the issuance will result in a discharge of a radiological, chemical, or biological warfare agent.

7001.1460 WAIVER.

With respect to the discharge that is the subject of the application, the agency is considered to have waived its authority to issue a section 401 certification under the following circumstances:

A. If the agency notifies the applicant in writing that it is waiving the agency's authority to certify the project. If issuance of the waiver is conditional, the notification shall specify the conditions that must be met.

B. If the agency fails or refuses to make a final determination on an application for a section 401 certification within one year after receipt of the application and the agency's failure or refusal to act is not a result of the applicant's failure or refusal to cure a deficiency in the application as required by the director pursuant to part 7001.0090.

7001.1470 TERMS AND CONDITIONS OF SECTION 401 CERTIFICATIONS.

Subpart 1. **General terms required.** A section 401 certification issued by the agency shall include the following:

A. The name and address of the certificate holder.

B. A statement that the agency has examined the section 401 certification application and any other information furnished by the applicant and bases its certification upon an evaluation of this information that is relevant to water quality considerations.

C. A statement that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards.

D. The terms and conditions in part 7001.0150, except that the provisions of part 7001.0150, subpart 1 do not apply to section 401 certifications. In addition to the special conditions in part 7001.0150, subpart 2, a section 401 certification shall contain the special conditions described in subpart 2.

Subp. 2. **NPDES conditions.** A section 401 certification shall contain the special conditions described in part 7001.1080, subparts 2 to 9, which conditions shall be established in the same manner as special conditions are established under part 7001.1080 for national pollutant discharge elimination system permits.

Pollution Control Agency

Proposed Rules Relating to Water Quality Permit Fees

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt, without a public hearing, rules establishing fees for water quality permits. The rules will be adopted in accordance with the provisions of Minn. Stat. § 16A.128 (Supp. 1985) and in accordance with Minn. Stat. § 14.22-14.28 (Supp. 1985).

The Agency previously published proposed rules for both air quality and water quality permits, codified as Minn. Rules Parts 7002.0010-7002.0110 (10 S.R. 456, August 19, 1985.) However, following receipt by the Agency of a substantial amount of adverse comments on the proposed water quality permit fees, the portions of the proposed rules relating to water quality permit fees have been withdrawn. The rules which are attached to this notice reflect a revised fee schedule which is, in part, based on facility flow.

The proposed rules are authorized by Minn. Stat. § 116.07, subd. 4d (Supp. 1985). The proposed rules are published below.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Governing Section 401 Certifications, Minn. Rules Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Penny Neckles, being duly sworn, deposes and says:

That on the 12 day of December, 1985, at the City of Roseville, County of Ramsey, State of Minnesota, s/he served the attached Notice of Intent to Adopt Amendments to Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System or in the United States mail for first class mailing at said City of Roseville, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Pollution Control Agency for the purpose of receiving notice of the proposed adoption of rules by the Pollution Control Agency.

Penny Neckles

Subscribed and sworn to before me this 12th day of December, 1985.

Maryanne Gibbons
Notary Public

MARYANNE GIBBONS
NOTARY PUBLIC MINNESOTA
RAMSEY COUNTY
My commission expires 9-24-91

ST^TE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Governing Section 401 Certifications, Minn. Rules Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. §14.14 (Supp. 1985), that their names be placed on file with the Minnesota Pollution Control Agency (Agency) for the purpose of receiving notice of the proposed adoption of rules by the Agency is accurate and complete as of 3:00 p.m., this 12 day of December, 1985.

Elaine A. Zoch

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Minnesota Rules Governing Section 401 Certification Minn. Rule Parts 7001.1400 to 7001.1470 and associated Amendments to Permit Rules Minn. Rules 7001.0010 and 7001.0020.

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 25th day of February, 1986. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the State of Need and Reasonableness and the written comments submitted to the Agency, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Agency published its notice of intent to adopt the above-captioned rules, together with the proposed rules, in the State Register on December 16, 1985 (10 S.R. 1358).

