

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

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RULE REVIEW CHECKLIST

File No. 1573 Docket No. 05.009.0700

DATE RECEIVED 3/8/89 ADOPTED W/O HEARING X

REVIEW DATE 3/17/89 EMERGENCY RULE _____

DUE DATE 3/22/89 on REVISOR APPROVED _____

APPROVED [signature] REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

_____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~
- _____ ~~Date published in State Register~~
- _____ ~~Comments~~

_____ ~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution
- 11/22/88 Date adopted

✓ Proposed Rule
- yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 115.03 subd 1e Statutory Authority + 116.07 subd 4
- yes Small Business Statement
- no Expenditure of public money statement
- yes Signature

✓ Statement of Need and Reasonableness (if applicable)
- yes Small Business Statement
- n/a Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- 12/22/88 Date (30)/25 days before adoption
- ok Notice attached
- _____ ~~Copy of rule or summary attached~~

✓ Publication in State Register
- 1/31/89 Date (30)/25 days before adoption

_____ 180-day deadline from:
- n/a Effective date of law requiring rule (14.12) (both rules)
- 2/3/89 end of comment period (§ 14.26) (rules without hearing)
- _____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

✓ Resolution Adopting
- 3/6/89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- 2/28/89 Date

✓ Written requests, submissions or comments (1)

✓ Declaration of attorney
- J. Olson Name of SAAG representing agency

✓ ~~Notice of Submission to Atty. Gen. (if applicable)~~ 4/19/88 memo

✓ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~ Mailing list

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : March 22, 1989

TO : JOCELYN F. OLSON
Assistant Attorney General

FROM : JULIE A. LEPPINK
Special Assistant Attorney General

PHONE : 6-9422

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Permit Rules

The above-referenced rule has been approved as to its legality by the Attorney General on March 22, 1989.

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 accoradance 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.

MJC:klk
Enclosures

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

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Pollution Control Agency

Adopted Permanent Rules Relating to Permit Rules

Rules as Adopted

7001.0020 SCOPE.

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

A. to I. [Unchanged.]

J. An agency permit required for the construction of a facility, building, structure, or installation that attracts or may attract mobile source activity that results in emissions of an air pollutant for which there is a state standard. Parts 7001.0100, subparts 4 and 5, and 7001.0110 do not apply to permits for parking facilities described in part 7001.1270, subpart 2, with a new or increased parking capacity of 5,000 vehicles or less. Part 7001.0150, subparts 1 and 2, does not apply to these permits.

K. [Unchanged.]

7001.0040 APPLICATION DEADLINES.

Subpart 1. **Application for new permit.** Except as otherwise required by parts 7001.0530 and 7001.1040, 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.

Subp. 2. and 3. [Unchanged.]

7001.0130 CONTESTED CASE HEARING.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Hearing notice and order.** If the agency decides to hold a contested case hearing, the commissioner shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

A. and B. [Unchanged.]

C. identification of the existing parties and a concise description of the issues on which the agency has ordered a hearing; and

D. [Unchanged.]

Subp. 4. [Unchanged.]

7001.0140 FINAL DETERMINATION.

Subpart 1. [Unchanged.]

Subp. 2. **Agency findings.** The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

A. to C. [Unchanged.]

D. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;

E. that all applicable requirements of Minnesota Statutes, chapter 116D and the rules adopted under Minnesota Statutes, chapter 116D have not been fulfilled;

F. that with respect to the facility or activity to be permitted, the proposed permittee has not complied with any requirement under chapter 7002 or 7046 to pay permit fees; or

G. that with respect to the facility or activity to be permitted, the proposed permittee has failed to pay a penalty owed under Minnesota Statutes, section 116.072.

Subp. 3. [Unchanged.]

7001.0160 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit, other than a permit described in part 7001.0020, item B, and who has submitted a timely application for reissuance of the permit may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the agency takes final action on the application unless the commissioner determines that any of the following are true:

A. the permittee is not in substantial compliance

with the terms and conditions of the expired permit or with a stipulation agreement or compliance schedule designed to bring the permittee in compliance with the permit;

B. the agency, as a result of an action or failure to act of the permittee, has been unable to take final action on the application on or before the expiration date of the permit; or

C. the permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies.

7001.0180 JUSTIFICATION TO COMMENCE REVOCATION WITHOUT REISSUANCE OF PERMIT.

The following constitute justification for the commissioner to commence proceedings to revoke a permit without reissuance:

A. and B. [Unchanged.]

C. the commissioner finds that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;

D. the permittee has failed to comply with any requirement under chapter 7002 or 7046 to pay permit fees; or

E. the permittee has failed to pay a penalty owed under Minnesota Statutes, section 116.072.

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the commissioner shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the commissioner finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or B, the commissioner shall also find that

the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. If the permit is a permit described in part 7001.0020, item A, the commissioner shall comply with the requirements of Minnesota Statutes, section 116.074, before approving the permit modification. The commissioner shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. If the permit is a permit described in part 7001.0020, item B, the following additional requirements apply:

A. and B. [Unchanged.]

Subp. 3. and 4. [Unchanged.]

HAZARDOUS WASTE FACILITY PERMITS

7001.0725 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit and who has submitted a timely and complete application for reissuance of the permit may continue to conduct the permitted activity until the agency takes final action on the application if the commissioner determines that both of the following are true:

A. the permittee is in compliance with the terms and conditions of the expired permit; and

B. the agency, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

NPDES PERMITS

7001.1020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in Minnesota Statutes, section 115.01, subdivisions 2 to 9 and 11 to 17, and in part 7001.0010 apply to the terms used in parts 7001.1000 to 7001.1100 unless the terms are defined in this part.

As used in parts 7001.1000 to 7001.1100, the terms in subparts 2 to 31 have the meanings given them.

Subp. 2. to 31. [Unchanged.]

7001.1030 PERMIT REQUIREMENT AND EXEMPTIONS.

Subpart 1. [Unchanged.]

Subp. 2. **Exemptions.** The following persons are not required to obtain a National Pollutant Discharge Elimination System permit:

A. to G. [Unchanged.]

H. persons injecting water, gas, or other material into a well to facilitate the production of oil or gas;

I. persons disposing of water in a well if this water is associated with oil and gas production; and

J. persons disposing of water in a conveyance or system of conveyances used solely for the collection and conveyance of stormwater runoff, unless the commissioner determines that:

(1) the discharge is subject to effluent limitations or other requirements for stormwater adopted by the United States Environmental Protection Agency for stormwater point source discharges;

(2) a water quality management plan adopted pursuant to section 208 of the Clean Water Act, United States Code, title 33, section 1288, recommends that pollution control requirements be applied to the discharge; or

(3) the discharge to the receiving water is significant due to volume, pollutant loading, or the character of the receiving water.

7001.1080 ESTABLISHMENT OF SPECIAL CONDITIONS FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Conditions in reissued permits.** In a reissued permit the commissioner shall establish effluent limitations, standards, or prohibitions that are at least as stringent as the effluent limitations, standards, or prohibitions or conditions in the previous permit unless the commissioner establishes less stringent effluent limitations, standards, or prohibitions in accordance with part 7050.0212.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAR 22 1989

Joan Anderson Growe

Secretary of State

2:15 PM

APPROVED AS TO FORM AND LEGALITY

March 22 19 89

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Gerald L. Willet, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 22nd day of November, 1988, 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 Commissioner of the Minnesota Pollution Control Agency (Agency) is hereby granted the authority to sign and to give notice of the Agency's intent to adopt, without a public hearing, the attached proposed amendments to the Agency's Permit Rules, Minn. Rules ch. 7001 (1987), to all persons who have registered their names with the Agency for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making 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 (1986).
>
> BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Commissioner is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rule amendments as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for 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 November, 1988.

Gerald L. Willet

Gerald L. Willet
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Permit Rules

Rules as Proposed

7001.0020 SCOPE.

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

A. to I. [Unchanged.]

J. An agency permit required for the construction of a facility, building, structure, or installation that attracts or may attract mobile source activity that results in emissions of an air pollutant for which there is a state standard. Parts 7001.0100, subparts 4 and 5, and 7001.0110 do not apply to permits for parking facilities described in part 7001.1270, subpart 2, with a new or increased parking capacity of 5,000 vehicles or less. Part 7001.0150, subparts 1 and 2, does not apply to these permits.

K. [Unchanged.]

7001.0040 APPLICATION DEADLINES.

Subpart 1. **Application for new permit.** Except as otherwise required by parts 7001.0530 and ~~7001.1050~~ 7001.1040, 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.

Subp. 2. and 3. [Unchanged.]

7001.0130 CONTESTED CASE HEARING.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Hearing notice and order.** If the agency decides to hold a contested case hearing, the commissioner shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

Approved by Revisor

A. and B. [Unchanged.]

C. identification of the existing parties and a concise description of the issues ~~which have been raised by any party~~ on which the agency has ordered a hearing; and

D. [Unchanged.]

Subp. 4. [Unchanged.]

