

CHAPTER 7100
MINNESOTA POLLUTION CONTROL AGENCY
WATER QUALITY DIVISION
MISCELLANEOUS

**STORAGE OR KEEPING OF OIL AND OTHER
LIQUID SUBSTANCES**

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STORAGE OR KEEPING OF OIL AND OTHER LIQUID SUBSTANCES

7100.0010 DEFINITIONS.

Subpart 1. **Scope.** The definitions given in this part shall obtain for the purposes of parts 7100.0010 to 7100.0090 except as otherwise specified or indicated by the context.

Subp. 2. **Safeguard.** "Safeguard" means a facility or device or any system or combination thereof designed to prevent the escape or movement of any substance or solution thereof from the place of storage or keeping thereof under such conditions that pollution of any waters of the state might result therefrom.

Subp. 3. **Site.** "Site" means any tract or parcel of land, including any constructed storage tank or artificial or natural basin or containment facility, except underground or buried tanks where any substance is stored or kept and which is so located that the escape or movement of such substance or a solution therefrom the site or into the underlying ground might result in pollution of any waters of the state.

Subp. 4. **Stored liquid material.** "Stored liquid material" means liquid material which is within a container or containment device located within the state other than a mobile type unit while in transit, used for transporting said material from one location to another.

Subp. 5. **Substance.** "Substance" means any liquid material which might cause pollution of any waters of the state if mixed therewith.

Statutory Authority: *MS s 115.03 subd 1 para (c),(g)*

7100.0020 PROHIBITION.

No substance shall be stored, kept, or allowed to remain in or upon any site without reasonable safeguards adequate to prevent the escape or movement of the substance or a solution thereof from the site under any conditions of failure of the storage facility whereby pollution of any waters of the state might result therefrom. It shall be the duty of every owner of such stored substances, or other person responsible therefor, to obtain from the Water Pollution Control Commission a permit for the use of the site for the storage of liquid substances as provided in part 7100.0040 or 7100.0050.

Statutory Authority: *MS s 115.03 subd 1 para (c),(g)*

7100.0030 SAFEGUARDS.

Unless otherwise prescribed by a permit issued under part 7100.0040 or 7100.0050 as hereinafter provided, every safeguard shall comply with the requirements of this part, and shall consist of the following features:

A. a continuous dike or wall entirely surrounding the site of such dimensions and construction that the emergency storage volume thereby created will be equal to not less than the total capacity of the largest storage tank or other container located within the area enclosed by the dike and will hold securely all of the aforesaid tank contents or any solution thereof in case of any failure of the container and the escape or movement of the substance or solution from its container or place of storage or keeping;

B. a reasonably impervious bottom under the entire site and enclosure of such construction or composition either natural or artificial as to prevent in case of any failure of the container the seepage, percolation, or other movement of any substance stored or kept on the site or within the enclosure or any solution thereof into the underlying ground in such quantity that substantial pollution of the waters of the state in the vicinity might reasonably be expected to result therefrom under conditions prevailing at the site.

Any alternative method of adequate safeguards submitted by owners of stored liquid substances may be reviewed by the Water Pollution Control Commission. Upon finding that any such alternative safeguards are satisfactory and that they will reasonably protect any waters of the state against pollution by the stored liquid, the commission may approve the use of said alternate safeguards in lieu of the above standards and may thereafter issue a permit in accordance with part 7100.0040 or 7100.0050.

Statutory Authority: MS s 115.03 subd 1 para (c),(g)

7100.0040 PERMITS.

Subpart 1. Issuance. On application for a permit by the owner or other person responsible for the keeping or storage of any substance on any site, the Water Pollution Control Commission may require plans showing the features and method of operation of existing or proposed safeguards in accordance with these parts. Such plans must be accompanied by a certification as to the adequacy of such safeguards. The commission may thereafter issue a permit therefor upon such conditions as it shall prescribe to prevent pollution of any waters of the state by such substance. Such permit shall be subject to modification or revocation by the commission in like manner as provided by law for permits for the installation or operation of disposal systems or parts thereof.

