

12/27/91(rev)

STATE OF MINNESOTA

In the Matter of Proposed Amendments
to Rules of the Minnesota Department of
Health Relating to Fees for Public
Swimming Pools, Minnesota Rules,
parts 4717.0200 and 4717.0310

STATEMENT OF NEED
AND REASONABLENESS

Amendments to Minnesota Rules, parts 4717.0200 and 4717.0310 are proposed to increase the fees that must be paid to review public swimming pool construction plans and provide for inspection for compliance with the approved plans.

AUTHORITY TO ADOPT RULES

Authority to promulgate the proposed amendments is found in Minnesota Statutes, section 144.05, (c) which authorizes the commissioner to:

(c) Establish and enforce health standards for the protection and the promotion of the public's health such as quality of health services, reporting of disease, regulation of health facilities, environmental health hazards and personnel.

Authority to prescribe fees by rule is contained in Minnesota Statutes, section 144.122 which provides that:

(a) The state commissioner of health, by rule, may prescribe reasonable procedures and fees for filing with the commissioner as prescribed by statute and for the issuance of original and renewal permits, licenses, registrations, and certifications issued under authority of the commissioner. The expiration dates of various licenses, permits, registrations, and certifications as prescribed by the rules shall be plainly marked thereon. Fees may include application and examination fees and a penalty fee for renewal applications submitted after the expiration date of the previously issued permit, license, registration, and certification. The commissioner may also prescribe, by rule, reduced fees for permits, licenses, registrations, and certifications when the application therefor is submitted during the last three months of the permit, license, registration, or certification period. Fees proposed to be prescribed in rules shall be reasonable. The fees shall be in an amount so that the total fees collected by the

pro rate ?

commissioner will, where practical, approximate the cost to the commissioner in administering the program. All fees collected shall be deposited in the state treasury and credited to the general fund unless otherwise specifically appropriated by law for specific purposes.

Since 1972, the department has regulated the construction and design of public swimming pools (parts 4717.0100 to 4717.3900). The cost of the review of public swimming pool plans, on-site inspection and surveillance and the handling of public pool complaints was not directly funded as a program until 1987 when the legislature created a specific public swimming pool program position and authorized the collection of fees to fund the program. The department promulgated the current fee system under Laws of Minnesota 1987, chapter 403, article 1, section 8, subdivision 2 to address program costs and projected revenue identified at that time.

The appropriation for preventive and protective health services reflects an increase of \$54,000 the first year and \$53,000 the second year for swimming pool surveillance and monitoring. The increase is not available until the department has established a fee system that will allow the increased costs to be fully recovered.

The Department of Finance reviews expenditures and revenue generated by programs that are fee supported. In the case of the public swimming pool program, the Department of Finance has indicated the revenue generated by the current fee system is not meeting program costs. In accordance with Minnesota Statutes, section 16A.128, the department is proposing a revision to the adopted fees to address changes in projected program costs and revenue.

NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION

The Notice of Intent to Solicit Outside Opinion was published in the State Register on November 4, 1991 at 16 S.R. 1131.

APPROVAL OF THE COMMISSIONER OF FINANCE; NOTICE TO HOUSE AND SENATE

With regard to the requirements of Minnesota Statutes, section 16A.128, subdivision 1a, the Commissioner of Finance has reviewed and approved the proposed fee system. A copy of the Commissioner of Finance's approval is attached.

With regard to the requirements of Minnesota Statutes, section 16A.128, subdivision 2a, the agency sent a copy of the notice to adopt rules and the proposed rules to the chairs of the house appropriations committee and senate finance committee.

NEED FOR AND REASONABLENESS OF AMENDMENTS

4717.0200 DEFINITIONS

Subp. 6. Spa pool. The proposed amendment to part 4717.0200 subpart 6 is necessary to provide definition to the term "spa pool." This definition is needed because the term is now used in part 4717.0310 as proposed for amendment to describe a category of pools with a separate and distinct fee requirement. The subpart clarifies that the term "spa pool" is synonymous with the term "whirlpool." Clarification is necessary to eliminate any confusion about these terms which tend to be used interchangeably by the regulated industry.

