

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1435 Docket No. 05.0009.1210

DATE RECEIVED 12-21-87
REVIEW DATE 12-30-87
DUE DATE 1-4-88

APPROVED X 1/4/88 JPR
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE not

REVISOR APPROVED (yes)
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

___ Rule as adopted (4 copies)

X Notice to Solicit Outside Information/Opinion
7/20/87 Date published in State Register
Comments

~~___ Petition for Adoption of a Rule~~

~~___ Board's Authorizing Resolution~~

X Proposed rule
yes Revisor's Certificate

X Notice of Intent to Adopt Rule
MN Laws 1987 ch 403, art 1, §80(2) Statutory Authority + 144.122, 16A.128
yes Small business statement
yes In SNR but not on $100,000 Expenditure of public money statement
yes Signature

X Statement of Need and Reasonableness

X Affidavit of Mailing Notice of Intent to Adopt Rule
9/29/87 Date (30)/25 days before adoption

X Publication in State Register
10/12/87 Date (30)/25 days before adoption

~~___ Resolution Adopting~~

X Findings of Fact, Conclusions & Order Adopting
12/14/87 Date

X Written requests, submissions or comments

X Declaration of attorney
Paul Zerby Name of SAAG representing agency

~~X Notice of Submission to Attorney General~~ In Findings

~~___ Affidavit of Mailing Notice to Attorney General~~

X Fees - Approved by Finance

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : January 4, 1988

TO : PAUL G. ZERBY
Special Assistant
Attorney General

FROM :

JULIE A. LEPPINK
Special Assistant
Attorney General

PHONE :

SUBJECT : 7-3493

In the Matter of the Adopted Rules Relating to
Payment of a Fee When Swimming Pool Plans and Specifications are Submitted to the Commissioner of Health for Approval

The above-referenced rule has been approved as to its legality by the Attorney General on January 4, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth 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.

JAL:nah

Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

Office of the Revisor of Statutes
Administrative Rules

Janet C. Rahm
Senior Assistant Revisor
296-0952

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

October 16, 1987

Mr. Gary Englund
Department of Health
717 SE Delaware Street
PO Box 9441
Minneapolis, Minnesota 55440

RE: AR1156

Dear Mr. Englund:

Enclosed is a stripped copy of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

If your proposed emergency rules or proposed rules adopted without public hearing are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will then input the changes, approve the document as to form, and provide you with copies to submit to the Attorney General.

If your proposed rules are adopted after public hearing without modification, please submit one copy of this document to our office for final approval as to form. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will input the changes, approve the document as to form, and provide you with copies.

Very truly yours,

Janet C. Rahm

Janet C. Rahm

JCR/ca
Encl.

Department of Health

Adopted Permanent Rule Requiring Payment of a Fee When Swimming Pool Plans and Specifications are Submitted to the Commissioner of Health for Approval

Rule as Adopted

4717.0310 FEES.

All plans for swimming pool construction, installation, or alteration submitted to the commissioner of health for review and approval under part 4717.0300 must be accompanied by the appropriate fee as prescribed below:

A. Each pool, except as provided in items B and C, $300.

B. Each additional pool located at the same site, shown in the same plans, and constructed at the same time, $200.

C. Alterations to an existing pool without changing the size or configuration of the pool, $100.

12:50 PM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN - 4 1988
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
January 4 1988
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

To assist in the implementation of this program, the task force will be meeting a number of times throughout the 1987-89 biennium to make recommendations and decisions for Department action. Specific tasks defined by the legislation include:

- Making recommendations for a system of incentives at the state and local level to assure that highly capable individuals are attracted to and retained in the teaching profession;
- Determining ways in which teachers can be empowered through expanding to new and more professional roles;
- Developing the application forms, criteria, and procedures for the mentorship program; and
- Making recommendations to approve or disapprove the applications.