Subp. 2. Hearing. Before the issuance, denial, revocation, or modification of a permit by the commission any person whose vested rights may be adversely affected thereby shall, upon request therefor, be entitled to a hearing before the commission for the purpose of presenting evidence thereat. Written notice of the hearing stating the time and place thereof shall be given by the commission to any person known by it to be directly affected by such action of the commission either personally or by registered mail not less than 30 days before the date of the hearing.

Statutory Authority: MS s 115.03 subd 1 para (c),(g)

7100.0050 FLAMMABLE LIQUIDS.

Notwithstanding the provisions of part 7100.0040, a permit may be issued to owners of a flammable liquid storage facility upon certification by the Minnesota state fire marshal that the requirements of the Minnesota state fire marshal's flammable liquids code as amended and part 7100.0020, have been complied with and are currently being fulfilled.

Statutory Authority: MS s 115.03 subd 1 para (c),(g)

7100.0060 INADEQUATE SAFEGUARDS.

In case the commission shall find that any substance is stored or kept on any site without a safeguard, or that any existing safeguard is inadequate, it may by order require the owner or other responsible person to immediately remove the substance from the site and to refrain from further storage or keeping of any substance therein unless and until an adequate safeguard is provided as hereinbefore prescribed.

Statutory Authority: MS s 115.03 subd 1 para (c),(g)

7100.0070 NOTICE CONCERNING LOSS.

It shall be the duty of the owner of a liquid storage facility or other responsible person in charge thereof to notify the Water Pollution Control Commission at its office in the Minnesota Department of Health building at the university campus, Minneapolis, of any loss of stored liquids either by accident or otherwise when such loss involves a liquid substance which would be likely to enter any waters of the state. Said notice shall be by telephone or other comparable means and shall be made immediately upon discovery of the loss. The notification shall include the location and nature of the loss and other pertinent information as may be available at the time.

Statutory Authority: MS s 115.03 subd 1 para (c),(g)

7100.0080 VIOLATIONS.

Violation of any provision of parts 7100.0010 to 7100.0090 shall be punishable as provided by law.

Statutory Authority: MS s 115.03 subd 1 para (c),(g)

7100.0090 SCOPE.

Parts 7100.0010 to 7100.0090 shall not apply to the disposal of sewage, industrial waste, or other wastes under permits issued by the commission as provided by law.

Statutory Authority: MS s 115.03 subd 1 para (c),(g)

CLEANING AGENTS AND WATER CONDITIONERS

7100.0150 POLICY AND PURPOSE.

The official policy and purpose of the state of Minnesota in regard to these matters is set forth in Minnesota Statutes 1971, sections 116.21 to 116.35, which are stated in part as follows:

“Section 116.21. Nutrients in cleaning agents and water conditioners, control; statement of policy.

The legislature seeks to encourage the Minnesota Pollution Control Agency through the passage of sections 116.21 to 116.35, to set standards limiting the amount of nutrients in various cleaning agents and water conditioning agents. The legislature realizes that the nutrients contained in many of these products serve a valuable purpose in increasing their overall effectiveness, but we are also aware that they overstimulate the growth of aquatic life and eventually lead to an acceleration of the natural eutrophication process of our state's waters. Limitations imposed under sections 116.21 to 116.35 should, however, be made taking the following factors into consideration:

(1) The availability of safe, nonpolluting and effective substitutes.

(2) The difference in the mineral content of water in various parts of the state.

(3) The differing needs of industrial, commercial, and household users of cleaning agents and chemical water conditioners.

Section 116.24. Regulations.

The Pollution Control Agency may make regulations:

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(a) Prescribing, for the purpose of section 116.23, nutrients and the maximum permissible concentration, if any, of a prescribed nutrient in any cleaning agent or chemical water conditioner;

(b) Respecting the manner in which the concentration of any prescribed nutrient in a cleaning agent or chemical water conditioner shall be determined; and

(c) Requiring persons who manufacture in Minnesota any cleaning agent or chemical water conditioner to maintain books and records necessary for the proper enforcement of sections 116.21 to 116.35 and regulations thereunder, and to submit samples of cleaning agents or water conditioners to the Pollution Control Agency."