7001.0140 FINAL DETERMINATION.

Subpart 1. [Unchanged.]

Subp. 2. **Agency findings.** The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

A. to C. [Unchanged.]

D. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit; ~~or~~

E. that all applicable requirements of Minnesota Statutes, chapter 116D and the rules ~~promulgated~~ adopted under Minnesota Statutes, chapter 116D have not been fulfilled;

F. that with respect to the facility or activity to be permitted, the proposed permittee has not complied with any requirement under chapter 7002 or 7046 to pay permit fees; or

G. that with respect to the facility or activity to be permitted, the proposed permittee has failed to pay a penalty owed under Minnesota Statutes, section 116.072.

Subp. 3. [Unchanged.]

7001.0160 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit, other than a permit described in part 7001.0020, item B, and who has submitted a timely ~~and complete~~ application for reissuance of the permit may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the agency takes final action on the application ~~if~~ unless the commissioner determines that ~~both~~ any of the following are true:

A. the permittee is not in substantial compliance

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with the terms and conditions of the expired permit or with a stipulation agreement or compliance schedule designed to bring the permittee in compliance with the permit; ~~and~~

B. the agency, ~~through no fault~~ as a result of an action or failure to act of the permittee, has ~~not taken~~ been unable to take final action on the application on or before the expiration date of the permit; or

C. the permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies.

7001.0180 JUSTIFICATION TO COMMENCE REVOCATION WITHOUT REISSUANCE OF PERMIT.

The following constitute justification for the commissioner to commence proceedings to revoke a permit without reissuance:

A. and B. [Unchanged.]

C. ~~the operation of the permitted facility or activity terminates; and~~

~~D.~~ the commissioner finds that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;

D. the permittee has failed to comply with any requirement under chapter 7002 or 7046 to pay permit fees; or

E. the permittee has failed to pay a penalty owed under Minnesota Statutes, section 116.072.

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the ~~agency~~ commissioner shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the ~~agency~~ commissioner finds that no other change in the

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permit is necessary. If the permit is a permit described in part 7001.0020, item A or B, the ~~agency~~ commissioner shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. ~~Within 60 days of receipt of a complete written application for modification as to ownership and control, the commissioner shall place the matter on the agenda for consideration by the agency.~~ If the permit is a permit described in part 7001.0020, item A, the commissioner shall comply with the requirements of Minnesota Statutes, section 116.074, before approving the permit modification. The ~~agency~~ commissioner shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. If the permit is a permit described in part 7001.0020, item B, the following additional requirements apply:

A. and B. [Unchanged.]

Subp. 3. and 4. [Unchanged.]

HAZARDOUS WASTE FACILITY PERMITS

7001.0725 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit and who has submitted a timely and complete application for reissuance of the permit may continue to conduct the permitted activity until the agency takes final action on the application if the commissioner determines that both of the following are true:

A. the permittee is in compliance with the terms and conditions of the expired permit; and

B. the agency, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

NPDES PERMITS

7001.1020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in Minnesota Statutes, section 115.01, subdivisions 2 to 9 and 11 to 17, and in part

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As used in parts 7001.1000 to 7001.1100, the terms in subparts 2 to 31 have the meanings given them.

Subp. 2. to 31. [Unchanged.]

7001.1030 PERMIT REQUIREMENT AND EXEMPTIONS.

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Subp. 2. **Exemptions.** The following persons are not required to obtain a National Pollutant Discharge Elimination System permit:

A. to G. [Unchanged.]

H. persons injecting water, gas, or other material into a well to facilitate the production of oil or gas; ~~and~~

I. persons disposing of water in a well if this water is associated with oil and gas production; and

J. persons disposing of water in a conveyance or system of conveyances used solely for the collection and conveyance of stormwater runoff, unless the commissioner determines that:

(1) the discharge is subject to effluent limitations or other requirements for stormwater adopted by the United States Environmental Protection Agency for stormwater point source discharges;

(2) a water quality management plan adopted pursuant to section 208 of the Clean Water Act, United States Code, title 33, section 1288, recommends that pollution control requirements be applied to the discharge; or

(3) the discharge to the receiving water is significant due to volume, pollutant loading, or the character of the receiving water.

7001.1080 ESTABLISHMENT OF SPECIAL CONDITIONS FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Conditions in reissued permits.** In a reissued permit the commissioner shall establish effluent limitations,

Approved by Revisor _____

standards, or prohibitions that are at least as stringent as the effluent limitations, standards, or prohibitions or conditions in the previous permit unless the commissioner ~~makes the finding in items A, B, and C~~ establishes less stringent effluent limitations, standards, or prohibitions in accordance with part 7050.0212. ~~In no event may the commissioner establish an effluent limitation, standard, or prohibition that is less stringent than that allowed by the applicable effluent limitation guideline in effect at the date of the renewal or reissuance of the permit. Less stringent effluent limitations, standards, prohibitions, or conditions may only be established if the commissioner finds:~~

~~A. the circumstances upon which the previous permit was based have materially and substantially changed since the time the previous permit was issued and this change would constitute cause for permit modification or revocation and reissuance under part 7001.0190;~~

~~B. the permittee has installed the treatment facilities required to meet the effluent limitations, standards, or prohibitions in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve compliance with these effluent limitations, standards, or prohibitions, and that the effluent limitation guideline upon which the original effluent limitation, standard, or prohibition was based has been amended by the Environmental Protection Agency to allow the establishment of a less stringent effluent limitation, standard, or prohibition. The revised effluent limitation, standard, or prohibition must not be less stringent than the level of pollutant control actually achieved by the permittee;~~

~~C. that the Environmental Protection Agency has amended the effluent limitation guideline applicable to the permittee and that the amended effluent guideline is based upon best conventional pollutant control technology under section 301(b)(2)(E) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(E) as amended; or~~

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~~D.--that-the-permittee-has-increased-production-at-the facility-to-cause-a-significant-reduction-in-treatment efficiency,-and-that-the-effluent-limitation-guideline-upon which-the-original-effluent-limitation,-standard,-or-prohibition was-based-has-been-amended-by-the-Environmental-Protection Agency-to-allow-the-establishment-of-a-less-stringent-effluent limitation,-standard,-or-prohibition.~~

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Permit Rules

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7001

The attached rules are approved for publication
in the State Register

Carla M. Riehle

Carla M. Riehle
Assistant Revisor

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments to Permit Rules,
Minn. Rules Parts 7001.0020,
7001.0040, 7001.0130, 7001.0140,
7001.0160, 7001.0180, 7001.0190,
7001.1020, 7001.1030, 7001.1080,
and 7001.0725

NOTICE OF INTENT TO
ADOPT RULES WITHOUT
A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28 (1986). The Agency's authority to adopt the rule is set forth in Minn. Stat. §§ 115.03, subd. 1(e) and 116.07, subd. 4 (1986).

All persons have until 4:30 p.m. on February 3, 1989, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Barbara Lindsey Sims
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7305

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

The proposed rule amendments, if adopted, will change the public notice requirements for air quality indirect source permits for small parking facilities, clarify the circumstances under which a permittee may continue to operate under the terms of an expired permit, exempt certain stormwater

discharges from the requirement to obtain a National Pollution Discharge Elimination System permit, and make miscellaneous changes to incorporate statutory changes, eliminate erroneous cross references, and clarify the applicability of certain provisions. A copy of the proposed rule amendments is enclosed. One free copy of the rules is available upon request from Barbara Lindsey Sims at the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from Barbara Lindsey Sims upon request.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1986), "Small business considerations in rulemaking," that the proposed rules will not have an adverse effect on small businesses.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 receive a copy of the rule amendments as adopted, must submit a written request to Barbara Lindsey Sims.

Dated: December 21, 1988

Gerald L. Willet

GERALD L. WILLET
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Permit Rules, Minn. Rules Parts 7001.0020, 7001.0040, 7001.0130, 7001.0140, 7001.0160, 7001.0180, 7001.0190, 7001.1020, 7001.1030, 7001.1080, and 7001.0725

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

In 1984, the Minnesota Pollution Control Agency (MPCA) adopted amendments to its rules governing MPCA permits, which rules are now codified as Minn. Rules ch. 7001 (1987). The MPCA is now proposing several amendments to those rules.

The MPCA began drafting the proposed rule amendments after receiving a proposal from industry representatives to amend the MPCA's rule related to expired permits. The overall goal of the rule amendments is to correct problems in the existing rules which have been identified over the last four years during implementation of the MPCA permit programs.

The draft rule amendments were brought before the MPCA's Policy and Rules Committee on September 26, 1988. Members of the Advisory Group were present at the meeting and commented on the draft rules. The MPCA Board authorized commencement of rulemaking proceedings on the draft rules at its September 17, 1988, meeting.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to issue permits is set forth in Minn. Stat. §§ 115.03, subd. 1(e) and 116.07, subd. 4a

(1986). Minn. Stat. § 115.03, subd. 1(e) 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, rules, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities.