The legislation indicates that task force representatives shall include members from: two teachers' unions, the two principals' organizations, school boards association, administrators association, board of teaching, parent teacher association, post secondary institutions, foundations, and the private sector. Recommendations to the Commissioner must vary according to size of district/organization, geography, sex, and race. Representation on the task force by minority populations shall reflect the proportion of minorities in the public schools. The Department will take recommendations and select one person from each organization who helps provide an equitable balance of factors required in the legislation.

The legislative timeline for appointing the task force is August 15, 1987. In order to meet this deadline and begin work as a committee, we need to move quickly in selecting representatives. Therefore, it is essential that we have pertinent information regarding each organization's suggested representatives, no later than July 29, 1987. If you have questions and are interested in representing any of the organizations or private sector, please contact one of the listed organizations or Marlys Peters at: Minnesota Department of Education, 681 Capitol Square Building, 550 Cedar St., St. Paul, MN 55101 or 612/297-2685.

Ethical Practices Board

Advisory Opinion #96—Re: Campaign Finance Disclosure

Issued to:

Bruce D. Willis, Esq.
Popham, Haik, Schnobrich, Kaufman & Doty, ltd.
3300 Piper Jaffray Tower
Minneapolis, MN 55402

SUMMARY

96: Expenditures described in *Minnesota Statutes* § 10A.275 made by a political committee co-sponsored by the party organization within the House and the Senate are not allocable to any candidates.

The full text of the opinion is available upon request from the office of the Ethical Practices Board, 625 N. Robert Street, St. Paul, MN 55101-2520, (612) 296-5148.

Department of Health

Notice of Intent to Solicit Outside Information or Opinions on a Fee for Each Swimming Pool Construction Project, Covering Plan Review and Construction Inspection

Notice is hereby given that the Department of Health is seeking information or opinions from sources outside the Department in preparing to adopt rules to establish a one-time fee for each public swimming pool construction project to cover both plan review and a construction inspection of each completed project.

Adoption of the rules is authorized by *Minnesota Laws 1987*, Chapter 403, Section 8, Subd. 3 which permits the Department to establish a fee system that will recover the costs of increased effort in the public swimming pool program.

The Department requests information and comments concerning the subject matter of the rules. Interested or affected persons or groups may submit statements of information or comment in writing or by telephone.

Comments should be addressed to Milton R. Bellin, Division of Environmental Health, Minnesota Department of Health, 717 Delaware Street, S.E., P.O. Box 9441, Minneapolis, Minnesota 55440 (612/623-5517).

Any material received by the Department shall become part of the rulemaking record to be submitted to the Attorney General.

Department of Health

Proposed Permanent Rule Requiring Payment of a Fee When Swimming Pool Plans and Specifications are Submitted to the Commissioner of Health for Approval

Rule as Proposed (all new material)

4717.0310 FEES.

All plans for swimming pool construction, installation, or alteration submitted to the commissioner of health for review and approval under part 4717.0300 must be accompanied by the appropriate fee as prescribed below:

A. Each pool, except as provided in items B and C, $300.

B. Each additional pool located at the same site, shown in the same plans, and constructed at the same time, $200.

C. Alterations to an existing pool without changing the size or configuration of the pool, $100.

Approved by Revisor

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rule Requiring Payment of a Fee When Swimming Pool Plans and Specifications are Submitted to the Commissioner of Health for Approval

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4717

The attached rules are approved for publication in the State Register

Janet C. Rahm
Senior Assistant Revisor

Department of Health
Environmental Health

Proposed Rules Relating to Swimming Pool Plan Review and Inspection Fees

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Commissioner of Health proposes to adopt Minn. Rules pt. 4717.0310 relating to fees for swimming pool plan review and inspection fees. The Commissioner proposes to adopt and amend the above rules without a public hearing, following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minn. Laws 1987, ch. 403, art. 1, § 8, subd. 2. In addition to the specific authority cited above, the Commissioner of Health also has general authority pursuant to Minn. Stat. § 144.122 to prescribe fees for the issuance of original and renewal permits, licenses, registrations and certifications issued under her authority. Further, Minn. Stat. § 16A.128 provides that fees must be set or adjusted so the total fees nearly equal the sum of the appropriation for the accounts plus agency's general support costs, statewide indirect costs, and Attorney General costs attributable to the fee function.