2. On December 12, 1985 the Agency gave the same notice by United States mail to all persons who have registered their names with the Agency pursuant to Minn. Stat. § 14.14 (Supp. 1985) and to interested persons.

3. The notice of the Agency's intent to amend the rules afforded all interested persons 30 days to submit data and views on the proposed rules. The notice was in all respects in compliance with the requirements of Minn. Stat. § 14.22 (Supp. 1985).

4. The Agency prepared a Statement of Need and Reasonableness and made it available to the public upon the date of mailing of the notice of intent to adopt the rules.

5. The 30 day comment period, as set out in the notice, expired on January 17, 1986.

6. During the comment period, the Agency received two (2) written letters of comment.

7. The Agency finds that the written comments received on the Section 401 Certification rules do not justify revisions to those rules.

8. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the amendments to the rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely and adequate notice of the intent to adopt amendments to the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

MINNESOTA POLLUTION CONTROL AGENCY

Duane A Dahlberg
Duane Dahlberg, Chairperson

Thomas Kalitowski
Thomas J. Kalitowski
Executive Director

Dated: February 25, 1985

CERTIFICATE OF AGENCY'S RESOLUTION ADOPTING RULES

I, Thomas J. Kalitowski, do hereby certify that I am theand Executive Director of the Minnesota Pollution Control Agency (Agency), an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Agency duly and properly called and held on the 25th day of February, 1986, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Minnesota Pollution Control Agency (Agency) hereby approves and adopts the attached Minn. Rules Parts 7001.1400 to 7001.1470 and associated amendments to the Agency's permit rules, Minn. Rules Parts 7001.0010 and 7001.0020, pursuant to the authority vested in the Agency by Minn. Stat. §115.03, subd. 1(e) and 116.07, subd. 3 (Supp. 1985).

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. §14.07, subd. 2 (Supp. 1985).

BE IT FURTHER RESOLVED, that the Agency adopts the attached "Findings of Fact and Conclusions" and "Order Adopting Rules" and that the Chairperson and the Executive Director are hereby authorized to execute the above named documents on behalf of the Agency.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 25th day of February, 1986.

Thom Kalitowski

THOMAS J. KALITOWSKI
Executive Director

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Rules Parts 7001.1400 - 7001.1470, Section 401 Certification Rules, and Associated Amendments to Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the proposed adoption by the Minnesota Pollution Control Agency ("Agency") of rules governing the processing by the Agency of certifications under Section 401 of the Clean Water Act, 33 U.S.C. §1341 (1983) ("Section 401") along with associated amendments to the Agency's permit rules. Section 401 requires that a 401 certification be obtained by any applicant for a federal license or permit for the conduct of any activity which may result in any discharge into the navigable waters. The certification is issued by the state in which the discharge originates.

The proposed rules and rule amendments will, if adopted, establish a procedure for issuing Section 401 certifications which is the same, with certain exceptions, as the procedure which the Agency uses to issue, reissue, and modify permits under Minn. Rules chapter 7001. The proposed amendments to Minn. Rules chapter 7001 make the requirements of that chapter applicable to Section 401 certifications, and the proposed Minn. Rules pts. 7001.1400 to 7001.1470 specify additional requirements or exceptions from that chapter that apply to Section 401 certifications.

This Statement of Need and Reasonableness is divided into

several parts. Part II sets forth the Agency's statutory authority to adopt the proposed rules and rule amendments. Part III contains the Agency's explanation of the need for the proposed rules and rule amendments. Part IV contains the Agency's explanation of the reasonableness of the proposed rules and rule amendments. Pursuant to the requirements of Minn. Stat. §14.115 (1984), Part V documents how the Agency has considered methods of reducing the impact of the proposed amendments on small businesses. Part VI contains a reference to the exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's office at 1935 West County Road B-2, Roseville, Minnesota 55113.

II. STATEMENT OF THE AGENCY'S STATUTORY AUTHORITY

The proposed rules will establish both substantive provisions and procedural requirements for Section 401 certifications. The adoption of rules establishing substantive provisions for Section 401 certifications falls within the Agency's broad authority to adopt rules relating to water pollution. Minn. Stat. §115.03, subd. 1(e) (1984) provides:

> The Agency is hereby given and charged with the following powers and duties:
>
> . . .
>
> (e) To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, regulations, schedules of compliance, and stipulation agreements under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the

> installation or operation of disposal systems or parts thereof, or for other equipment and facilities.