(Emphasis supplied.) Minn. Stat. § 116.07, subd. 4a provides:

> The pollution control agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution.
>
> The pollution control agency may also issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof, related to the storage, collection, transportation, processing, or disposal of waste.
>
> The pollution control agency may revoke or modify any permit issued under this subdivision and section 116.81 whenever it is necessary, in the opinion of the agency, to prevent or abate pollution.

The statutory authority for the MPCA to adopt rules to implement this permitting authority is set forth in Minn. Stat. § 115.03, subd. 1(e) and 116.07, subd. 4 (1986). Under these statutes, the Agency has the necessary statutory authority to adopt the

proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MPCA must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the MPCA is appropriate. The need for the rule amendments is discussed below.

The overall need for the proposed rule amendments arises from the identification of problems, mostly minor, which has occurred over the years as a result of working with and implementing the existing permit rules. The Statement of Reasonableness identifies the specific problems being addressed by each of the proposed rule amendments. For the purposes of clarity and to avoid redundancy, the MPCA's demonstration of the need for the individual rule amendments is set forth in the Statement of Reasonableness.

IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of

arbitrariness or capriciousness. It means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rules is discussed below.

Part 7001.0020, Scope

Minn. Rules pt. 7001.0020 provides that the MPCA's general permit rules, pts. 7001.0010 to 7001.0210, apply to the types of permits listed in Items A through K. Item J relates to permits for the construction of a facility, building, structure, or installation that attracts or may attract mobile source activity that results in emissions of an air pollutant for which there is a state standard. These permits are known as "indirect source permits."

The public notice provisions of Minn. Rules pts. 7001.0200, subps. 4 and 5 and 7001.0110 require the MPCA to prepare and distribute a public notice and allow for a thirty-day comment period before issuing any indirect source permit. The public notice allows the public and the permittee thirty days to comment on the draft permit. In the course of implementing the indirect source permit rules, the MPCA has found that public notices on smaller parking facilities, which are required by Minn. Rules pt. 7001.1270, subp. 2 to be permitted, do not attract much public comment or interest. In fact, since at least 1981, the MPCA has received no written comments from the public on projects that involved parking only. This fact causes the MPCA to believe that

these relatively small parking facilities are not of much interest to the community with respect to their potential air quality impacts. The lack of interest in these permits causes the MPCA to believe that the staff time and money that is being invested into the preparation and distribution of public notices on these types of parking facilities is being wasted and could be put to better use elsewhere, given the limited resources of the MPCA. In addition, the public notice requirements cause the owners and operators of these smaller parking facilities to wait at least thirty extra days to receive their permits, even though no member of the public is likely to submit any comments.

In order to address the problems identified during the implementation of the rules, the MPCA proposes to add the following sentence to the rule: "Parts 7001.0200, subparts 4 and 5 and 7001.0110 do not apply to permits for parking facilities described in part 7001.1270, subpart 2 with a new or increased parking capacity of 5000 vehicles or less." The purpose of this sentence is to exempt indirect source permits for these smaller parking facilties from public notice requirements.

It is reasonable to exempt smaller parking facilities from public notice requirements because, in the experience of the MPCA, these types of facilities have not attracted public comments, which causes the MPCA to believe that they are not of much interest to the public. The exemption is reasonable because it will prevent the MPCA from wasting staff time and money on

public notices that no one seems to be interested in, thus making that time and money available to be used on projects which are of more interest and concern to the public. The exemption is reasonable because it will allow permittees to receive their permits and commence construction thirty days earlier than under the existing rules. The exemption is reasonable because it does not go too far: i.e., it does not exempt these projects from the requirement to be permitted; it still allows the MPCA to perform needed review on the project's potential to adversely affect air quality.

Based on discussion above, the proposed rule amendment is needed and reasonable.

Part 7001.0040, Application Deadline

Minn. Rules pt. 7001.0040, subp. 1 concerns the timing of applying for a new permit. The rule allows a permit application for a new facility or activity to be submitted at any time, "[e]xcept as otherwise required by parts 7001.0530 and 7001.1050." In the course of implementing this rule the MPCA discovered that the cross reference to Minn. Rules pt. 7001.1050 is incorrect; it should instead cross reference Minn. Rules pt. 7001.1040, entitled "Application Deadline for New Permits." Therefore there is a need to amend this rule to correct the cross reference. It is reasonable to correct the cross reference so that the reader will not be confused when determining the requirements of the permit rules.

Part 7001.0130, Contested Case Hearing

Minn. Rules pt. 7001.0130 relates to the holding of contested case hearings. Subpart 3 of the rule requires certain items of information to be included in the notice of and order for hearing. One of the items is: "identification of the existing parties and a concise description of the issues which have been raised by any party."

During the implementation of this rule the MPCA has noted a problem with the above-quoted language. The language conflicts with subpart 1 of the rule, which sets up criteria which must be met in order for the MPCA to order a contested case hearing at all. The MPCA must find all three of the following before ordering a contested case hearing:

A. that a person requesting the contested case hearing has raised a material issue of fact or of the application of facts to law related to the commissioner's preliminary determination or the terms of the draft permit;

B. that the agency has jurisdiction to make determinations on the issues of fact or of the application of facts to law raised by the person requesting the contested case hearing; and

C. that there is a reasonable basis underlying issues of fact or law raised by the person that requests the contested case hearing such that the holding of a contested case hearing would aid the agency in making a final determination on the permit application.

The language of subpart 3.C. creates a conflict because it suggests that the MPCA must hold a hearing on every issue raised by the person requesting a contested case hearing, even if one or

more of the issues raised does not meet the criteria listed in subpart 1. As shown by its adoption of subpart 1, the MPCA clearly did not intend to require itself to hold contested case hearings where any one of the three criteria listed therein was not met.

The MPCA proposes to amend subpart 3 to require the notice of and order for hearing to contain a description of the issues "on which the agency has ordered a hearing." This language reflects the MPCA's intention to order hearings only on those issues which meet the criteria in subdivision 1.

The proposed amendment is reasonable because it brings subpart 3 into harmony with the provisions of subpart 1 and clarifies the MPCA's intention only to hold hearings on issues which meet the criteria listed in subpart 1.

Based on the foregoing, the proposed amendment is needed and reasonable.

Part 7001.0140, Final Determination

Minn. Rules pt. 7001.0140, subp. 2 contains the criteria under which the MPCA will refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance. There are two problems being addressed by the proposed amendments: one relating to clarity and another relating to a 1987 statutory change.

The first problem relates to the clarity of the rules. Although Item B of the rule clearly states that unresolved

noncompliance with applicable state and federal pollution control statutes and rules administered by the MPCA constitutes justification to refuse to issue a new or modified pemit, to refuse permit reissuance, or to revoke a permit without reissuance, it has never been absolutely clear whether the MPCA's permit fee rules, Minn. Rules ch. 7001 and 7046, constitute "pollution control rules."

The MPCA believes that the permit fee rules do constitute pollution control rules, noncompliance with which should constitute justification to revoke or refuse to issue permits, and therefore there is a need to amend the rule to clarify that noncompliance with fee rules justifies revocation or refusal to issue permits. The MPCA proposes to add a new Item F to the rules which states: "that with respect to the facility or activity to be permitted, the proposed permittee or permittees have not complied with any requirement under Minnesota Rules, chapter 7002 or 7046 to pay permit fees." This proposal is reasonable because it makes it clear that the MPCA has a remedy (in addition to the burdensome remedy of bringing a lawsuit or hiring a collection agency) in case a permittee fails to comply with permit fee rules, a remedy which has a logical connection to the permittee's failure. The proposal is reasonable because it is merely clarifying the MPCA's belief that the permit fee rules are an integral part of the Minnesota's pollution control rules as referred to in existing Item B of the rule. This is because

permit fees collected as a result of the fee rules form the basis for a portion of the MPCA's budget relating to the issuance and enforcement of permits and are thus a necessary part of Minnesota's pollution control program.

The second problem being addressed is the addition of statutory language by the legislature in 1987, now codified as Minn. Stat. § 116.072, subd. 10, which states: "If a person fails to pay a penalty owed under this section, the agency has grounds to revoke or refuse to reissue or renew a hazardous waste permit issued by the agency." A penalty "owed under this section" refers to an Administrative Penalty Order (APO) issued for hazardous waste violations under Minn. Stat. § 116.072 (Supp. 1987).

In order for the items in Minn. Rules pt. 7001.0140, subp. 2 to be an exhaustive list of grounds for revocation or refusal to issue a permit, there is a need to add a reference to the language of Minn. Stat. § 116.072, subd. 10 (Supp. 1987). The MPCA proposes to add a new Item G to the rule which mirrors the statutory language. This is reasonable because it will allow both regulated parties and the MPCA to determine all the grounds for revocation or refusal to issue a permit by looking at one document rather than examining all the statutes pertaining to the MPCA.