Persons interested in these rules shall have 30 days in which to submit comment in support of or in opposition to the proposed rule, and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule or amendments wihtin the 30-day period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. Any person requesting a public hearing should state the request in writing, should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change

proposed. If a public hearing is required the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Milton R. Bellin
Division of Environmental Health
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5517

The proposed rule may be modified if the modifications are supported by the data and views submitted and do not result in a substantial change in the proposed rule and amendments as noticed.

A copy of the proposed rule and amendments is attached to this notice.

A Statement of Need and Reasonableness has been prepared and is available upon request from Milton Bellin at the above phone number and address. The statement describes the need for and reasonableness of each provision of the proposed rule and amendments, and identifies the data and information relied upon to support its proposed rule and amendments.

The approval of the Commissioner of Finance has been obtained and is attached to the Statement of Need and Reasonableness.

The proposed rule and amendments will affect small businesses as they are defined in Minn. Stat. § 14.115, subd. 1. The agency's consideration of the impact is contained in the Statement of Need and Reasonableness.

Since the total cost of the increased swimming pool surveillance program, and the fees collected to recover the cost, would not exceed $100,000 in either of the two years, there is no need to prepare a fiscal note as required in Minn. Stat. § 14.11 and § 15.065.

If no hearing is required, upon adoption of the rule and amendments, the rule and the required supporting documents will be delivered to the Attorney General

for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to obtain a copy of the adopted rule and amendments, should submit a written request to Milton Bellin at the above address.

Dated: September 11, 1987

Sr. Mary Madonna Ashton

SISTER MARY MADONNA ASHTON
Commissioner of Health

STATEMENT OF NEED AND REASONABLENESS

Part 4717.0310 is a new part which establishes fees for plan reviews and inspections associated with the construction of new public swimming pools, and alterations to existing public swimming pools. The authority for establishing the fees is contained in Minnesota Laws, 1987, Chapter 403, Article 1, Section 8, Subd. 2, paragraph 3, which reads as follows: "The appropriation for preventive and protective health services reflects an increase . . . for swimming pool surveillance and monitoring. The increase is not available until the department has established a fee system that will allow the increased costs to be fully recovered."

Under the proposed rule, the swimming pool contractor would have to submit, for each pool construction project, a one-time fee which would cover the Department's expenses associated with both the review and approval of plans and an inspection of the completed project to verify compliance with the swimming pool rules. The existing rules include a requirement that plans be reviewed and approved by the Department for all pool construction projects, and also give the Department the authority to conduct inspections to determine compliance with the approved plans and with the rule requirements governing pool operation.

At present, plan review for all pool construction in the State is done by a single engineer, who also has responsibilities pertaining to water supply, plumbing, and sewage disposal. Clerical support is provided by a small group, which also provides clerical services for five other program areas. Inspections are done on a limited basis by Environmental Field Services (EFS) sanitarians whose main responsibilities are the inspection of licensed facilities and public

water supply surveillance. The limited effort and low priority given the swimming pool program because of lack of staff resulted in plan review turnaround times of up to six weeks which is not acceptable to the pool construction industry, especially with the short construction season for outdoor pools in Minnesota. Likewise, new pools are often not inspected until long after the pools have been in use. This could result in the users being subjected to health or safety hazards. During the past several years, spot checks by the engineering staff have noted that a very high percentage of new pools are constructed with serious deficiencies, including improper water depths, improper bottom slopes, improper sidewall slopes, improper deck areas, lack of stairs and rails, and improper filter size. The State's pool program must include staff for initial construction inspections in order to be effective.