The authority to adopt rules governing the procedure to be followed by the Agency in issuing Section 401 certifications falls within Minn. Stat. §116.07, subd. 3 (1984), which provides:

> Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules governing its own administration and procedure and its staff and employees.

Pursuant to these statutes, the Agency has statutory authority to adopt the proposed rules and rule amendments.

III. STATEMENT OF NEED

The need to adopt the proposed rules and rule amendments arises from Section 401 of the Clean Water Act. That statute, in addition to requiring that a Section 401 certification be obtained by any applicant for a federal license or permit for the conduct of any activity which may result in any discharge into the navigable waters, requires the state issuing the Section 401 certification to adopt procedures for public notice of all applications and, to the extent the state deems appropriate, procedures for public hearings in connection with specific applications. Section 401(a)(1) provides:

> Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution contol agency having

> jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator [of the U. S. Environmental Protection Agency]. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceeding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(Emphasis supplied.)

As the State agency designated by the legislature in Minn. Stat. chs. 115 and 116 as responsible for the abatement and control of water pollution, the Agency is responsible for undertaking the obligations of the State of Minnesota under Section 401. However, to date, none of the Agency's rules apply to issuance of Section 401 certifications. Therefore there is a need to adopt procedural rules for these certifications.

The proposed rules also apply substantive requirements to

holders of Section 401 certifications by requiring the establishment of certain conditions in the certificate itself. (See proposed Minn. Rules pt. 7001.1470.) Establishing such requirements is necessary because of the need for all discharges into navigable water to meet the State effluent limitations and water quality standards established in Minn. Rules chapter 7050. Presently, any person who discharges a pollutant from a point source (e.g., a pipe, ditch, channel) is required by Minn. Rules pt. 7001.1031 to obtain a National Pollutant Discharge Elimination System ("NPDES") permit, and any person who constructs or operates a disposal system is required by Minn. Stat. §115.07 (1984) to obtain a State Disposal System ("SDS") permit. The Agency enforces the State water quality standards with respect to these dischargers through the imposition of permit conditions. However, some discharges into the waters of the State do not meet the definition either of "discharge from a point source" or a "disposal system." For example, activities associated with the widening of a river channel result in a discharge of pollutants into the waters of the State without triggering any of the Agency's permit requirements. In these cases, the Agency may still enforce its water quality standards, but there is no administrative "handle" on the discharger other than putting conditions upon the Agency's issuance of its Section 401 certification. Therefore it is necessary to adopt rules which inform the regulated community what types of conditions the

Agency intends to impose upon the issuance of Section 401 certifications.

IV. STATEMENT OF REASONABLENESS

The general thrust of the proposed rules and rule amendments is to adopt a Section 401 certification procedure which is like the Agency's current permitting procedures and to impose on the proposed discharger conditions which are like those imposed in NPDES and SDS permits. This procedure involves the submission of an application by the proposed discharger, the review of the application by Agency staff, issuance of a preliminary determination and public notice by the Director of the Agency, a public comment period, during which time the discharger or the public may request a public informational meeting or a contested case hearing on the matter, the holding of a contested case hearing if necessary, and the final determination by the Agency on the application.

It is reasonable to apply the Agency's permitting procedures to the Section 401 certification program because the allowance of a discharge covered by a Section 401 certification raises water quality issues similar to those raised when the Agency receives a NPDES and/or SDS permit application. The NPDES/SDS permitting procedure has been used by the Agency for many years and has worked well in surfacing and addressing issues associated with water discharge projects; therefore it is reasonable to predict

that it will work well in the Section 401 certification program. This prediction is backed up with experience, since in the past, the Agency informally applied this same type of procedure in making decisions on Section 401 certifications, and this procedure has been satisfactory. It is reasonable to make the procedure officially applicable to Section 401 certifications in order to reduce any uncertainty which the public may have experienced in the past as a result of the Agency's informal application of the procedure.