Statutory Authority: *MS s 116.24*

7100.0160 SCOPE.

The following controls, prohibitions, or restrictions hereby adopted and established shall apply to all ingredients of cleaning agents and chemical water conditioners distributed, sold, offered, or exposed for sale in the state of Minnesota within the scope of parts 7100.0150 to 7100.0240.

Statutory Authority: *MS s 116.24*

7100.0170 PROHIBITION.

No person shall sell, offer, expose for sale, or distribute for use in Minnesota any cleaning agent or chemical water conditioner which contains a prescribed nutrient in a concentration that is greater than the prescribed maximum permissible concentration of that nutrient in that cleaning agent or chemical water conditioner.

Statutory Authority: *MS s 116.24*

7100.0180 SEVERABILITY.

The provisions of this rule shall be severable, and the validity of any lettered paragraph or any subparagraph or subdivision thereof shall not make void any other lettered paragraph, subparagraph, subdivision, or any other part thereof.

Statutory Authority: *MS s 116.24*

7100.0190 DEFINITIONS.

Subpart 1. Scope. For purposes of parts 7100.0150 to 7100.0240, the terms defined in this part shall have the meanings given them:

Subp. 2. Chemical water conditioner. "Chemical water conditioner" means a water softening chemical, antiscald chemical, corrosion inhibitor, or other substance intended to be used to treat water.

Subp. 3. Cleaning agent. "Cleaning agent" means a heavy duty laundry detergent, laundry additive, dishwashing compound, household cleaner, industrial cleaner, phosphate compound, or other substance intended to be used for cleaning purposes.

Subp. 4. Dishwashing machine. "Dishwashing machine" means equipment manufactured for the purpose of cleaning dishes, glassware, and other utensils involved in food preparation, consumption, or use, using a combination of water agitation and high temperature.

Subp. 5. Nutrient. "Nutrient" means a substance or combination of substances which, if added to waters in sufficient quantities, provide nourishment that promotes growth of aquatic vegetation in densities which:

A. interfere with use of the waters by man or by any animal, fish, or plant useful to man; or

B. contribute to degradation or alteration of the quality of the waters to an extent detrimental to their use by man or by any animal, fish, or plant that is useful to man.

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Subp. 6. **Other terms and abbreviations.** Other terms and abbreviations used herein not specifically defined in the law shall be construed in conformance within the context and professional usage.

Statutory Authority: *MS s 116.24*

7100.0200 PRESCRIBED NUTRIENT.

Phosphorus, as elemental phosphorus, is prescribed as a nutrient for the purpose of parts 7100.0150 to 7100.0240 pursuant to Minnesota Statutes, section 116.23.

Statutory Authority: *MS s 116.24*

7100.0210 NUTRIENT LIMITATION.

After January 1, 1977, the maximum permissible concentrations of the prescribed nutrient in the below listed cleaning agents or chemical water conditioners shall be as follows:

A. laundry detergents and built soaps for machine laundry excluding chemical water conditioners: not to exceed 0.5 percent phosphorus, by weight;

B. household and commercial detergents for machine dishwashing: not to exceed 11 percent phosphorus, by weight;

C. all household cleaning agents except those listed in items A and B intended to be used in the home: not to exceed 0.5 percent phosphorus, by weight; and

D. chemical water conditioners for machine laundry use: not to exceed 20 percent phosphorus, by weight.

Statutory Authority: *MS s 116.24*

7100.0220 EXCEPTIONS.

The amounts of phosphorus permissible in all cleaning agents and chemical water conditioners other than those identified in part 7100.0210 are not limited by parts 7100.0150 to 7100.0240.