The fees collected for new pools and pool alterations would be used to offset the cost of two new pool program positions which were approved in the Minnesota Department of Health FY88-89 budget, an engineer and a clerk-typist. The engineer would primarily conduct initial pool inspections, but would do plan review and other activities related to the pool program. The clerk-typist would type inspection and plan review reports as a priority task, thus greatly reducing turnaround times for reports. It is hoped that most plans could be reviewed and approved in approximately two weeks or less.

ESTIMATED COSTS

The estimated expenditure for the increased effort is shown below.

	FY88	FY89
Graduate Engineer 1 (salary + 2½% annual inflation + 18%)	$28,183	$30,043
Clerk-Typist 1 (salary + 2½% annual inflation + 18%)	19,774	21,079
Supplies, equipment and travel	3,600	1,878
	$51,557	53,000

TOTAL COST (FY88 + FY89) = $104,557

The legislature appropriated funds for these two new positions in the amount of $54,000 for FY88 and $53,000 for FY89.

ESTIMATED REVENUE

Based on an average of the type and number of pool projects reviewed in the past three years, the estimated annual revenue from the proposed fee schedule is:

151 new pools x $300 =	$45,300
47 second or accessory pools x $200 =	9,400
5 pool alterations x $100 =	500
	$55,200

TOTAL ESTIMATED REVENUE (FY88 + FY89) = $110,400

The Department has examined the fee structure used in other states which provide swimming pool plan review and construction inspection to determine if the proposed fees are indeed reasonable. The following were noted:

Michigan:	Plan review		$200
	Initial construction inspection		200
		TOTAL	$400
Florida:	Plan review		$190
	Initial construction inspection		125
		TOTAL	$315

Minnesota's one-time fee of $300 for plan review and initial construction inspection combined is comparable to the fees charged in these two states.

The concept of a plan review and inspection fee is supported by the pool construction industry if it will mean an acceptable turnaround time on plan review, and more uniformity of inspections for new pools. Both of these goals should be met with the newly expanded activity which the proposed fees will cover.

For all of the reasons stated above the proposed fees are reasonable, in that they meet the statutory criterion for covering estimated program costs.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

IN THE MATTER OF PROPOSED
ADOPTION OF RULES RELATING
TO SWIMMING POOL PLAN REVIEW
AND INSPECTION FEES

AFFIDAVIT
OF MAILING

I hereby certify that the attached mailing list constitutes a complete list of persons, associations and other interested groups who as of September 29, 1987, have requested that their names be placed on file with the Minnesota Department of Health for the purpose of receiving notice of rule hearings on proposed rules and regulations on the subject captioned above.

I do further certify that on September 29, 1987, I deposited a copy of the Notice of Intent to Adopt Rules Without a Public Hearing to each person listed on the attached mailing list by United States mail, postage prepaid.

Thomas G. Collins
Division of Environmental Health
Minnesota Department of Health

Subscribed and sworn to before me
this 1st day of October, 1987.

Louise Kaniuk

LOUISE KANIUK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSON EXPIRES FEBRUARY 22, 1991

Cheryl Chafin
United Hospital Business
Office
239 W. Seventh Street
St. Paul, MN 55102

Michael J. Ahern
Moss and Barnett
1200 Pillsbury Center
200 South Sixth Street
Minneapolis, MN 55402

Anna Anderson, Director
Public Health Department
33 East Wentworth Ave., #101
West St. Paul, MN 55118

Joan Archer
MN Manufactured Housing Association
222 E. Little Canada Road, Suite 222
St. Paul, MN 55117

Assoc. for Retarded Citizens of
of Hennepin County
2344 Nicollet Avenue South, #370
Minneapolis, MN 55404

ATTN: Advocate

Walter A. Baldus
Woodvale Management Services Inc.
P.O. Box 1047
Austin, MN 55912

Carol J. Bishop, Director
Region Nine Area Agency on Aging
P.O. Box 3367
Mankato, MN 56001

Les Block
Public Health Administration
School of Public Health - U of M
Box 197, Mayo
Minneapolis, MN 55455

