

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed
Rules Governing Wells and Borings;
Minnesota Rules Chapter 4725

**ORDER ON REQUEST TO
REDUCE TIME FOR SOLICITING
COMMENTS UNDER MINN. STAT.
§ 14.101, SUBD. 4**

The Minnesota Department of Health (Department) is proposing to amend Minnesota Rules chapter 4725 governing wells and borings. The Department seeks to revise the list of grout products that are authorized for use in constructing and sealing wells and borings to add a new cement product.

On May 27, 2022, the Department filed a request for authorization to reduce the time period between the publication of its Request for Comments and its publication of a Notice of Intent to Adopt Rules. Pursuant to Minn. Stat. § 14.101, subd. 4 (2020), the Department requests that the publication period be shortened from 60 to 30 days.

Based upon a review of the written submissions and applicable law, and for the reasons set forth in the Memorandum that follows, the Chief Administrative Law Judge finds the Department has established good cause exists to reduce the period for soliciting comments in this case. Accordingly, the Chief Administrative Law Judge issues the following:

ORDER

The Department's request to reduce the period between publication of its Request for Comments and Notice of Intent to Adopt from 60 to 30 days is **GRANTED**.

Dated: June 6, 2022

A handwritten signature in black ink, appearing to be 'Jenny Starr', written over a horizontal line.

JENNY STARR
Chief Administrative Law Judge

MEMORANDUM

I. Regulatory Background

The Department is charged with regulating the construction and sealing of wells and borings in Minnesota.¹ Wells must be constructed and sealed using approved grouts and methods in accordance with the provisions in Minnesota Rules chapter 4725. Among the approved methods are products that include Type I Portland cement (Type I PC), which is now in scarce supply throughout the state.² Minnesota Rules chapter 4725 defines Type I PC by its conformity with ASTM Standard C150 and requires its use in a numerous processes regulated under the rule.³

The Department seeks to revise its rules to authorize use of a new “low carbon” Type IL Portland-limestone cement (Green PC) for constructing and sealing wells and borings. According to the Department, the cement industry is replacing Type I PC with Green PC and, as a result, Type I PC is generally scarce and, in certain parts of the state, unavailable.⁴ The Department states that Green PC, on the other hand, is widely available throughout the state and appears to perform as well as Type I PC. Green PC, however, conforms to ASTM Standard C595, but not C150 as required under the current rules.⁵

The Department intends to revise its rules by adding Green PC to the definition of “Portland cement” at Minn. R. 4725.0100, subp. 34a or by other minor revisions to achieve the same effect.⁶

Based upon discussions with Minnesota stakeholders, including contractors and well owners, the Department does not expect this rule revision to be controversial and instead expects to receive support from the public and regulated parties. According to the Department, this has been the experience of regulators in Michigan and Wisconsin.⁷

II. Legal Standards

Under Minn. Stat. § 14.101, subd. 1 (2020), an agency is required to solicit comments from the public on its possible rulemaking “at least 60 days before publication of a notice of intent to adopt or a notice of hearing.” Subdivision 4 of that same statute allows the Chief Administrative Law Judge to reduce the period between the publication

¹ See Minn. Stat. § 103I.101, subd. 5(4) (2020) (statutory authority for adoption of chapter 4725 for the “establishment of minimum standards for design, location, construction, repair, and sealing of wells and borings to implement the purpose and intent of this chapter”).

² Department’s Request to Reduce Time Period at 1 (May 27, 2022).

³ See Minn. R. 4725.0100, subparts 34a (2021) (defining Portland cement as “a construction material that conforms to ASTM Standard C150-04a”), 22b (defining “Cement-sand grout” as a mixture including Portland cement); Minn. R. 4725.3050 (2021) (governing grouting materials and methods for wells and borings).

⁴ Department’s Request to Reduce Time Period at 2.

⁵ See Minn. R. 4725.0100, subpart 34a (defining Portland cement as “a construction material that conforms to ASTM Standard C150-85a”).

⁶ Request to Reduce Time Period at 2.

⁷ *Id.*

of the request for comments and the notice of intent to adopt the rule to 30 days “for good cause” shown.⁸

The purpose of Minn. Stat. § 14.101 (2020) is to require agencies to solicit public input on proposed rules so that the agency can use those comments to better inform its rule drafting. The 60-day timeline between the publication of a request for comments and a notice of intent to adopt is intended to give agencies time to consider and possibly incorporate the received comments before the proposed rules are finalized.

III. Analysis and Conclusion

In this matter, the Department requests that the 60-day period between publication of its Request for Comments and its Notice of Intent to Adopt Rules be reduced to 30 days. The Department states that the proposed revision is relatively straight-forward but urgently needed due to the ongoing shortage of Type I PC. The Department maintains that the supply shortage of this cement product is causing significant economic hardships for the regulated industry and delays in sealing wells, which in turn poses potential public health concerns. According to the Department, approximately 13,000 wells were constructed in 2021. The Department estimates that up to 2,000 of these required the use of Type I PC.⁹ While there is a process in place for varying the rule on a case-by-case basis to allow for use of Green PC, the Department asserts that processing up to 2,000 variance requests per year would create unreasonable delays and considerable burdens on Department staff.¹⁰ Moreover, the Department is required to collect a \$275 fee per variance request, which creates an economic hardship for contractors and Minnesota customers.¹¹

The Department is preparing to solve the Type I PC shortage through rulemaking. It seeks to shorten the statutory 60-day comment period to more quickly address the delays in constructing and sealing wells caused by the supply shortage.

The Chief Administrative Law Judge finds that the need to quickly address shortage of a single product provides good cause to shorten the 60-day period between publishing the Request for Comments and the Notice of Intent to Adopt. The reduction in time between publications is not likely to deprive the public the ability to participate meaningfully and provide comments on the proposed revision. The Department’s request is **GRANTED**.

J. S.

⁸ Minn. Stat. § 14.101, subd. 4.

⁹ Request to Reduce Time Period at 2.

¹⁰ *Id.*

¹¹ *Id.*; See Minn. Stat. § 1031.101, subd. 6 (2020).