Statutory Authority: *MS s 116.24*

7100.0230 DETERMINATION OF CONCENTRATION BY WEIGHT.

The concentration by weight of prescribed nutrient in any cleaning agent or chemical water conditioner shall be determined by the current applicable method prescribed by the American Society for Testing and Materials (A.S.T.M.).

Statutory Authority: *MS s 116.24*

7100.0240 VARIANCE.

In any case where, upon application of the responsible person or persons, the agency finds that by reason of exceptional circumstances the strict enforcement of any provision of parts 7100.0150 to 7100.0240 would cause undue hardship; that the use of cleaning or water conditioning agents containing phosphorus in excess of the permissible levels set forth herein is necessary for the public health, safety, or welfare; or that strict conformities with these limits would be unreasonable, impractical, or not feasible under the circumstances, the agency in its discretion may permit a variance therefrom upon such conditions as it may prescribe for prevention, control, or abatement of pollution in harmony with the general purpose of parts 7100.0150 to 7100.0240 and the intent of applicable state and national laws.

Statutory Authority: *MS s 116.24*

POLYCHLORINATED BIPHENYLS (PCB)**7100.0300 PURPOSE.**

Parts 7100.0300 to 7100.0360 are hereby adopted and promulgated by the

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agency to implement the provisions of Minnesota Statutes, sections 116.36 and 116.37. These parts establish procedures for the issuance by the agency of certificates of exemption for the use, possession, sale, purchase, or manufacture of polychlorinated biphenyls (PCB) and products or class of products containing PCB, and labeling requirements for items, products, or materials sold in the state which contain PCB.

Statutory Authority: *MS s 116.07 subd 7*

7100.0310 SCOPE.

The provisions of parts 7100.0300 to 7100.0360 shall apply to PCB and products or a class of products containing PCB used, possessed, sold, purchased, or manufactured in the state of Minnesota.

Statutory Authority: *MS s 116.07 subd 7*

7100.0320 SEVERABILITY.

The provisions of this rule shall be severable and the invalidity of any lettered paragraph or any subparagraph or subdivision thereof shall not void any other lettered paragraph, subparagraph, or subdivision or any other part thereof.

Statutory Authority: *MS s 116.07 subd 7*

7100.0330 DEFINITIONS.

Subpart 1. Agency. "Agency" means the Minnesota Pollution Control Agency.

Subp. 2. Certificate of exemption. "Certificate of exemption" means a document issued by the agency for the purpose of permitting the use, sale, possession, purchase, or manufacture of PCB, a product containing PCB, or a class of products containing PCB.

Subp. 3. Class of products containing PCB. "Class of products containing PCB" means a group or category of closely related items, products, or materials having a similar function or making similar use of the chemical or physical properties of the PCB which they contain.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 5. PCB. "PCB" means the class of organic compounds known as polychlorinated biphenyls and includes any of several compounds produced by replacing one or more hydrogen atoms on the biphenyl molecule with chlorine. PCB does not include chlorinated biphenyl compounds that have functional groups attached other than chlorine.

Subp. 6. Person. "Person" means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission, or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation.

Subp. 7. Possess, possession. "Possess" or "possession" means the ownership or physical control of an item, product, or material. "Possess" or "possession" does not include physical control by a person other than the owner while the item, product, or material is being shipped in commerce.

Subp. 8. Product containing PCB. "Product containing PCB" means a product, item, or material which contains a concentration of PCB equal to or greater than 500 milligrams per kilogram (mg/kg). Concentration for the purposes of this definition is calculated as follows:

A. if PCB is distributed throughout a product, item, or material, the concentration of PCB is determined on the basis of milligram (mg) of PCB per kilogram (kg) of the mass in which the PCB is distributed;

B. if PCB is a constituent of only a portion of a product, item, or material, the concentration of PCB is determined on the basis of milligram (mg) of PCB per kilogram (kg) of only that portion of the product, item, or material in which the PCB is a constituent.

Subp. 9. **Subsequent use.** "Subsequent use" means a use of PCB or a product or class of products containing PCB which is identical in function to the use exempted in a certificate of exemption currently in effect.