For the foregoing reasons, the proposed rules amendments are needed and reasonable.

Part 7001.0160, Continuation of Expired Permit

Minn. Rules pt. 7001.0160 provides for the continuation of expired permits under certain circumstances. Under the existing rule, a permittee who has made a timely and complete application for reissuance may continue to conduct the permitted activity until the MPCA takes final action on the application if the Commissioner makes the following findings: A) the permittee is in compliance with the terms and conditions of the expired permit; and B) the agency, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

In the course of implementing this rule the MPCA has discovered some problems with the rule. First, the rule requires an affirmative action of the Commissioner in order for the permittee to be authorized to continue the permitted activity. As a practical matter, there are a large number of expired permits which would qualify for continuance under this rule, but the Commissioner has not made the affirmative findings required by the rule. Even in the absence of these findings, the MPCA staff have treated these otherwise qualifying permits as if the Commissioner had made these findings. There is a need to conform this rule to the reality of its implementation. To meet this need the MPCA proposes to amend the rule to reflect actual practice by changing the presumption. Under the proposed amendment, a qualifying permittee may continue the permitted

activity in accordance with the terms and conditions of the expired permit unless the Commissioner makes the findings set forth in Items A through C of the rule. (Except as discussed below with respect to hazardous waste permits, a permittee "qualifies" for this rule by submitting a timely application for reissuance of the permit.) This change is reasonable because it conforms the rule to actual practice and provides permittees with more certainty as to whether they may continue to conduct the permitted activity after permit expiration (i.e., a qualifying permittee may do so until the Commissioner makes the adverse findings listed in the rule).

Under the proposed rule amendment, a permittee is not covered by this rule if the permit is a permit described in Minn. Rules pt. 7001.0020, item B, which is a permit for the treatment, storage, or disposal of hazardous waste. Those permittees are covered instead by the proposed new rule, Minn. Rules pt. 7001.0725, which relates specifically to hazardous waste permits. The text of the new rule is substantially identical to the text of existing Minn. Rules pt. 7001.0160. The effect of these proposed actions is that the MPCA is proposing not to change the requirements related to continuation of expired permits as they relate to hazardous waste permits. Retaining the original rule language for hazardous waste permits is needed because the original rule language was approved by the U. S. Environmental Protection Agency (EPA) as being equivalent to federal hazardous

waste regulations, and that approval was an essential part of EPA's grant to the MPCA of authority to implement the federal hazardous waste program. Changing that language in the manner proposed for other permits may be perceived by EPA as making Minnesota's hazardous waste permit program as less stringent than EPA's, thereby potentially jeopardizing Minnesota's hazardous waste authorization. Therefore it is reasonable to retain the original language in order to protect Minnesota's hazardous waste authorization. The MPCA does not expect this proposal to affect any hazardous waste permits in the near future; in the meantime, the MPCA will continue to explore this issue with EPA. If conforming the hazardous waste permit rule with respect to continuation of expired permits will not jeopardize Minnesota's program, the MPCA expects to do so in a separate rulemaking procedure.

Items A through C of the rules also contain changes as a result of problems identified in the course of implementing the rules. The existing Item A states: "the permittee is in compliance with the terms and conditions of the expired permit." Under this rule, a permittee would be required to stop the permitted activity if the commissioner found that the permittee was not in compliance with any provision of the permit. This presents a problem in cases where the violation may be very minor and where the shutdown of the permitted facility would create other problems (e.g., shutting down a municipal wastewater treatment plant does not halt the generation of municipal

wastewater). Thus there is a need to amend the rule to allow continuation of expired permits if the facility is in substantial compliance with the permit so that extremely minor violations will not result in shutdown of the facility. The MPCA proposes to amend Item A to refer to "substantial compliance with the terms and conditions of the expired permit." This proposal is reasonable because it allows the Commissioner to focus on the more important aspects of permit compliance in deciding whether to allow an expired permit to continue.

The MPCA also proposes to amend Item A to allow the Commissioner to require discontinuance of permitted activity if the permittee is not in substantial compliance with other enforcement documents to which a permittee may be subject: a stipulation agreement or compliance schedule designed to bring the permittee into compliance with the permit. This addition is reasonable because stipulation agreements and compliance schedules are similar to permits and are designed to assure that the permittee conducts the permitted activity in an environmentally acceptable manner. Failure to meet those requirements means the activity is not being conducted in an environmenally sound manner and should therefore result in discontinuance of the permitted activity.

The MPCA proposes to make minor amendments to Item B of the rule, which are needed to clarify the rule. The existing rule states that the agency "through no fault of the permittee, has

not taken final action on the application on or before the expiration date of the permit." Since the concept of "fault" could be unclear in these circumstances, the MPCA proposes to change the language of the first part of the rule to state: "the agency, as a result of an action or failure to act of the permittee, has been unable to take final action." This language is reasonable because it is more clear than the original language; it draws a clear cause-and-effect relationship between a permittee's act or failure to act and the MPCA's inability to take final action on the permit application.

Finally, the MPCA proposes to add a new Item C to the rule, the language of which replaces the language which has been deleted from the existing rule requiring a "complete" application in order to qualify to be covered by the rule. Proposed Item C states: "the permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies." This amendment is needed because the existing rule is too stringent: it would prevent a person from qualifying for coverage under this rule for even the most minor omission from the permit application. The proposed language is reasonable because it would allow the Commissioner to focus on important deficiencies in the permit application and overlook those that are minor. It is reasonable to allow the Commissioner to require discontinuance of the permitted activity following the failure of a permittee to

submit information after being informed that an application is deficient because this will provide the Commissioner with a remedy if information requests are ignored and, at the same time, give permittees an incentive to respond fully to requests for information needed to reissue the permit.

Based on the foregoing, the proposed amendments to Minn. Rules pt. 7001.0160 are needed and reasonable.

Part 7001.0180, Justification to Commence Revocation Without Reissuance of Permit

Minn. Rules pt. 7001.0180 sets forth the justifications that the Commissioner may have to commence proceedings to revoke a permit without reissuance. In the course of implementing this rule, three problems have arisen. These problems and their solutions are set forth below.

First, Item C of the rule lists as a justification to revoke a permit "the operation of the permitted facility terminates." The problem with this rule is that it implies that full revocation procedures must be followed in the event that a permittee shuts down a facility. Revocation procedures, which are set forth in Minn. Rules pt. 7001.0190, subp. 4 require thirty days' notice to the permittee, and the holding of a contested case hearing is required if the permittee asks for one. In cases where a facility is simply shutting down and where the shutdown eliminates the need for the permittee to have a permit, both from the standpoint of the permittee and the standpoint of

the MPCA, 1/ (e.g., where the shutdown results in the cessation of a discharge into the air or water), this level of formal procedures constitutes an overkill of due process, since there is little chance for controversy. Therefore there is a need to eliminate this language from the list of justification to commence proceedings to revoke a permit. It is reasonable to delete this language in order to eliminate the implication that revocation procedures apply to this type of situation.

The second problem with the existing rule is the same problem that was described previously with respect to Minn. Rules pt. 7001.0140, subp. 2. There is a need to amend the rule to clarify that noncompliance with fee rules justifies commencment of proceedings to revoke or refuse to issue permits. The MPCA proposes to add a new Item E to the rules which states: "that the permittee has failed to comply with any requirement under Minnesota Rules, chapter 7002 or 7046 to pay permit fees." This proposal is reasonable because it makes it clear that the MPCA has a remedy (in addition to the burdensome remedy of bringing a

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1/ It should be noted that not all requests for voluntary termination are appropriate from the MPCA's standpoint. For example, a landfill operator may not want to fulfill the obligations in the permit and may request termination of the permit. At the same time, it may be vital from a public health and welfare standpoint that the conditions of that permit be fulfilled, because the wastes previously deposited at that site continue to need active management or monitoring or the environmental problems created by that waste deposit need mitigation.

lawsuit or hiring a collection agency) in case a permittee fails to comply with permit fee rules, a remedy which has a logical connection to the permittee's failure. The proposal is reasonable because it is merely clarifying the MPCA's belief that the permit fee rules are an integral part of the Minnesota's pollution control rules as referred to in existing Item A of the rule. This is because permit fees collected as a result of the fee rules form the basis for a portion of the MPCA's budget relating to the issuance and enforcement of permits and are thus a necessary part of Minnesota's pollution control program.

The third problem being addressed is the existence of Minn. Stat. § 116.072, subd. 10 (Supp. 1987), which provides that if a person fails to pay a penalty assessed in an APO, the MPCA has grounds to revoke or refuse to reissue or renew a hazardous waste permit. In order for the items in Minn. Rules pt. 7001.0180 to be an exhaustive list of grounds for commencement of proceedings to revoke or refuse to issue a permit, there is a need to add a reference to the language of Minn. Stat. § 116.072, subd. 10 (Supp. 1987). The MPCA proposes to add a new Item F to the rule which mirrors the statutory language. This is reasonable because it will allow both regulated parties and the MPCA to determine all the grounds for commencing proceedings to revoke or refuse to issue a permit by looking at one document rather than examining all the statutes pertaining to the MPCA.