The reasonableness of each of the provisions of the rules is discussed below.

Minn. Rules Pt. 7001.0010, subp. 3, Definitions

The Agency proposes to amend the definition of "permit" that is set forth in the Agency's permit rule, Minn. Rules pt. 7001.0010, subp. 3, to state that the exclusion of the term "certification" from the definition of "permit" does not in any way affect the applicability of the permit procedural rules to the processing of Section 401 certifications to the extent provided by the Section 401 certification rules, Minn. Rules pts. 7001.1400 to 7001.1470.

The need for this amendment arises from the decision to apply the requirements of the permit rules to the processing of Section 401 certifications. The Agency does not want to change the definition of "permit" to include the term "certification," because that would impose the permitting procedures on all types

of certifications that the Agency may issue, rather than on this one class of certifications. Also, the Agency does not consider a 401 Certification, which is a requirement of federal law, to constitute a State permit. Instead, the rule is drafted to clearly indicate that even though Section 401 certifications do not constitute permits, the permitting procedures are being applied to them. It is reasonable to clarify the effect of the definition of the term "permit" on the applicability of the permit rules to Section 401 certifications so that the public will understand that the Agency is subjecting one, but not all, type of certification to the requirements of the permit rules.

Minn Rules Pt. 7001.0020, Applicability

The Agency proposes to amend Minn. Rules pt. 7001.0020 to add a new Subpart K to apply the requirements of the permit rules to the processing of Section 401 certifications. As previously discussed, it is reasonable to apply the Agency's permitting procedures to the Section 401 certification program because the allowance of a discharge covered by a Section 401 certification raises water quality issues similar to those raised when the Agency receives a NPDES and/or SDS permit application. Based on previous experience in informally applying the NPDES/SDS permitting procedure to Section 401 certifications, it is reasonable to predict that it will work well in the Section 401 certification program. It is reasonable to make the procedure

officially applicable to Section 401 certifications in order to reduce any uncertainty which the public may have experienced in the past as a result of the Agency's informal application of the procedure.

Minn. Rule Pt. 7001.1400, Applicability of Rules

Minn. Rule pt. 7001.1400 specifies that the Agency's permit rules, Minn. Rules pts. 7001.0010 to 7001.0210 and the newly proposed rules, Minn. Rules pts. 7001.1400 to 7001.1470 apply to the processing of Section 401 certifications and that the two sets of rules shall be construed to complement each other. It is reasonable to clarify what subject matter is covered by these rules and to cross reference other rules that apply to the subject because it is more convenient to the regulated community to have a listing in one place of the rules with which they must comply with respect to that subject matter.

The proposed rule also provides that in applying the Agency permit rules, Minn. Rules pts. 7001.0010 to 7001.0210, to Section 401 certifications, the term "Section 401 certification" should be substituted for the word "permit" and the term "certificate holder" should be substituted for the word term "permittee." This provisions is necessary because of the confusion which would otherwise result from the differences in terminology between a permit program and a Section 401 certification program. For example, without this provision, the Agency would be issuing certifications which would be required by Minn. Rules pt.

7001.0150, subp. 3 to contain conditions commencing with the phrase "The permittee shall . . . " or "The permit . . . " The provision requiring the substitution of the correct terms in the permit rules is reasonable because it will eliminate this confusion.

Minn. Rules Pt. 7001.1410, Definitions

This part states that the definitions in Minn. Stat. §115.01 apply to the terms found elsewhere in the rules unless they are defined in this part. Minn. Stat. §115.01 is a part of the Agency's enabling legislation and defines many terms which are relevant to the control of water pollution. It is reasonable to apply the definitions in the statute to these rules because it promotes consistency within the Agency's water pollution control program.