Subp. 10. **Written.** "Written" includes printing, typewriting, or any other intentional reduction to tangible form.

Subp. 11. **Other terms and abbreviations.** Other terms and abbreviations used herein which are not specifically defined by law shall be construed in conformance with the context and commonly accepted professional usage.

Statutory Authority: *MS s 116.07 subd 7*

History: *L 1987 c 186 s 15*

7100.0335 CERTIFICATE OF EXEMPTION REQUIRED.

Subpart 1. **Certification of exemption required.** Except as provided in subpart 2, no person may use, possess, sell, purchase, or manufacture PCB, a product containing PCB, or a class of products containing PCB without obtaining a certificate of exemption from the agency.

Subp. 2. **Exclusions.** The requirement to obtain a certification of exemption does not apply to the following uses or products:

A. any product containing PCB that was purchased or otherwise acquired by an individual person for consumer use in the home;

B. wastepaper, pulp, or other wood fiber materials purchased for use within this state in the manufacture of recycled paper products; and

C. any electrical ballast, capacitor, or transformer that contains less than one kilogram of PCB.

Subp. 3. **Certification of exemption by rule.** Any person who is required to obtain a certificate of exemption shall be considered to have obtained a certification of exemption without making application for it, if:

A. the person complies with the manufacturing, processing, distribution, use, disposal, storage, and labeling and marking requirements of the federal PCB program in Code of Federal Regulations, title 40, part 761;

B. the person's eligibility to obtain or maintain a certification of exemption by rule has not been terminated under subpart 4; and

C. the person submits a written notification to the commissioner that explains the PCB activities the person will be conducting that require a certification of exemption.

The notification requirement in item C does not apply to a person who was issued a certification of exemption under part 7100.0340 and then had the certification of exemption terminated under part 7100.0340, subpart 21, item A.

Subp. 4. **Termination of eligibility for certification of exemption by rule.** The eligibility of a person to receive or maintain a certification of exemption by rule under subpart 3 is subject to termination by the agency after notice and opportunity for a public informational meeting or a contested case hearing if the agency makes any of the findings in items A to C. A person whose eligibility to be exempted by rule under subpart 3 has been terminated shall apply for and obtain an individual certification of exemption under these parts. The following findings constitute justification for the commissioner to commence proceedings to terminate eligibility:

A. that the person does not comply with the manufacturing, processing, distribution, use, disposal, storage, and labeling and marking requirements of the federal PCB program in Code of Federal Regulations, title 40, part 761;

B. that the person is conducting other activities that are not regulated under the federal PCB program in Code of Federal Regulations, title 40, part 761, and are required to be covered by a certification of exemption; and

C. that under the circumstances, in order to protect human health or the environment, the person should be subject to the requirement to obtain an individual certification of exemption under these parts.

Statutory Authority: *MS s 116.07; 116.37*

History: *15 SR 1515*

7100.0340 CERTIFICATE OF EXEMPTION.

Subpart 1. Application for existing facilities, equipment, and products. Any person who presently uses, possesses, sells, purchases, or manufactures PCB or a product containing PCB shall submit a complete application for a certificate of exemption for such PCB or products containing PCB by February 14, 1978.

Subp. 2. Application for new facilities, equipment, and products. Any person who intends to use, possess, sell, purchase, or manufacture PCB or a product containing PCB shall submit a complete application for a certificate of exemption for such PCB or products containing PCB at least 180 days prior to the proposed date of use, possession, sale, purchase, or manufacture of PCB or a product containing PCB.

Subp. 3. Forms and signatures. Applications shall be submitted on forms prescribed by the commissioner. Applications shall be signed as follows:

A. in case of a corporation, by a principal executive officer of at least the level of vice president, or his duly authorized representative;

B. in case of a partnership, by a general partner;

C. in case of a sole proprietorship, by the proprietor; and

D. in case of a municipal, state, or other public entity, by either the principal executive officer or by an official authorized by a resolution passed at an official meeting of the governing body.

