

STATEMENT OF NEED AND REASONABLENESS
FOR AMENDMENTS TO
FEES FOR WATER RESOURCES PERMITS
AND
FEES FOR UNDERGROUND STORAGE OF GAS OR LIQUID

INTRODUCTION

The authority for adoption of water resources permit fees and fees for the underground storage of gas or liquid was originally granted by the 1973 legislature (codified in § 105.44, subd. 10). This authorization included a "permit application fee" of \$15.00, an "additional field inspection fee" of not less than \$25.00 for projects requiring a field investigation, a monitoring fee for activities covered by permit, and an annual water appropriations reporting fee of \$5.00 per permit. Rules were promulgated pursuant to this legislation in 1975.

In a 1977 amendment, the legislature limited the field investigation fee to those "...projects requiring a mandatory environmental assessment...", and also provided discretionary authorization for an "...additional permit application fee..." which would "...be based upon the project's costs and the complexity of the permit applied for." Rules for this additional permit application fee have not previously been adopted.

1983 LEGISLATION

The 1983 legislature made several significant changes in water resources permit fees. § 105.41, subd. 5, relating to the annual water appropriation processing fee, was amended to incorporate the following schedule: (a) irrigation permits, \$10 for each permitted 40 acres or portion thereof; (b) for nonirrigation permits, \$5 for each ten million gallons or portion thereof permitted each year, but not to exceed a total fee of \$250 per permit.

Substantial criticism of the department's failure to update the water resources permit fee rules since 1975 emerged in 1983 hearings before the State Department's Division of the Senate Finance Committee. An amendment drafted by Senate Counsel was ultimately adopted, which increased the permit application fee from \$15.00 to \$30.00 and changed the rule making authority for the additional permit application fee to § 16A.128 from Chap. 15 (14). Under this rule making authority, fee schedules must be designed to recapture full program costs, subject to the approval of the commissioner of finance (see Attachment #1), and his periodic review. Proposed fee rules must be published in the State Register and are subject to public commentary, but may be adopted without public hearing.

COST CONSIDERATIONS

The costs associated with the statutorily fixed permit application fee are primarily clerical in nature and relate to receiving, recording, and processing the application, including service on the local governmental units specified in § 105.44, subd. 5 (Watershed district and City, if applicable; SWCD in all cases).

The field inspection fee is being amended to recapture the full cost of the inspection, including travel time, when a mandatory environmental assessment is involved as specified by statute.

The project monitoring fee recaptures the full cost to the state when such monitoring is required by the department pursuant to the procedures outlined in the proposed rules.

The annual water appropriations reporting fee essentially covers the cost of the water appropriations regulatory program in the department of natural resources, including an expanded program of monitoring both water quality and quantity. Accordingly, the additional permit application fee is not being applied at this time to the appropriation of state waters.

Based upon discussions with the department of finance, it was concluded that the costs associated with the additional permit application fee include the professional and technical staff expenses associated with permit applications for projects not covered by the dam safety rules which would change the course, current or cross section of protected waters, exclusive of the cost of field investigations. The dam safety rules contain a fee schedule which is based upon the size of the dam and its cost of construction.

RULE FORMAT

Because the Office of the Attorney General determined the 1983 legislative changes did not exempt changes in fee rules relating to permits for underground storage of gas or liquid from hearing, these fee rule changes are being separated from the Water Resources Permit Fee Rule changes.

The authorities for water resources permits and permits for underground storage of gas or liquid are:

- Minn. Stat. § 105.41 relating to water appropriation and use of water.
- Minn. Stat. § 105.42 relating to changing the course, current, or cross-section of protected waters
- Minn. Stat. § 105.64 relating to diversion of waters to facilitate mining of iron ore, taconite, copper, copper-nickel or nickel.
- Minn. Stat. § 84.58 relating to permits for underground storage of gas or liquid.

The Sections of law affecting these fee rule revisions are included as Attachment #2. The contents of the proposed revised rules are:

Fees for Water Resources Permits

- 6 MCAR § 1.5000 General provisions.
- 6 MCAR § 1.5001 General requirements.
- 6 MCAR § 1.5002 Additional fees required by Minnesota Statutes, Chapter 105.
- 6 MCAR § 1.5003 Annual water appropriation processing fee.

Fees for Underground Storage of Gas or Liquid

- 6 MCAR § 1.5010 Fee schedule for underground storage of gas or liquid.

JUSTIFICATION
DIVISION I
Fee For Water Resources Permits

6 MCAR § 1.5000 General Provisions

A. Scope and applicability

1. The scope and applicability of these rules are inserted to identify current statutory references authorizing the Commissioner to charge fees for the various water resources permits or permit related activities.

2. The exemption of state and federal agencies from these proposed fee revisions is a statutory requirement of Minn. Stat. § 105.44, subd. 10.

B. Definitions

There is no change in the first three definitions.