This part also defines three additional terms. "Director" is defined as the Director of the Agency. It is reasonable to define this term in order to clarify the person to whom this term refers. "Clean Water Act" is defined as the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq. It is reasonable to include this definition because this statute is the source of the requirement to obtain a Section 401 certification, and is used several times in the rules. "National Pollutant Discharge Elimination System" is defined in exactly the same manner as in Minn. Rule pt. 7001.1020, subp. 19, a portion of the Agency permit rules which is specifically applicable to

NPDES permits. This definition is reasonable because it promotes consistency among Agency programs.

Minn. Rules Pt. 7001.1420, Requirement to Apply for Certification

Minn. Rules pt. 7001.1420 provides that any person who is required by Section 401 to obtain a certification from the State of Minnesota shall make application to the Agency. This provision is reasonable because it directs a person seeking a federal permit to the appropriate Minnesota agency to obtain the needed Section 401 certification. The receipt of the application by the Agency alerts the Agency of the existence of the proposed project and allows the Agency to begin reviewing the information which is relevant to the decision it must make regarding a certification.

Minn. Rules Pt. 7001.1430, Application Deadlines

The Agency is proposing in this part to state that Minn. Rules pt. 7001.0040, subp. 1 and 2 apply to Section 401 certifications, with the exception that the time period referenced in subp. 1 of that rule shall be 90 days instead of 180 days. Minn. Rule 7001.0040, subp. 1 provides:

> Subpart 1. Application for new permit. Except as otherwise required by parts 7001.0530 and 7001.1050, a permit application for a new facility or activity may be submitted at any time. However, it is recommended that the permit application be submitted at least 180 days before the planned date of the commencement of facility construction or of the activity.

It is reasonable to change the recommended application time

period from 180 days to 90 days because, in the past, a large number of the projects needing Section 401 certifications have been routine in nature with minimal impacts on water quality and, consequently, the Agency has been able to act on these projects within 90 days. It is expected that this will be the case in the future.

Minn. Rules Pt. 7001.1440, Public Notice of Application and Preliminary Determination

This proposed rule has two subparts. Subpart 1 provides that the Director shall prepare and issue public notices of Section 401 certification applications in accordance with the requirements of Minn. Rules pt. 7001.0100, subp. 4, except that the public comment period, instead of being automatically 30 days, shall be established on a case-by-case basis after considering the scope, nature, and potential impacts on water quality of the project. The comment period established must be at least ten days.

It is reasonable to allow for a case-by-case determination of the public notice period because of the great variety of projects needing Section 401 certifications. Some of the projects will have minor water quality implications, and some of them may serve beneficial purposes, such as erosion protection. These types of projects do not tend to be controversial, and few, if any, comments are received regardless of the length of the public notice period. In these cases, a shorter public notice

period is reasonable. On the other hand, in cases of complex or highly controversial projects, it is reasonable for the Director to be able to provide more time for the public and the applicant to comment on the preliminary determination of the Director.

Subpart 2 of the proposed rule provides that the Director is not required to prepare and distribute a public notice if the Director finds that a federal agency or department has prepared and distributed or will prepare and distribute a public notice concerning the project in accordance with the public notice requirements applicable to the federal agency or department, so long as such notice is actually prepared and distributed. This provision is reasonable because it avoids duplication of effort by the State of notice already given by the federal government. The Agency has established a working relationship with those federal agencies or departments which are frequently involved with Section 401 certifications, specifically the United States Army Corps of Engineers, and have worked out arrangements so that federal notices include notice that the Agency is also receiving comments on the project. Therefore, the provisions of subpart 2 will not result in cutting off the Agency from receiving comment on the project.

Minn. Rules Pt. 7001.1450, Final Determination

Subpart 1 provides that the Agency has three choices in making a final determination on a Section 401 certification application. The first option is to issue, reissue, revoke and

reissue, or modify a Section 401 certification in accordance with Minn. Rules pt. 7001.0140, subp. 1 and upon making a finding that the discharge will comply with 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317. The finding concerning compliance with the federal statutes is necessary under Section 401(a)(1), 33 U.S.C. §1341(a)(1), which provides in relevant part:

> Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution contol agency having jurisdiction over the navigable waters at the point where the discharge originates or will originiate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title.