Subp. 4. Contents of application. The application for certificate of exemption shall include:

A. The name and address of the applicant.

B. The amount of PCB involved in the use, possession, sale, purchase, or manufacture or contained in a product containing PCB. In instances where the amount of PCB involved is not ascertainable by an applicant, applicant shall supply the name and mailing address of the manufacturer of such product and the serial and model number, if any, of the product involved. In all such cases wherein the amount of PCB involved cannot be reasonably ascertained by an applicant, the applicant shall make an estimate of the amount of PCB involved.

C. The purpose for the use, possession, sale, purchase, or manufacture of PCB or a product containing PCB.

D. A concise description of the location of the use, possession, sale, purchase, or manufacture of PCB or a product containing PCB.

E. Justification for the use, possession, sale, purchase, or manufacture of the PCB or a product containing PCB. The justification shall include, but is not limited to, a detailed evaluation of the following:

(1) The impact upon the air, water, and land resources of the state which may result from the applicant's use, possession, sale, purchase, or manufacture of PCB or a product containing PCB, including any impacts that may result from the accidental spill of PCB or fluids containing PCB.

(2) The risk to public health and safety which may result from the applicant's use, possession, sale, purchase, or manufacture of PCB or a product containing PCB.

(3) The toxicity, flammability, and reasonable availability of PCB substitutes.

(4) Any feasible alternatives to the continued use, possession, sale, purchase, or manufacture of PCB or a product containing PCB which have been considered by the applicant.

(5) The data, information, or analyses which the applicant has relied upon or developed in determining the public health, safety, and environmental impacts which may result from the applicant's use, possession, sale, purchase, or manufacture of PCB or a product containing PCB.

F. A description of the applicant's practices and procedures for handling and storing PCB or products containing PCB. The description shall include, but is not limited to, the following:

(1) The existing safeguards utilized in handling or storing PCB or products containing PCB.

(2) The procedures utilized in the control and cleanup of spilled PCB or products containing PCB.

(3) The procedures followed for disposing of PCB, products containing PCB, or materials and items contaminated by PCB.

Any application for a certificate of exemption for the use or replacement of existing electrical transformers or capacitors shall include, in addition to the requirements of subpart 4, a detailed assessment of the cost of replacing the existing electrical transformers or capacitors with equipment that does not contain PCB, and the cost of purchasing and installing non-PCB fluids in existing equipment.

Subp. 5. Complete application. All certificate of exemption applications shall be reviewed for completeness by the commissioner. If an application is incomplete or otherwise deficient, the commissioner shall promptly advise the applicant of such incompleteness or deficiency. Further processing of the application may be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A certificate of exemption shall not be issued until a complete application is submitted to the agency.

Subp. 6. Exemption for class of products. Any person may submit an application for a certificate of exemption for a class of products possessed by the applicant which contain PCB. An application for a class of products exemption shall comply with subpart 4.

Subp. 7. Preliminary determination and draft certificate of exemption. The commissioner shall make preliminary determinations regarding a complete certificate of exemption application prior to issuance of public notice of the application. These preliminary determinations shall include a proposed determination to issue or deny a certificate of exemption.

The commissioner shall inform the applicant of the proposed determination to issue or deny a certificate of exemption.

If the proposed determination is to issue a certificate of exemption, the commissioner shall prepare a draft certificate.

Subp. 8. Public notice. The commissioner shall prepare and issue a public notice of the certificate of exemption application. The notice shall be circulated within the geographical area of the use, possession, sale, purchase, or manufacture of the PCB or a product containing PCB. The commissioner may circulate the notice in any of the following ways:

A. posting the notice in public libraries or other public buildings or places located in the designated geographical area;

B. posting the notice at or nearby the entrance to the applicant's premises;

C. publishing the notice in one or more newspapers of general circula-

tion in the designated geographical area of the applicant or, if appropriate, in an applicable periodical; or

D. publishing the notice in the State Register.

Subp. 9. Public notice availability. The commissioner shall mail a copy of the public notice to the applicant. The commissioner shall mail a copy of the public notice to any interested persons upon written request.