Neil Boyum
Range Center Inc.
1001 N.W. Eighth Avenue
P.O. Box 629
Chisholm, MN 55719

Broeker, Mihalchick and Blumer
2850 Metro Drive, Suite 800
Minneapolis, MN 55420

ATTN: Robert J. Ran

Fred D. Carlson, D.D.S., P.A.
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Fairmont, MN 56031

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POST Board
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St. Paul, MN 55101

Kathy Cavanaugh
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Benson, MN 56215

Becky A. Comstock
Dorsey and Whitney
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Minneapolis, MN 55402

William Conley
Mental Health Association of MN
328 Hennepin Avenue
Minneapolis, MN 55414

Jean Dawson
Minnesota Government Report
Room B-28, Press Room, State Capitol
St. Paul, MN 55155

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The Phoenix Residence, Inc.
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St. Paul, MN 55107

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Ewald Consulting Group, Inc.
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Alexandria, VA 22314

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St. Paul, MN 55164

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PHN Administrator
St. Louis County Health Department
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Bob Fitzgerald, D.C.
133 W. Lake Street
Minneapolis, MN 55408

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People, Incorporated
350 Iris Park Place
1885 University Avenue
St. Paul, MN 55104

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Range Mental Health Center, Inc.
P.O. Box 1188
Virginia, MN 55792

Jan Gervais
1131 Goodrich Avenue
St. Paul, MN 55105

James L. Glasoe
Homeward Bound Inc.
4741 Zealand Avenue North
New Hope, MN 55428

Elizabeth M. Gotz
Ebenezer Society
2500 Park Avenue
Minneapolis, MN 55404

Governmental Affairs Department
MN Nurses Association
1821 University Avenue
St. Paul, MN 55104

Jerry Gross
Community Living Inc.
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Victoria, MN 55386

Clark Gubin
Southwestern Mental Health Center, Inc.
P.O. Box D
Luverne, MN 56156

Eileen L. Harris
VALOR Resources, Inc.
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Minneapolis, MN 55426

Robert L. Haven
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St. Paul, MN 55104

Thomas L. Heenan
Supervising Sanitarian
City of Crystal Health Department
4141 Douglas Drive
Crystal, MN 55422

Ms. Lila Holdsworth
Assisi Residences of Faribault Co., Inc.
Box 353
Blue Earth, MN 56013

Mrs. Irene Homlquist
Crippled Children's School, Inc.
Box 23
Worthington, MN 56187

Hope Residence Inc.
Box 63
Waterville, MN 56096

Ingleside Engineering
and Construction, Inc.
4920 Highway 55
Rockford, MN 55373

ATTN: Brian Van Beusekom

Alan Ingram
National Assoc. of Social Workers
MN Chapter
614 Portland
St. Paul, MN 55102

James Jack
Department of Recreation, Parks
and Leisure Services
Mankato State University
Mankato, MN 56001

Gaynold Jensen, R.D.
111 West 107th Street
Minneapolis, MN 55420

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Group Homes of Winona, Inc.
252 W. Wabasha Street
Winona, MN 55987

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Manufactured Housing Assoc. of Iowa
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Karen Lenander
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Waconia, MN 55387

David Lurie, Commissioner of Health
City of Minneapolis
250 South Fourth Street
Minneapolis, MN 55415

Lorraine Lutgen
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St. Paul, MN 55116

Mary Luth
Washington County Public Health
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Carl F. Meissner, Clerk/Administrator
City of Cottage Grove
7516 - 80th Street South
Cottage Grove, MN 55016

Nancy Meyer, Public Health Supervisor
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Mankato, MN 56001

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Alliance for the Mentally Ill of MN
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Phil Newberg
MN Board Examiners -- Nursing
Home Administrators
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St. Paul, MN 55114

New Dawn, Inc.
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Fulda, MN 56131