(Emphasis supplied.) It is reasonable to require this finding so that the Agency's program will conform to the requirements of federal law.

The second option under subpart 1 is to deny or revoke a Section 401 certification upon making the findings set forth in Minn. Rules pt. 7001.0140, subp. 2 (the findings which the Agency must make in order to refuse to issue a new or modified permit, to refuse to permit reissuance, or to revoke a permit without reissuance) or the findings set forth in Minn. Rules 7001.1450, subps. 2 to 3. It is reasonable to provide for denial or revocation of a Section 401 certification if the discharge cannot meet the standards for issuance of the certification.

The third option under subpart 1 is to waive the Agency's authority to issue a Section 401 certification in accordance with Minn. Rules pt. 7001.1460. As quoted at page 4, supra, Section 401 gives the State the option to waive its authority to issue a Section 401 certification. It is reasonable to retain this option in the State program because it promotes consistency with the federal statutory program.

Subparts 2 and 3 provide additional findings which result in denial or revocation of a Section 401 certification. Subpart 2 requires denial or revocation if the Agency finds that the issuance of a Section 401 certification will result in a discharge of a radiological, chemical, or biological warfare agent. This finding is consistent with Section 301(f) of the Clean Water Act, 33 U.S.C. §1311(f), which makes it unlawful "to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters." It is reasonable to deny or revoke a certification on this basis because a discharge of this nature constitutes a direct violation of a federal statute.

Minn. Rules Pt. 7001.1460, Waiver

Section 401(a)(1), quoted at page 4, supra, provides that the State waives its authority to issue a Section 401 certification if it fails to act on a request for certification within a "reasonable" period of time, which may not exceed one year. In the Agency's past administration of the Section 401 certification

program, the Agency has exercised its option to waive certification, not only by inaction but also expressly. The proposed Minn. Rule pt. 7001.1460 reflects past practice by providing that the Agency shall be deemed to have waived its authority to issue a Section 401 certification under the following circumstances:

A. If the Agency notifies the applicant in writing that it is waiving its authority. If the waiver is conditional, the notification must specify the conditions which the applicant must meet; or

B. If the Agency fails or refuses to make a final determination within one year after receipt of the application and the failure or refusal is not a result of the applicant's failure or refusal to cure a deficiency in the application.

It is reasonable to continue to provide for an express waiver because it provides certainty to the applicant and to the federal permitting agency involved and allows them to proceed with the federal permitting process. It is also reasonable to provide for waiver in the event of a failure or refusal to act within one year, if the delay is not caused by the applicant, because the express terms of Section 401 provide that failure of the State to act within a reasonable period of time, not to exceed one year, constitutes waiver.

Minn. Rules Pt. 7001.1470, Terms and Conditions of Section 401 Certifications

This part sets forth the terms and conditions which are to be included in a Section 401 certifications.

Subpart 1, item A provides that the certification must include the name and address of the certificate holder. This provision is reasonable because it makes the document identifiable.

Subpart 1, item B provides that the certification must include a statement that the Agency has examined the Section 401 certification application and any other information furnished by the applicant and bases its certification upon an evaluation of this information which is relevant to water quality considerations. This provision is reasonable because it informs the public and the certificate holder of information upon which the Agency has based its final determination to issue the certification.

Subpart 1, item C provides that the certification must include a statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards. This is reasonable because Section 401 specifically provides that this finding must be the basis for the issuance of a Section 401 certification.

Subpart 1, item D provides that the certification shall include the terms and conditions set forth in the Agency's permit

rules, Minn. Rules pt. 7001.0150, except that the provisions of subpart 1 of that rule do not apply to Section 401 certifications. Subpart 1 of Minn. Rules 7001.0150 states: "Unless specifically otherwise provided by statute or rule, an agency permit is issued for a term not to exceed five years." It is reasonable to exclude this rule from applying to Section 401 certifications because certifications are issued on a one-time basis, at the time the person applies for the federal permit. They are not on-going, and therefore the concept of "term" is not relevant to certifications.