For the foregoing reasons, the proposed rules amendments are

needed and reasonable.

Part 7001.0190, Procedure for Modification; Revocation and Reissuance; Revocation Without Reissuance of Permits

Minn. Rules pt. 7001.0190 establishes the procedure for various permit actions. In the course of implementing this rule, the MPCA discovered two problems; in addition, the legislature has added a new statutory notice requirement which affects this rule. The MPCA proposes to address these problems by amending subpart 2 of the rule and adding a new subpart 5. These problems and their proposed solutions are discussed below.

Subpart 2, Modification solely as to ownership or control

Subpart 2 of the rule provides a relatively simple procedure where a permit is proposed to be modified solely as to ownership or control. Two of the problems referred to above relate to the language of this rule, as described below.

The first problem arises as a result of the 1988 Minnesota legislature's enactment of 1988 Minn. Laws ch. 685, § 24, which provides, in relevant part:

> Before the agency grants a permit for a solid waste facility . . . or allows the change of a facility permittee, the commissioner must notify the county and town where the facility is located, contiguous counties and towns, and all home rule charter and statutory cities within the contiguous townships. If a local government unit requests a public meeting within 30 days after being notified, the agency must hold at least one public meeting in the area near the facility before . . . allowing the change of the facility permittee.

This statute will be codified as Minn. Stat. § 116.074. Because

the existing rule relating to allowing the change of a facility permittee does not include this statutorily-required notice requirement, there is a need to amend the rule to add this notice requirement. This change is reasonable because it will allow both regulated parties and the MPCA to determine all the procedures for changing the facility permittee on a solid waste permit by looking at the permit rules and without having to examine all the statutes pertaining to the MPCA.

The second problem with subpart 2 of the rule is that it implies that the MPCA citizen board must consider all requests for permit modifications solely as to ownership or control. The rule now states: "Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency." However, many of the MPCA's permit issuance functions have been delegated to the Commissioner by written delegation, filed with the Secretary of State, including permit modifications of this type, except those permits which are controversial. Because of this delegation and because these types of permit changes have not been controversial, it has not been necessary to bring the matter before the citizen board. Therefore there is a need to amend the rule to eliminate the implication that these matters must go to the Board. The MPCA proposes to delete the language which creates this implication. This is reasonable because the language is misleading to

regulated parties. The MPCA also proposes to amend the last sentence of the rule as follows: "The commissioner ~~agency~~ shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification." This amendment makes it clear that the commissioner, not the agency, issues this type of permit. This amendment is reasonable because it reflects the actual practice of the MCPA.

Based on the foregoing, the proposed amendments to Minn. Rules pt. 7001.0190 are needed and reasonable.

NPDES PERMITS

Part 7001.1020, Definitions

Minn. Rules pt. 7001.1020 is one of the permit rules that applies only to National Pollutant Discharge Elimination System (NPDES) permits. Subpart 1 of the rule cross-references definitions set forth in statutes and other rules which are applicable to the terms used in Minn. Rules pt. 7001.1030, unless otherwise defined in the other subparts of the rules.

In the course of implementing the NPDES rules it was discovered that subpart 1 cross-references two definitions of "person" that conflict with each other. The rule cross-references Minn. Stat. § 115.03, subd. 10, which defines "person" as including the MPCA, and it cross-references Minn. Rules pt. 7001.0010. Minn. Rules pt. 7001.0010, in turn, cross-references Minn. Rules pt. 7000.0100, of which subp. 9 defines "person" as not including the MPCA.

This conflict causes confusion whenever, in the course of its duties, the MPCA needs to undertake activities for which "persons" are required to obtain a MPCA permit. For example, under the Minnesota Environmental Response and Liability Act, Minn. Stat. ch. 115B, the MPCA has undertaken some cleanups of hazardous waste sites. The activities involved in some of these cleanups require permits if conducted by a "person." The existing Minn. Rules pt. 7001.1020 provides that the MPCA is both a "person" and not a person. Therefore, there is a need to amend the rule to clear up this conflict.

The MPCA proposes to amend the rule to eliminate the cross-reference to the definition of "person" which includes the MPCA and to retain the cross-reference to the definition of "person" which does not include the MPCA. This is reasonable because it eliminates the conflict in the existing rules. It is reasonable because it is somewhat odd for the MPCA to require itself to obtain a permit from itself.

It should be noted that this proposal does not seek to exempt the MPCA from the substantive provisions of its rules relating to the activity to be conducted. For example, if the MPCA discharges pollutants to surface waters as a part of a hazardous waste site cleanup, the MPCA will comply with the rules relating to water discharges.

For the foregoing reasons, the proposed rule amendment is needed and reasonable.

Part 7001.1030, Permit Requirement and Exemptions

Minn. Rules pt. 7001.1030 establishes the requirement to obtain an NPDES permit in order to discharge pollutants from a point source into the waters of the state unless an exemption under subpart 2 of the rule is applicable. The existing rule does not contain an exemption for stormwater discharges, and therefore a permit is required. However, the federal NPDES regulation, 40 C.F.R. § 122.26, requires a NPDES permit only for certain stormwater discharges, which are described in the regulation. Because the MPCA is implementing the federal NPDES program, there is a need to amend the rule to make it consistent with the federal regulation.

The MPCA proposes to amend the rule to add a new exemption, item J, to the requirement to obtain a permit. The proposed rule would exempt persons disposing of water in a conveyance or system of conveyances used solely for the collection of stormwater runoff, unless the Commissioner determines the following:

(1) the discharge is subject to effluent limitations or other requirements for stormwater promulgated by the United States Environmental Protection Agency for stormwater point source discharges;

(2) a water quality management plan adopted pursuant to Section 208 of the Clean Water Act, United States Code, title 33, section 12988 recommends that pollution control requirements be applied to the discharge; or

(3) the discharge to the receiving water is significant due to volume, pollutant loading, or the character of the receiving water.

This proposal is reasonable because it makes Minnesota's stormwater requirements consistent with those set forth in 40 C.F.R. § 122.26.

Based on foregoing, the proposed rule amendment is needed and reasonable.

Part 7001.1080, Establishment of Special Conditions for National Pollutant Discharge Elimination System Permits

Minn. Rules pt. 7001.1080 relates to the establishment of conditions for NPDES permits. Subp. 9 of the rule relates specifically to conditions in reissued permits. The rule requires that a reissued permit contain limitations at least as stringent as those in the previous permit unless the Commissioner finds that any one of several conditions exist. In the 1988 revisions to the MPCA's water quality rules, Minn. Rules ch. 7050, a new rule entitled "Requirements for Point Source Discharges of Industrial or Other Waste," Minn. Rules pt. 7050.0212, was promulgated. Subpart 3 of this new rule specifically establishes antibacksliding criteria to be used in the reissuance of NPDES permits. The MPCA intends these new criteria in Minn. Rules 7050.0212 to supersede those presently found in Minn. Rules 7001.1080, subp. 9. Therefore, there is need to amend Minn. Rules pt. 7001.1080 to make it clear that the antibacksliding provisions of Minn. Rules pt. 7050.0212 apply to reissued permits.

The MPCA proposes to amend the rule by replacing part of the

language of subpart 9 with a cross reference to the new Minn. Rules pt. 7050.0212. This proposal is reasonable because, by providing a cross reference to the updated rule, it eliminates the potential for confusing the reader as to what conditions may be put into reissued permits

Based on the foregoing, the proposed rule amendment is needed and reasonable.

HAZARDOUS WASTE FACILITY PERMITS

Part 7001.0725, Continuation of Expired Permit

As previously described with respect to the proposed amendments to Minn. Rules pt. 7001.0160, the MPCA is proposing to amend part 7001.0160 with respect to all permits except hazardous waste permits. This has been done by exempting hazardous waste permits from the provisions of Minn. Rules pt. 7001.0160 and adding a new section to the rules relating specifically to hazardous waste facility permits. The language of the new rule is substantially identical to the original language of Minn. Rules pt. 7001.0160. Retaining the original rule language for hazardous waste permits is needed because the original rule language was approved by EPA as being equivalent to federal hazardous waste regulations, and that approval was an essential part of EPA's grant to the MPCA of authority to implement the federal hazardous waste program. Changing that language in the manner proposed for other permits may be perceived by EPA as making Minnesota's hazardous waste permit program less

stringent than EPA's, thereby potentially jeopardizing Minnesota's hazardous waste authorization. Therefore it is reasonable to retain the original language in order to protect Minnesota's hazardous waste authorization.