There is no single recognized definition of the term "spa pool" within the regulated community. The proposed definition is consistent with how the department has used the term while reviewing plans for the construction of spa pools. The key elements distinguishing a spa pool are that it uses hot water, usually much hotter than the temperature of water normally found in public swimming pools; persons are seated in the pool; the pool is used for recreation; and the pool has a water agitation system in addition to the pool's water filtration and recirculation system. Spa pools meet the definition of a public swimming pool to the extent that they are used collectively by the general public.

The proposed definition is similar to the term as defined by the State of Connecticut in section 19-13-B 33b of that state's public health code.

"Public Spas", "Whirlpools:", or "Hot Tubs" are pools used for recreational bathing which are used in conjunction with high velocity air systems, high velocity water recirculation systems, hot water, cold water, mineral baths or any combination of these items.

The State of Maine has developed guidelines for "public spas" and "hot tubs." Within those guidelines, that state indicates that spas may also be called:

whirlpools, jacuzzis (a brand name), hydro-therapy, or soaking tubs. These are large tubs or small pools which hold hot water for people to soak in, not bathe. Some are equipped with whirlpool jets and bubblers for underwater massage...

Subp. 7. Special purpose pool. The amendments proposed to this subpart are technical in nature to ensure the consistent use of defined terms throughout the proposed rules and to ensure parallel construction within the definition.

4717.0310 FEES

This part is proposed for revision to adjust the fee required to be submitted with constructions plans for each pool project. It is necessary to revised the current fee system so projected revenue covers program cost. The proposed fees cover the cost of 1 FTE swimming pool engineer to review and approve construction plans and conduct onsite surveillance and monitoring to ensure that pool construction is in compliance with approved plans and adopted state standards.

The existing fee schedule does not provide adequate revenue to recover program costs. The average program costs for fiscal year 91 through fiscal year 95 is projected to be \$45,000 annually (See Fee Review - Attachment). Based on the number of public swimming pool projects submitted to the department in recent years, the existing fee schedule is estimated to generate \$31,000 in revenue in fiscal year 91 and about \$32,000 in fiscal year 92. Under the proposed schedule, using the same number and type of pool projects per year, it is estimated that \$49,000 in revenue would be generated per year through fiscal year 1995 thus recovering program costs.

Number of pool projects per year		Proposed fee		Revenue
80 pools	x	\$500	=	\$40,000
25 spa pools	x	\$200	=	\$ 5,000
20 pool alterations	x	\$200	=	\$ 4,000

The department intends the proposed fees to become effective July 1, 1992 which is consistent with the beginning of the state fiscal year.

where? what statute?

The proposed schedule is reasonable because it meets the legislative mandate to recover the costs associated with the public swimming pool construction inspection program. The proposed fees are reasonable because they are similar to fees charged by the other states whose public swimming pool programs are totally fee supported. The State of Ohio, for example, charges \$550 for large pools and \$275 for small pools. Its swimming pool program, like Minnesota's, is totally fee supported and not subsidized by the state general fund. The proposed separate and smaller fee for spa pools is reasonable because it is proportionally in line with the total project cost to the owner of the spa pool. Spa pools are usually much smaller in size than other public swimming pool projects and require less cost to install or construct.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115 requires that an agency consider five factors for reducing the impact of proposed rules on small business. According to Minnesota Statutes, section 14.115 a small

business is an entity, including its affiliates, that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than \$4 million. The proposed amendments may impact small businesses such as hotels, motels, resorts, health clubs and recreational camping areas.

The methods delineated in Minnesota Statutes, section 14.115 for reducing the impact of the rule on small business include:

- 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 for small businesses;
- D) the establishment of performance standards for small businesses to replace design or operational standards required in rule; and
- E) the exemption of small businesses from any or all the requirements of the proposed rules.

The proposed amendments do not pertain to reporting requirements. The establishment of less stringent deadlines or schedules is not relevant because the fee is a one time only per construction project fee that must be paid in a timely manner because the state has to pay its program costs on a specific schedule. The establishment of performance standards for small businesses to replace design or operational standards does not apply to the proposed amendments since the changes proposed are to project fees, not to specific construction standards for public swimming pools.

The exemption of small business from fee payment would not be reasonable because the commissioner is responsible to ensure the safe construction and use of public swimming pools regardless of the size of the facility owning or operating the pool.

The department has however, taken into consideration the impact on small business by allowing a smaller fee for spa pool installation or construction. This is a type of pool which is frequently associated with small businesses.