In addition, item D states that two additional conditions, set forth in subparts 2 and 3, apply to certifications. Subpart 2 requires a Section 401 certification to contain the special conditions described in Minn. Rules pt. 1002.1080, subps. 2 to 9, which conditions must be established in the same manner as special conditions are established under Minn. Rules pt. 7001.1080 for NPDES permits. This is reasonable because the Agency's rules establishing the conditions of a NPDES permit were established in accordance with the requirements of 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317, which Section 401 lists as the statutes which the discharger must meet to obtain certification.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. §14.115, subd. 2 (1984) requires the Agency, when

proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

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

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

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

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

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

The proposed amendments may affect small businesses as defined in Minn. Stat. §14.115 (1984). As a result, the Agency has considered the above-listed methods for reducing the impact of the rule on small businesses. However, because obtaining a Section 401 certification is a federal requirement, the Agency is not free to exempt small businesses from the requirement to obtain a certification. The proposed rules are generally procedural in nature; the substantive requirements for the protection of water quality are already applicable to persons whose discharges are subject to Section 401 certification requirements. Based on the Agency's experience with using procedures similar to those embodied in the proposed rules when processing Section 401 certifications in the past, the Agency

does not believe that the procedures impose a hardship on either small businesses or any other entity. Consequently, the proposed rules do not provide for special consideration for small businesses.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 7001.0010 and 7001.0020 and the proposed Minn. Rules 7001.1400 to 7001.1470 are both needed and reasonable.

Dated: October 10, 1985

THOMAS J. KALITOWSKI
Executive Director

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Governing Section 401 Certifications, Minn. Rules Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jocelyn F. Olson, do hereby declare that I have examined the proposed rules, and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act and the rules of the Attorney General have been followed.

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

Dated: February 25, 1986

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Governing Section 401 Certifications, Minn. Rules Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020.

AFFIDAVIT REGARDING NOTIFICATION OF SUBMISSION TO ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Lou Flynn, being duly sworn on oath deposes and says:

1. That he is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing as published in the State Register (10 S.R. 1358, December 16, 1985) and as mailed to interested persons on December 12, 1985, as the person to receive requests for notification on the date that the Agency submits the above-entitled rules to the Attorney General for review.

2. That no person requested to be notified of the date that the Agency submits the rules to the Attorney General for review.

Lou Flynn

Subscribed and sworn to before me
this 25th day of February, 1986.

Mary Ann Hammer
Notary Public

MARY ANN HAMMER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 10, 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

February 26, 1986

Mr. Mike Miles
Assistant Attorney General
Office of the Attorney General
Administration Building
St. Paul, MN 55155

Re: Proposed Rules Governing Section 401 Certifications, Minn. Rules Parts 7001.1400 to 7001.1470 and Associated Amendments to Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020

Dear Mr. Miles:

On February 25, 1986, the Minnesota Pollution Control Agency adopted Minnesota Rules Parts 7001.1400 to 7001.1470, Section 401 Certification Rules, and associated amendments to the Agency's Permit Rules, Minn. Rules Parts 7001.0010 and 7001.0020. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).
2. Order Adopting Rules (two copies).
3. Certificate of Agency's Resolution Adopting Rules.
4. Notice of Intent to Solicit Outside Opinion (8 S.R. 2419, May 14, 1984).
5. Comments received pursuant to Notice of Intent to Solicit Outside Opinion.
6. Order for Notice of Intent to Adopt Rules Without a Public Hearing.
7. Certificate of Agency's Authorizing Resolution.
8. Notice of Intent to Adopt Rules Without A Public Hearing and rules as proposed (10 S.R. 1358, December 16, 1986).
9. Copies of the written comments received during the comment period.
10. Affidavit of Mailing, Certificate concerning mailing

list; Notice of Intent to Adopt Rules Without A Public Hearing, as mailed, and mailing list.

11. Rules as proposed.

12. Findings of Fact and Conclusions.

13. Statement of Need and Reasonableness.

14. Statement of Compliance with Rulemaking Procedures.

15. Affidavit Regarding Notification of Submission to Attorney General.

Very truly yours,

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General