As previously stated, the MPCA does not expect this proposal to affect any hazardous waste permits in the near future; in the meantime, the MPCA will continue to explore this issue with EPA. If conforming the hazardous waste permit rule with respect to continuation of expired permits will not jeopardize Minnesota's program, the MPCA expects to do so in a separate rulemaking procedure.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) 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 rule amendments will not have an adverse effect on small businesses. The amendments seek to clarify aspects of the procedural rules relating to permits that have caused confusion for staff and for the regulated community. The proposed amendments do not expand the scope of or change the substantive environmental requirements of the rules. In addition, the amendments to Minn. Rules pt. 7001.0200, 7001.0110 and 7001.1030 exempt certain facilities from public notice or permit requirements. Therefore, the Agency believes that any affect the proposed changes have on small businesses will be beneficial.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1986) to give due consideration to economic factors. The statute provides:

> In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the rules amendments, the Agency has given due consideration to available information as to any economic impacts the proposed rules would have. The proposed amendments are needed in order to ensure fair and consistent

application of the existing rules to all persons. The application of the existing rules has led to confusion within the regulated community. By clarifying the rules and reducing certain procedural requirements, the proposed changes should have a positive economic impact in the sense that less time will be spent by the regulated community in determining the applicability of the rules. The proposed changes will not have a significant economic impact since they relate to clarifying or reducing certain requirements.

VII. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 7001.0020, 7001.0040, 7001.0130, 7001.0140, 7001.0160, 7001.0180, 7001.0190, 7001.1020, 7001.1030, 7001.1080, and 7001.0725 are both needed and reasonable.

Dated: November 10, 1988

Barbara Lindsey Sims
for Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Permits, Minn. Rules Parts 7001.0020, 7001.0040, 7001.0130, 7001.0140, 7001.0160, 7001.0180, 7001.0190, 7001.1020, 7001.1030, 7001.1080, and 7001.0725

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Barbara Lindsey Sims, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of this 22nd day of December, 1988.

That on the 22nd day of December, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt 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 a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Barbara Lindsey Sims

Subscribed and sworn to before me
this 30 day of December, 1988.

Ardith M. Vos
Notary Public

ARDITH M. VOS
NOTARY PUBLIC — MINNESOTA
ANOKA COUNTY
My commission expires 1-12-94

a permit or application as required by *Minnesota Statutes*, sections 105.37 to 105.64; or (3) projects undertaken in excess of limitations established in an issued permit.

The fee charged will be the actual cost of the field inspection, but shall not be less than ~~$25 nor greater than $750~~ $100. Examples of field inspection costs are:

A. state salaries, including fringe benefits and overhead, (travel and inspection time of state employees multiplied by actual hourly rates);

B. transportation to and from inspection site, laboratories and other documented travel sites, based on current Department of Administration rates or rates specified in applicable bargaining unit agreements;

C. expense of purchase, rental, or repair of special equipment and supplies;

D. living expenses away from home, based on current Department of Administration rates or rates specified in applicable bargaining unit agreements;

E. inspection and consultant services contracted for by the state; and

F. laboratory expenses and analysis of data.

Subp. 2a. **Dams and water level controls.** Field inspection fees shall not be charged for any dam subject to parts 6115.0300 to 6115.0520. Such dams are subject to the inspection fee requirements of part 6115.0520. Field inspection fees for all other water level control structures shall be charged pursuant to parts 6115.0010 to 6115.0130.

~~The effective date of this subpart is August 1, 1985.~~

6115.0120 WATER APPROPRIATION PROCESSING FEE EXEMPTIONS.

The following water appropriation permit actions are exempt from amendment or transfer fees:

A. a change in mailing address;

B. a change of authorized agent when land ownership has not changed;

C. an assignment of a permit within the immediate family;

D. a change in pump location on surface water sources for the same operation;

E. an addition of a new well that replaces an old well for the same permitted operation and is completed at a similar depth in the same aquifer;

F. a decrease in the permitted pumping rate, amount of water authorized, or irrigated acreage;

G. an increase in the permitted pumping rate within ten percent;

H. an increase in the permitted appropriation within ten percent of the annual authorization for nonirrigation permits; or

I. an increase of less than 30 acres in the number of permitted irrigated acres.

Any amendments or transfers that exceed the exemptions in items A to I require a processing fee under part 6115.0065.

REPEALER. *Minnesota Rules*, part 6115.0080, subpart 1, is repealed.

Pollution Control Agency

Proposed Permanent Rules Relating to Permit Rules

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1986). The Agency's authority to adopt the rule is set forth in *Minnesota Statutes* §§ 115.03, subd. 1(e) and 116.07, subd. 4 (1986).

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.

All persons have until 4:30 p.m. on February 3, 1989, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Barbara Lindsey Sims
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7305

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

The proposed rule amendments, if adopted, will reduce the public notice requirements for air quality indirect source permits for small parking facilities, clarify the circumstances under which a permittee may continue to operate under the terms of an expired permit, exempt certain stormwater discharges from the requirement to obtain a National Pollutant Discharge Elimination System permit, and make miscellaneous changes to incorporate statutory changes, eliminate erroneous cross references, and clarify the applicability of certain provisions. The proposed rule amendments are published below. One free copy of the rule amendments is available upon request from Barbara Lindsey Sims at the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from Barbara Lindsey Sims upon request.

You are hereby advised, pursuant to *Minnesota Statutes*, § 14.115 (1986), "Small business considerations in rulemaking," that the proposed rule amendments will not have an adverse effect on small businesses.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 receive a copy of the rule amendments as adopted, must submit a written request to Barbara Lindsey Sims.

Gerald L. Willet
Commissioner

Rules as Proposed

7001.0020 SCOPE.

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

A. to I. [Unchanged.]

J. An agency permit required for the construction of a facility, building, structure, or installation that attracts or may attract mobile source activity that results in emissions of an air pollutant for which there is a state standard. Parts 7001.0100, subparts 4 and 5, and 7001.0110 do not apply to permits for parking facilities described in part 7001.1270, subpart 2, with a new or increased parking capacity of 5,000 vehicles or less. Part 7001.0150, subparts 1 and 2, does not apply to these permits.

K. [Unchanged.]

7001.0040 APPLICATION DEADLINES.

Subpart 1. **Application for new permit.** Except as otherwise required by parts 7001.0530 and ~~7001.1050~~ 7001.1040, 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.

Subp. 2. and 3. [Unchanged.]

7001.0130 CONTESTED CASE HEARING.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Hearing notice and order.** If the agency decides to hold a contested case hearing, the commissioner shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

A. and B. [Unchanged.]

C. identification of the existing parties and a concise description of the issues ~~which have been raised by any party~~ on which the agency has ordered a hearing; and

D. [Unchanged.]

Subp. 4. [Unchanged.]

7001.0140 FINAL DETERMINATION.

Subpart 1. [Unchanged.]

Subp. 2. **Agency findings.** The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

A. to C. [Unchanged.]

D. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit; ~~or~~

E. that all applicable requirements of *Minnesota Statutes*, chapter 116D and the rules ~~promulgated~~ adopted under *Minnesota Statutes*, with chapter 116D have not been fulfilled;

F. that with respect to the facility or activity to be permitted, the proposed permittee has not complied with any requirement under chapter 7002 or 7046 to pay permit fees; or

G. that with respect to the facility or activity to be permitted, the proposed permittee has failed to pay a penalty owed under *Minnesota Statutes*, section 116.072.

Subp. 3. [Unchanged.]

7001.0160 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit, other than a permit described in part 7001.0020, item B, and who has submitted a timely ~~and complete~~ application for reissuance of the permit may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the agency takes final action on the application ~~if unless~~ the commissioner determines that ~~both~~ any of the following are true:

A. the permittee is not in substantial compliance with the terms and conditions of the expired permit or with a stipulation agreement or compliance schedule designed to bring the permittee in compliance with the permit; ~~and~~

B. the agency, ~~through no fault~~ as a result of an action or failure to act of the permittee, has ~~not taken~~ been unable to take final action on the application on or before the expiration date of the permit; or

C. the permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies.

7001.0180 JUSTIFICATION TO COMMENCE REVOCATION WITHOUT REISSUANCE OF PERMIT.

The following constitute justification for the commissioner to commence proceedings to revoke a permit without reissuance:

A. and B. [Unchanged.]

C. ~~the operation of the permitted facility or activity terminates; and~~

~~D.~~ the commissioner finds that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;

D. the permittee has failed to comply with any requirement under chapter 7002 or 7046 to pay permit fees; or

E. the permittee has failed to pay a penalty owed under *Minnesota Statutes*, section 116.072.

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.

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the ~~agency~~ commissioner shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the ~~agency~~ commissioner finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or B, the ~~agency~~ commissioner shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferree. ~~Within 60 days of receipt of a complete written application for modification as to ownership and control, the commissioner shall place the matter on the agenda for consideration by the agency.~~ If the permit is a permit described in part 7001.0020, item A, the commissioner shall comply with the requirements of *Minnesota Statutes*, section 116.074, before approving the permit modification. The ~~agency~~ commissioner shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. If the permit is a permit described in part 7001.0020, item B, the following additional requirements apply:

A. and B. [Unchanged.]

Subp. 3. and 4. [Unchanged.]