D. Bill Olson
Habilitative Services, Inc.
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Windom, MN 56101

Mr. Donald W. Olson
Olson Well Service
RR
Halstad, MN 56548

Mary C. Pattock, Executive Director
Minnesota Chiropractic Association
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St. Paul, MN 55113

Guy Peterson, Administrator
Goodhue - Wabasha CHS
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Red Wing, MN 55066

Alex Petterson
Community Involvement Programs
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Kathleen Pine, Executive Director
Dakota's Children, Inc.
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West St. Paul, MN 55118

Pine Ridge Homes, Inc.
915 - 18th Street
Cloquet, MN 55720

Pine River Group Home, Inc.
Box 96
Pine River, MN 56474

Port-A-Ray Medical Services, Inc.
2025 Nicollet Avenue
Minneapolis, MN 55404

ATTN: W. A. Abler

Presbyterian Family Foundation
901 Memorial Parkway
Willmar, MN 56201

Attn: Beverly Helgeson, Administrator

The Residence, Inc.
2499 N. Rice Street #220
Roseville, MN 55113

Residential Services of
Northeast Minnesota, Inc.
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Duluth, MN 55803-3008

Paul Riddle
Metropolitan Council
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Minneapolis, MN 55414

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Alfred Ross
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215 Lowry Medical Arts Building
S.t Paul, MN 55102

Mr. Brian Huling
Program Analyst
Community Health Department
Fourth Floor, McGill Building
501 Park Avenue
Minneapolis, MN 55415

Colleen Wieck, Ph.D., Exec. Director
Developmental Disabilities Program
State Planning Agency
201 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Mark S. Wiger
801 Center Street
New Ulm, MN 56073

Merlin A. Wilbur
100 Sibley Street
Hastings, MN 55033

Terri Williams
6810 Hemlock Lane North
Maple Grove, MN 55369

Wright County Human Services
Courthouse
Buffalo, MN 55313

B. On filing a reinstatement application, pay the annual renewal fees and applicable penalty fees for the years between expiration or termination of the license and the year in which the application is filed.

Subp. 3. **Revoked or suspended license.** No license that has been suspended or revoked by the board may be reinstated unless the applicant for reinstatement provides evidence of full rehabilitation from the offense for which the license was suspended or revoked and complies with all other reasonable conditions imposed by the board for the purpose of establishing the extent of rehabilitation. In addition, if the disciplinary action was based in part on failure to meet continuing education requirements, the license may not be reinstated until the applicant has successfully completed the requirements in subpart 2. The board may require the licensee to pay all costs of the proceedings resulting in the suspension or revocation of a license under part 6500.2800 or pursuant to its disciplinary authority and the reinstatement or issuance of a new license. A licensee who has been disciplined by the board in a manner other than by suspension or revocation may be required by the board to pay all costs of the proceedings resulting in the disciplinary action.

Subp. 4. **Licensure application not precluded.** Nothing in this part prohibits an optometrist from applying for licensure under Minnesota Statutes, section 148.57, subdivisions 1 and 2.

Subp. 5. **Exemptions.** A licensee who pays an annual license renewal fee and meets any of the following conditions is exempt from complying with the continuing education requirements if the licensee files an affidavit with the board specifying the condition applicable to the licensee:

A. resides permanently outside the state and does not practice within the state;

B. is retired from practice and does not perform any optometric services on a voluntary or free basis; or

C. is permanently disabled and unable to practice optometry.

Subp. 6. **Expiration of exemption.** A licensee claiming exemption under subpart 5 who subsequently decides to resume practice shall submit to the board, before resuming practice, a written notice of the intended change and evidence of having completed the continuing education requirements equivalent to what requirements would have been without the exemption immediately preceding the date of receipt of the notice of the intent to resume practice. If the licensee has not complied with the continuing education requirements, the licensee must comply with part 6500.2900, subpart 2; if the licensee has been exempt from complying with the continuing education requirements, the licensee may not resume practice until notified by the board that the evidence submitted is acceptable. The licensee will be placed in the continuing education cycle that would have applied if the exemption had not been claimed.