The commissioner shall make available a copy of the public notice at the main agency office and at the appropriate agency regional office.

Subp. 10. Public notice comment period. Any interested person, including the applicant, may, within the time allowed for public comment following the issuance of the public notice, submit written comments on the certificate of exemption application to the agency. The time for public comment shall be 30 days unless otherwise extended by the commissioner. The time for public comment may be extended by the commissioner if he determines that such extension is necessary to facilitate public comment.

All written comments submitted during the comment period shall be retained and considered in the formulation of final determinations concerning the certificate of exemption application.

Subp. 11. Public notice contents. The public notice of the certificate of exemption application shall include:

A. the name and address of the applicant;

B. a concise description of the applicant's use, possession, sale, purchase, or manufacture of PCB or a product containing PCB and location of that use, possession, sale, purchase, or manufacture;

C. a statement of the commissioner's preliminary determination to issue or deny the certificate of exemption;

D. a statement regarding the proposed duration of the certificate of exemption;

E. a statement that any interested person may submit written comments to the agency during the public comment period after the issuance of the public notice;

F. the date the public comment period terminates;

G. if the proposed determination is to issue a certificate of exemption, a statement that a copy of the draft certificate of exemption will be mailed to any person upon written request;

H. the address and telephone number of the main agency office and the appropriate agency regional office; and

I. a concise statement explaining the procedures for petitioning for a public hearing on the certificate of exemption application.

Subp. 12. Public hearing on certificate of exemption application. The applicant or any interested person may, within the public comment period, file a petition with the commissioner for a public hearing on a certificate of exemption application. A petition for a public hearing shall include:

A. the basis for the hearing request;

B. the specific portion of the draft certificate of exemption, if one has been prepared pursuant to subpart 7, that necessitates a public hearing; and

C. the interest in or relationship of the petitioner to the applicant.

All public hearings on certificate of exemption applications shall be held in accordance with the rules of the Office of Administrative Hearings.

Subp. 13. Duration of certificate of exemption. All certificates of exemption issued by the agency shall have a fixed term which shall not exceed five years.

Subp. 14. Issuance of certificate of exemption.

A. The agency shall not issue a certificate of exemption unless a com-

plete application has been filed with the agency and the applicant has provided sufficient justification, to the satisfaction of the agency, for the use, possession, sale, purchase, or manufacture of PCB or a product or class of products containing PCB in accordance with subparts 1 to 6.

B. In determining whether to issue or deny the certificate of exemption, the agency shall consider, but is not limited to:

(1) the effect upon the air, water, and land resources of the state which may result from the applicant's use, possession, sale, purchase, or manufacture of PCB or a product containing PCB;

(2) the gravity of risk to public health and safety which may result from the applicant's use, possession, sale, purchase, or manufacture of PCB or a product containing PCB;

(3) the toxicity, flammability, and reasonable availability of PCB substitutes;

(4) the existence of feasible alternatives to the applicant's use, possession, sale, purchase, or manufacture of PCB or a product containing PCB;

(5) the potential risk for dispersion of PCB into the air, water, and land resources of the state which may result from the applicant's use, possession, sale, purchase, or manufacture of PCB or a product containing PCB;

(6) the applicant's practices and procedures, including compliance with applicable state and federal statutes and regulations, for the handling, storing, and disposing of PCB, products containing PCB, or materials and items contaminated by PCB.

C. If the certificate of exemption application involves the use or replacement of existing electrical transformers or capacitors, the agency shall consider, in addition to the requirements of items A and B:

(1) the safety of proven alternatives or substitutes;

(2) the cost of replacing existing electrical transformers or capacitors with equipment that does not contain PCB;

(3) the cost of purchasing and installing non-PCB fluids in existing equipment.