HAZARDOUS WASTE FACILITY PERMITS

7001.0725 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit and who has submitted a timely and complete application for reissuance of the permit may continue to conduct the permitted activity until the agency takes final action on the application if the commissioner determines that both of the following are true:

A. the permittee is in compliance with the terms and conditions of the expired permit; and

B. the agency, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

NPDES PERMITS

7001.1020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in *Minnesota Statutes*, section 115.01, subdivisions 2 to 9 and 11 to 17, and in part 7001.0010 apply to the terms used in parts 7001.1000 to 7001.1100 unless the terms are defined in this part.

As used in parts 7001.1000 to 7001.1100, the terms in subparts 2 to 31 have the meanings given them.

Subp. 2 to 31. [Unchanged.]

7001.1030 PERMIT REQUIREMENT AND EXEMPTIONS.

Subpart 1. [Unchanged.]

Subp. 2. **Exemptions.** The following persons are not required to obtain a National Pollutant Discharge Elimination System permit:

A. to G. [Unchanged.]

H. persons injecting water, gas, or other material into a well to facilitate the production of oil or gas; ~~and~~

I. persons disposing of water in a well if this water is associated with oil and gas production; and

J. persons disposing of water in a conveyance or system of conveyances used solely for the collection and conveyance of stormwater runoff, unless the commission determines that;

(1) the discharge is subject to effluent limitations or other requirements for stormwater adopted by the United States Environmental Protection Agency for stormwater point source discharges;

(2) a water quality management plan adopted pursuant to section 208 of the Clean Water Act, United States Code, title 33, section 1288, recommends that pollution control requirements be applied to the discharge; or

(3) the discharge to the receiving water is significant due to volume, pollutant loading, or the character of the receiving water.

7001.1080 ESTABLISHMENT OF SPECIAL CONDITIONS FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS.

Subpart 1. to 8. [Unchanged.]

Subp. 9. **Conditions in reissued permits.** In a reissued permit the commissioner shall establish effluent limitations, standards, or prohibitions that are at least as stringent as the effluent limitations, standards, or prohibitions or conditions in the previous permit unless the commission ~~makes the finding in items A, B, and C~~ establishes less stringent effluent limitations, standards, or prohibitions in accordance with part 7050.0212. ~~In no event may the commissioner establish an effluent limitation, standard, or prohibition that is less stringent than that allowed by the applicable effluent limitation guideline in effect at the date of the renewal or reissuance of the permit. Less stringent effluent limitations, standards, prohibitions, or conditions may only be established if the commissioner finds:~~

~~A. the circumstances upon which the previous permit was based have materially and substantially changed since the time the previous permit was issued and this change would constitute cause for permit modification or revocation and reissuance under part 7001.0190;~~

~~B. the permittee has installed the treatment facilities required to meet the effluent limitations, standards, or prohibitions in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve compliance with these effluent limitations, standards, or prohibitions; and that the effluent limitation guideline upon which the original effluent limitation, standard, or prohibition was based has been amended by the Environmental Protection Agency to allow the establishment of a less stringent effluent limitation, standard, or prohibition. The revised effluent limitation, standard, or prohibition must not be less stringent than the level of pollutant control actually achieved by the permittee;~~

~~C. that the Environmental Protection Agency has amended the effluent limitation guideline applicable to the permittee and that the amended effluent guideline is based upon best conventional pollutant control technology under section 301(b)(2)(E) of the Clean Water Act, United States Code, title 33, section 1311(b)(2)(E) as amended; or~~

~~D. that the permittee has increased production at the facility to cause a significant reduction in treatment efficiency; and that the effluent limitation guideline upon which the original effluent limitation, standard, or prohibition was based has been amended by the Environmental Protection Agency to allow the establishment of a less stringent effluent limitation, standard, or prohibition.~~

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Health

Adopted Permanent Rules Relating to Merit System

The rules proposed and published at *State Register,* Volume 13, Number 17, pages 1023-1028, October 24, 1988 (13 S.R. 1023) are adopted as proposed.

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.

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 23rd day of February, 1989, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby approves and adopts the attached amendments to Minn. Rules ch. 7001, rules governing permits, pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 115.03, subd. 1(e) and 116.07, subd. 4 (1988).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner is authorized to make any form changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1988).
>
> BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Commission is hereby authorized to sign the above-mentioned document on behalf of the Minnesota Pollution Control Agency and to perform the necessary acts to provide that the rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of March, 1989.

Gerald L. Willet

GERALD L. WILLET
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Permits, Minn. Rules Parts 7001.0020, 7001.0040, 7001.0130 7001.0140, 7001.0160, 7001.0180, 7001.0190, 7001.1020, 7001.1030, 7001.1080, and 7001.0725

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the 28th day of February, 1989. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the MPCA, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the MPCA, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. Notice of the MPCA's intent to adopt the above-entitled rule amendments without a public hearing was published in the State Register on January 3, 1989, and was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1988) on December 22, 1988.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the rule amendments for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on February 3, 1989.

4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received by the MPCA.

6. During the comment period the MPCA received one written comment.

7. The MPCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rule amendments. The MPCA hereby incorporates the Statement of Need and Reasonableness into these findings.

8. The above-captioned rule amendments are needed and reasonable.

CONCLUSIONS

1. The MPCA duly acquired and has jurisdiction over this proceeding.

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules Parts 7001.0020, 7001.0040, 7001.0130, 7001.0140, 7001.0160, 7001.0180, 7001.0190, 7001.1020, 7001.1030, 7001.1080, and 7001.0725 governing permits are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 115.03, subd. 1(e) and 116.07, subd. 4 (1988).

MINNESOTA POLLUTION CONTROL AGENCY

Dated: 2/28/89

Gerald L. Willet

Gerald L. Willet
Commissioner

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 23rd day of February, 1989, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby approves and adopts the attached amendments to Minn. Rules ch. 7001, rules governing permits, pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 115.03, subd. 1(e) and 116.07, subd. 4 (1988).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner is authorized to make any form changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1988).
>
> BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Commission is hereby authorized to sign the above-mentioned document on behalf of the Minnesota Pollution Control Agency and to perform the necessary acts to provide that the rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of March, 1989.

Gerald L. Willet

GERALD L. WILLET
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Permits, Minn. Rules Parts 7001.0020, 7001.0040, 7001.0130 7001.0140, 7001.0160, 7001.0180, 7001.0190, 7001.1020, 7001.1030, 7001.1080, and 7001.0725

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the 28th day of February, 1989. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the MPCA, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the MPCA, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. Notice of the MPCA's intent to adopt the above-entitled rule amendments without a public hearing was published in the State Register on January 3, 1989, and was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1988) on December 22, 1988.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

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4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received by the MPCA.

6. During the comment period the MPCA received one written comment.

7. The MPCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rule amendments. The MPCA hereby incorporates the Statement of Need and Reasonableness into these findings.

8. The above-captioned rule amendments are needed and reasonable.

CONCLUSIONS

1. The MPCA duly acquired and has jurisdiction over this proceeding.

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

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

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules Parts 7001.0020, 7001.0040, 7001.0130, 7001.0140, 7001.0160, 7001.0180, 7001.0190, 7001.1020, 7001.1030, 7001.1080, and 7001.0725 governing permits are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 115.03, subd. 1(e) and 116.07, subd. 4 (1988).

MINNESOTA POLLUTION CONTROL AGENCY

Dated: 2/28/89

Gerald L. Willet

Gerald L. Willet
Commissioner

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 23rd day of February, 1989, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby approves and adopts the attached amendments to Minn. Rules ch. 7001, rules governing permits, pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 115.03, subd. 1(e) and 116.07, subd. 4 (1988).

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner is authorized to make any form changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1988).

BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Commission is hereby authorized to sign the above-mentioned document on behalf of the Minnesota Pollution Control Agency and to perform the necessary acts to provide that the rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of March, 1989.

Gerald L. Willet

GERALD L. WILLET
Commissioner

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JEFFREY P. CAIRNS
LOUIS P. SMITH
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OF COUNSEL
FRED L. MORRISON

*ADMITTED IN IOWA
*ADMITTED IN ILLINOIS

January 31, 1989

RECEIVED
FEB 03 1989
MINN. POLLUTION CONTROL AGENCY

Ms. Barbara Lindsey Sims
Minnesota Pollution Control Agency
520 North Lafayette Road
St. Paul, MN 55155

Re: Proposed Permanent Rules Relating to Permit Rules

Dear Ms. Sims:

This letter is to present the comments of the business and industry representatives of the Advisory Committee to the Environmental Policy and Procedures Committee on the proposed rules referenced above. The Committee has very much appreciated the willingness of you and your staff to work with us in considering and responding to our suggestions for changes in the permit rules.