Department of Health

Proposed Permanent Rule Requiring Payment of a Fee When Swimming Pool Plans and Specifications are Submitted to the Commissioner of Health for Approval

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Commissioner of Health proposes to adopt *Minnesota Rules* pt. 4717.0310 relating to fees for swimming pool plan review and inspection fees. The Commissioner proposes to adopt and amend the above rules without a public hearing, following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Laws 1987*, ch. 403, art. 1, § 8, subd. 2. In addition to the specific authority cited above, the Commissioner of Health also has general authority pursuant to *Minnesota Statutes* § 144.122 to prescribe fees for the issuance of original and renewal permits, licenses, registrations and certifications issued under her authority. Further, *Minnesota Statutes* § 16A.128 provides that fees must be set or adjusted so the total fees nearly equal the sum of the appropriation for the accounts plus agency's general support costs, statewide indirect costs, and Attorney General costs attributable to the fee function.

Persons interested in these rules shall have 30 days in which to submit comment in support of or in opposition to the proposed rule, and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule or amendments within the 30-day period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. Any person

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.

requesting a public hearing should state the request in writing, should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

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

Milton R. Bellin
Division of Environmental Health
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5517

The proposed rule may be modified if the modifications are supported by the data and views submitted and do not result in a substantial change in the proposed rule and amendments as noticed.

A copy of the proposed rule and amendments is attached to this notice.

A Statement of Need and Reasonableness has been prepared and is available upon request from Milton Bellin at the above phone number and address. The statement describes the need for and reasonableness of each provision of the proposed rule and amendments, and identifies the data and information relied upon to support its proposed rule and amendments.

The approval of the Commissioner of Finance has been obtained and is attached to the Statement of Need and Reasonableness.

The proposed rule and amendments will affect small businesses as they are defined in *Minnesota Statutes* § 14.115, subd. 1. The agency's consideration of the impact is contained in the Statement of Need and Reasonableness.

Since the total cost of the increased swimming pool surveillance program, and the fees collected to recover the cost, would not exceed $100,000 in either of the two years, there is no need to prepare a fiscal note as required in *Minnesota Statutes* § 14.11 and § 15.065.

If no hearing is required, upon adoption of the rule and amendments, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to obtain a copy of the adopted rule and amendments, should submit a written request to Milton Bellin at the above address.

Dated 11 September 1987

Sister Mary Madonna Ashton
Commissioner of Health

Rule as Proposed (all new material)

4717.0310 FEES.

All plans for swimming pool construction, installation, or alteration submitted to the commissioner of health for review and approval under part 4717.0300 must be accompanied by the appropriate fee as prescribed below:

A. Each pool, except as provided in items B and C, $300.

B. Each additional pool located at the same site, shown in the same plans, and constructed at the same time, $200.

C. Alterations to an existing pool without changing the size or configuration of the pool, $100.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of a Rule Relating to Swimming Pool Plan Review and Inspection Fees, Minn. Rules, pt. 4715.0310

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

Notice of the Commissioner of Health's (hereinafter "Commissioner") intent to adopt the above-entitled rule was published in the State Register on October 12, 1987, and sent by United States mail to all persons on the list maintained by the Commissioner on September 29, 1987, pursuant to Minn. Stat. §§ 14.14, subd. 1.a. and 14.22. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking list and published in the State Register and was available to the public. Before the notice was submitted to the State Register, a copy of the notice of intent to adopt rules without a public hearing and the proposed rule was sent to the chairman of the House Appropriations Committee and Senate Finance Committee. The proposed rule was also approved by the Department of Finance. The Commissioner previously published a notice of solicitation of outside opinion in the State Register on July 20, 1987.

All persons were given the opportunity to submit comments on the proposed rule for 30 days after the notice of proposed rulemaking. No requests for a public hearing on the rule were received by the Commissioner.