Subp. 15. **Terms and conditions of a certificate of exemption.** The agency may include in a certificate of exemption such terms and conditions as are necessary in order to abate, control, or prevent pollution of the air, water, and land resources of the state including, but not limited to:

A. a requirement that annual reports be submitted to the agency within 30 days following the end of each calendar year and that these reports include the following information:

(1) name and address of the person responsible for filing the report;

(2) quantity of PCB used, possessed, sold, purchased, or manufactured during the preceding calendar year;

(3) location and nature of the use, possession, sale, purchase, or manufacture of PCB or a product containing PCB;

(4) handling, storage, or disposal practices and procedures utilized in the use, possession, sale, purchase, or manufacture of PCB or a product containing PCB; and

(5) such other information as the commissioner deems necessary;

B. a requirement that any item, product, or material containing PCB be labeled in a manner which discloses the following:

(1) the presence of PCB in the item, product, or material;

(2) a statement regarding proper disposal of the item, product, or material; and

(3) a warning regarding potential environmental and public health hazards of PCB;

C. a requirement that all records, including analytical and test analyses, be retained by the holder of the certificate of exemption for a period of three years;

D. a schedule for the replacement of existing equipment which contains PCB or PCB compounds or fluids with equipment which does not contain PCB or PCB compounds or fluids; and

E. such other terms and conditions as the commissioner deems necessary.

Subp. 16. Subsequent uses. If the agency issues a certificate of exemption for the use of PCB or a product or class of products containing PCB, the certificate of exemption shall be valid for all subsequent uses of such PCB or product or class of products containing PCB if the subsequent uses are consistent with the terms and conditions of the original certificate of exemption.

Subp. 17. Grounds for modification, suspension, and revocation of certificate of exemption. The agency may modify, suspend, or revoke any term or condition of the certificate of exemption, or the certificate of exemption in its entirety, upon finding:

A. there has been a change in the applicant's justification for use, possession, sale, purchase, or manufacture of PCB or a product or class of products containing PCB;

B. there has been a violation of law;

C. there has been a misrepresentation or omission of significant facts upon which certificate of exemption was based;

D. the terms and conditions of the certificate of exemption have not been complied with or have been violated; or

E. other just cause exists for such action.

Subp. 18. Notice of modification, suspension, or revocation. No certificate of exemption may be modified, suspended, or revoked by the agency unless the exempt person is notified of the proposed action at least 30 days prior to the effective date of the modification, suspension, or revocation.

Subp. 19. Opportunity for public hearing. Any exempt person may request, in accordance with part 7000.1000, the agency to hold a public hearing on the proposed modification, suspension, or revocation. The agency, upon its own motion, may order that a public hearing be held. In issuing its order of modification, suspension, or revocation of a certificate of exemption, the agency shall state the reasons for such action.

Subp. 20. Emergency powers. Subparts 17 to 19 shall not limit or preclude the agency from exercising its emergency powers pursuant to Minnesota Statutes, section 116.11.

Subp. 21. Termination of certification of exemption. A certificate of exemption is terminated and the terms and conditions of the certificate of exemption are no longer in force or effect under the following circumstances:

A. the person issued the certificate of exemption meets the requirements for a certification of exemption by rule in part 7100.0335, subpart 3; or

B. the person issued the certificate of exemption no longer uses, possesses, sells, purchases, or manufactures PCB, a product containing PCB, or a class of products containing PCB and has submitted a written notification to the commissioner stating this fact.

A person described in item B shall submit written notification to the commissioner within 30 days of stopping PCB activities that require a certificate of exemption.

Statutory Authority: *MS s 116.07; 116.37*

History: *L 1987 c 186 s 15; 15 SR 1515*

MINNESOTA RULES 1991

7100.0350 MISCELLANEOUS

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7100.0350 LABELS.

Any person in this state who sells any item, product, or material which contains PCB shall comply with all of the labeling and marking requirements of the federal PCB program in Code of Federal Regulations, title 40, part 761. The above labeling requirements do not apply to the uses or products excluded in part 7100.0335, subpart 2.

Statutory Authority: *MS s 116.07; 116.37*

History: *15 SR 1515*

7100.0360 [Repealed, 15 SR 1515]