We strongly support the proposed revisions to Minnesota Rule 7001.0160 and believe that the proposed revisions not only respond to the needs of permittees, but afford the MPCA all necessary authority to control activities conducted pursuant to expired permits. As you know, we are disappointed that hazardous waste facility permits are exempted from this proposed rule revision, but it is our understanding that EPA has required this exemption because of its belief that the proposed revisions will result in a rule less stringent than its own hazardous waste permit expiration rule. We disagree with EPA's assessment, in part because Minnesota hazardous waste facility permits are issued for a term only half as long as the 10-year period permitted by federal regulations. It is inconceivable to us that a permit which has technically expired under Minnesota law would remain in such an expired condition for an

additional 5 years, and thus we do not understand how the proposed rule would create a situation which conflicts with federal policy interests. In addition, we are not convinced that the proposed rule is inconsistent with the language of 40 C.F.R. §270.51(d), which discusses the continuation of expired permits in states with approved hazardous waste programs. We understand that we will be able to work with you and EPA in order to persuade EPA to withdraw its objection.

In proposed Rules 7001.0140, subp. 2(G), and 7001.0180(E), the Agency has proposed that a failure to pay a penalty "owed" under Minn. Stat. §116.072 will be deemed adequate justification for refusing to issue a new or modified permit or to revoke a permit. We understand that this proposed language restates statutory language. Nevertheless, we believe that under the statute, a disputed penalty should be deemed "owed" only if it has been so adjudicated and all appeals have either been exhausted or waived. We suggest that the MPCA so interpret the statutory term "owed" in its proposed rules.

Again, the Committee has appreciated the opportunity to work with you on the revision of the permit rules, and we look forward to continued cooperation in resolving matters of concern to both the MPCA and industry.

Sincerely yours,

James A. Payne

(154)ZSLH

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Governing Permits, Minn. Rules
Parts 7001.0020, 7001.0040, 7001.0130
7001.0140, 7001.0160, 7001.0180, 7001.0190,
7001.1020, 7001.1030, 7001.1080, and 7001.0725

DECLARATION OF COUNSEL

I, Jocelyn F. Olson, 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 ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0700.

Dated: March 6, 1989

Jocelyn F. Olson

Jocelyn F. Olson
Assistant Attorney General

DEPARTMENT: MN Pollution Control Agency

STATE OF MINNESOTA

Office Memorandum

DATE: April 19, 1988

TO: Bonnie Sims, Richard Svanda, Rod Massey, Mike Valentine, Tim Scherkenbach, Jocelyn Olson

FROM: Michael Robertson MR

PHONE: 296-7303

SUBJECT: Industry Group Suggestions for Rule Amendment

I recently met with Roland Olson, Jim Payne, Russ Susag and Joe Bizzano to discuss a proposed amendment to our permit rule.

The attached proposal amends the provision on continuation of expired permits. We have discussed the possibility of amending this provision when we have other changes to make in the permit rule.

MR:av

Attachment

cc: Jerry Willet

PROPOSED AMENDMENT TO MINNESOTA RULES PART 7001.0160

"A person who holds an expired permit and who has submitted a timely ~~and complete~~[1] application for reissuance of the permit may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit[2] until the agency takes final action on the application ~~if~~ unless[3] the ~~director~~ commissioner[4] determines that ~~both~~ either[3] of the following ~~are~~ is true:

A. The permittee is not[3] in substantial[5] compliance with the terms and conditions of the expired permit (or applicable stipulation agreement or compliance schedule designed to bring the activity into compliance with the permit);[6] ~~and~~ or

B. ~~The agency, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.~~ The permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies."[3]

---

[1]The requirement of "completeness" has been deleted because there is no time limit imposed on the agency for conducting a completeness review (see Minn. Rules Part 7001.0090), and an untimely finding of incompleteness by the agency would obviate any protections afforded to permittees by the proposed amendment.

The proposed amendment, however, is not intended to eliminate the agency's authority to require complete applications as a condition for continuing expired permits. The amended rule provides that an expired permit will not continue if the commissioner finds that the permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies. Thus, if a permittee submits an obviously incomplete application or fails to supplement an application in a timely way after being informed of its incompleteness, the commissioner may terminate the permit. The termination for incompleteness, however, is not automatic as it is under the existing rule.

[2]The phrase "in accordance with the terms and conditions of the expired permit" has been added to eliminate ambiguity from the existing rule. As the rule is currently written, it is not clear whether the terms of an expired permit or the terms of the applicable rules (which may be different) would govern the continued conduct of a permitted activity.

[3]The existing rule provides that the holder of an expired permit may continue to conduct the permitted activity if the MPCA Director determines (1) that he is in compliance with his permit and (2) that the agency has not acted on the application through no fault of the permittee. If the agency fails to make those findings, the permittee apparently may not continue the permitted activity. Thus, the risk of agency inaction is placed on the permittee. Yet, as a practical matter, the agency does not make these findings as a routine matter. This may be because of inadequate staffing or because the agency is understandably reluctant, without substantial inquiry, to certify that a permittee is "in compliance" with its permit. The result is that persons continuing to act under expired permits are technically in violation of the law and exposed to citizen enforcement actions.

The amended rule would shift the risk of agency inaction from the permittee to the agency. It provides that a permittee may continue to conduct its activity unless the MPCA commissioner finds (1) that it is not in compliance with its permit or (2) that the permittee has submitted a deficient application or has failed to supplement the application after being informed of its incompleteness. (A failure to submit an adequate application or to supplement an inadequate one is the only "fault" of a permittee which might prevent the agency from acting on the application.) This change thus protects permittees from technical violations of the law while preserving for the MPCA the right to terminate expired permits if it makes the requisite findings.

[4]The word "director" has been changed to "commissioner" to reflect the recent change in title.

[5]The requirement of "substantial" noncompliance has been added to avoid situations in which temporary or minor technical violations might be construed to mandate permit termination.

[6]A provision has been added to clarify the fact that compliance with stipulations or schedules is deemed to be compliance with any underlying permit.

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

ADDRESS REPLY TO:
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TELEPHONE: (612) 297-1075

March 3, 1988

Rec'd 3/8/89
OK
RMS

Ms. Christie Eller
Assistant Attorney General
Office of the Attorney General
515 Transportation Building
St. Paul, MN 55155

Re: In the Matter of the Proposed Amendments to Permit Rules

Dear Ms. Eller:

On February 28, 1989, the Minnesota Pollution Control Agency adopted the above-captioned rule amendments to its Permit Rules. Enclosed for your review are the following:

1. Rule amendments as adopted (original and three copies).

2. Findings of Fact, Conclusions, and Order Adopting Rule Amendments (two copies).

3. Certificate of Resolution Adopting Rule Amendments.

4. Certificate of Authorizing Resolution.

5. Notice of Intent to Adopt Rule Amendments Without a Public Hearing and rules as proposed (13 S.R. 1683, January 3, 1989).

6. Comments received pursuant to the notice of intent to adopt rules without a public hearing.

7. Notice of Intent to Adopt Rule Amendments Without a Public Hearing, as mailed.

8. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List.

9. Rules as proposed.

10. Statement of Need and Reasonableness.

11. Declaration of Counsel.

The Agency did not publish a notice of intent to solicit outside opinion because the Agency did not seek to obtain information or opinions in preparing to propose the rule amendments. The MPCA received a proposal from industry representatives to amend the MPCA's rule related to expired permits which the MPCA treated as a petition for rulemaking. A copy of a memorandum setting forth that proposal is enclosed as item 12.

There were no requests for notice of submission of the rule amendments to the Attorney General.

Very truly yours,

Jocelyn F. Olson

JOCELYN F. OLSON
Assistant Attorney General

Environmental Protection
Division

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BRD OF ARCH ENG LAND SURV
AND LANDSCAPE ARCHITECTURE
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SENATOR STUMPF'S OFFICE 00291
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222 S 9TH STREET
MPLS MN 55402 4

POTLATCH CORPORATION 00225
ATTN ARCHIE D CHELSETH
BOX 510
CLOQUET MN 55720 4

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MPLS MN 55432-1849 4

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1313 5TH ST SE
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MPLS MN 55414-1524 5

PULP & PAPER
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500 HOWARD ST
SAN FRANCISCO CA 94105 5

RED WING REP EAGLE 00234
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P O BOX 15
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REGION NINE DEVELP COMM 00236
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P O BOX 3367
410 S 5TH STREET
MANKATO MN 56001 5

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P O BOX 40
FARIBAULT MN 55021 5

SCREEN PRINTING ASSOC INC
TIM MCSWEENEY
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SHELDAHL 00254
ATTN DAVID MILLER
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SHELL ENGINEERING & ASSOC
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STAIRCASE OFFICE #8
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COLUMBIA MO 65205 5

ST PAUL FIRE DEPT 00287
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3650 ANNAPOLIS LANE
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TENNECO INC
L W PATTERSON
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THERMO-KING 00293
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314 W 90TH STREET
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MS BARBARA THOMAS
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