Based on the comments received and evidence before the Commissioner concerning the proposed rule, the Commissioner makes the following:

FINDINGS OF FACT

Minnesota Laws, 1987, Chapter 403, Article 1, Section 8, subd. 2, paragraph 3, authorizes the Department of Health (hereinafter "Department") to establish a fee system to recover the costs of increased swimming pool surveillance and monitoring. The Commissioner finds that a one-time fee for each public swimming pool construction project, to cover both plan review and inspection, would be appropriate since the increased effort in the program will be for surveillance of pool construction projects. The Commissioner further finds that the estimated revenue from the fee system is adequate to recover the estimated expenditures for the increased effort, and that it closely approximates the expenditures. The proposed amendment to Minn. Rules contained in part 4717.0310 is needed and reasonable.

CONCLUSIONS

1. The Department has the authority to adopt the above-captioned rule pursuant to Minn. Laws, 1987, Chapter 403, Article 1, Section 8, subd. 2, paragraph 3.

2. The Department gave proper notice of the proposed rule pursuant to Minn. Stat. § 14.22 (1986).

3. The only comments received by the Commissioner in response to a notice of intent to solicit outside opinion was a letter of support from a county health department, therefore it was not necessary to address any public comments.

4. No comments and no requests for a public hearing on the rule were received by the Commissioner during the 30-day comment period after the notice of intent to adopt rules without a public hearing was published, therefore a public hearing was not required, pursuant to Minn. Stat. § 14.25 (1986).

5. The Commissioner concludes that the proposed Minn. Rule, part 4717.0310 is needed and reasonable and should be adopted.

ORDER

NOW THEREFORE, IT IS ORDERED that the rule identified as Minn. Rule, part 4717.0310, as published in the State Register and as addressed herein, is adopted this 14th day of December 1987 pursuant to the authority vested in the Commissioner of Health pursuant to Minn. Laws, 1987, Chapter 403, Article 1, Section 8, subd. 2, paragraph 3.

Sr. Mary Madonna Ashton

Sister Mary Madonna Ashton
Commissioner of Health

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of Proposed
Adoption of Rules Relating to
Swimming Pool Plan Review
and Inspection Fees

DECLARATION OF
COUNSEL

I, Paul G. Zerby, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit client code is 1210.

Dated: December 22, 1987

PAUL G. ZERBY
Special Assistant
Attorney General

1435

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL - Health

STATE OF MINNESOTA

Office Memorandum

DATE : December 22, 1987

TO : Christie Bennett Eller
Assistant Attorney General

FROM : Paul G. Zerby
Special Assistant
Attorney General

PHONE : 341-7272

SUBJECT : In the Matter of the Proposed Adoption of a Rule Relating to Swimming Pool Plan Review and Inspection Fees, Minn. Rules pt. 4715.0310

Pursuant to Minn. Stat. § 14.26 and Minn Rules pt. 2010.0300, the attached documents are submitted to your office for approval as to the legality of the above adopted rule:

1. Rule as adopted (four copies);
2. Rule as proposed with certificate of approval as to form by revisor of statutes;
3. Notice of Solicitation of Outside Opinion as published in the State Register;
4. Notice of Intent to Adopt a Rule Without a Public Hearing as mailed;
5. Notice of Intent to Adopt a Rule Without a Public Hearing as published in the State Register;
6. Affidavit of Mailing and certified copy of mailing list;
7. Letter to The Honorable Glen Anderson, Chairman, House Appropriations Committee;
8. Letter to The Honorable Gene Merriam, Chairman, Senate Finance Committee;
9. Statement of Need and Reasonableness;
10. Approval by Department of Finance;
11. Comments received;
12. Findings of Fact, Conclusions and Order;
13. Declaration of counsel.

RECEIVED
ATTORNEY GENERAL'S OFFICE
DEC 24 1987
204 ADMINISTRATION BLDG
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

PGZ:dsc

Enclosures

RECEIVED
DEC 23 1987