3. The definition of the "Appropriation of Water", etc. has been amended to reflect the current statutory reference.

4. & 5. Definitions of "Division" and "Commissioner" have been added to facilitate abbreviation of reference where used in the revised rules.

6. The definition of "Project Cost" is vital to the implementation of the Additional Permit Application Fee. The definition includes only direct project costs to the applicant and applies only to the portion of the project directly encroaching in, over or under protected water permit jurisdictions of the Division. For complex projects, it may be difficult to determine the cost of that portion of the project upon which the additional permit application fee is to apply. In such cases the rules allow negotiation with the Commissioner or his representative to determine a reasonable project cost.

7. The definition of "Protected Waters" has been added to reflect changes in the Statutes as well as terminology useage since the old fee rules were promulgated.

8. The definition of "Ordinary High Water Mark" while being a statutory definition is vital to the identification of the jurisdictional limits relating to permits for activities affecting protected waters.

9. The definition of "Shoreline" is necessary because it is used as a complexity parameter in determining the additional permit application fees of specific projects. Its useage is discussed further in the part of the Statement relating to the proposed rule on Additional Permit Application Fees.

10. The definition of "State Agency" is necessary to determine in part which units or institutions of government are exempt from these fee rules.

C. An effective date for this rule no earlier than July 1, 1984, will allow adequate time to prepare for implementation once the form of the rule is finalized through the adoption process.

6 MCAR § 1.5001 General Requirements

A. Permit Application Fees

1. A \$30 permit application fee is required by Minnesota Statute for permit applications submitted under the permit authorities of Minnesota Statutes § § 109.391, 105.41, 105.42, and 105.64. Permit applications submitted for projects requiring review under dam safety rules or submitted with the intent to trigger the water bank program, are considered special cases under the authority of 105.42.

2. Minnesota Statutes § 105.42, subd. 10 prohibits the Commissioner from issuing permits until all fees are paid. The intent of this requirement has not changed from the old fee rules, that is to minimize the time spent by the State on permit applications which aren't submitted in good faith or with the intent of implementing the proposed project if authorized. The proposed requirement as now written, allows the applicant 30 days to submit the required minimum fees before review by the State on the application is halted.

3. Fees are required for each application unless the project is exempt from fees.

B. The permit application fee and minimum additional permit application fee are not refundable unless it turns out a permit is not required for work which an application and fees were submitted. Minn. Stat. § 105.44, subdivision 10 states, "No permit application or field inspection fee may be refunded for any reason, even if the application is denied or withdrawn." While this appears to expressly prohibit any refund; if an application is submitted and it turns out a permit is not required, the money submitted is not actually a permit or additional permit application fee. Such an interpretation will not discourage individuals from submitting application for projects where there is a doubt over whether a permit is required, if the prospective applicants know they can get their money back if it is indeed determined a permit is not required. This posture will also help protect the resource, since it is better to encourage submittal of an application and then determine a permit is not required; than to discourage submittal of an application and find out later the proposed work was done and should have been permitted. Approximately 3% of the 105.42 permit applications submitted end up being for activities not requiring a permit. Since these projects are minor in scope, it would result in approximately \$1500 having to be returned or refunded every year. Only \$600 of this amount would be "additional permit application fees". The projections of income takes this amount into account.

C. The manner in which fees are to be paid to the State is information needed by those applicants required to pay a fee.

D. This rule also has a proposed effective date for the same reason as has Rule 6 MCAR 1.5000.

6 MCAR § 1.5002 Additional Fees Required by Minn. Stat. Ch. 105

A. The major revision of these fee rules includes the addition of a schedule of "additional permit application fees," which according to Minn. Stat. § 105.44, subdivision 10 is to be based upon the project's costs and the complexity of the permit applied for. The additional permit application fee is intended to defray the cost of the time of professional and technical staff engaged in the review and analysis of permit applications. As indicated previously, the Commissioner of Finance has approved the proposed additional permit application fee schedule, to the end that the total fees received approximate the amount appropriated for the several accounts plus the portion of the general support costs and statewide indirect costs of the Division that is attributable to the function for which the fee is charged. This fee will apply to new permits received after July 1, 1984, or after these rules are adopted, whichever is the latest date.

The following table shows the estimated fee receipts resulting from application of the proposed schedule of "additional permit application fees" to the various types of permits that can be expected to be received annually.

<u>Project Cost</u>	<u>No. of Applications</u>	<u>Average Fee</u>	<u>Receipts</u>
0-\$2,000	465	\$ 20	9,300
\$2,000-\$10,000	105	\$ 60	6,300
\$10,000-\$50,000	155	\$200	31,000
Greater than \$50,000	185	\$500	92,500
Total	<u>910</u>		<u>\$139,100</u>

The number of applications and average fees shown in the table are based on analysis of project costs, length of shoreland affected and the volume of material to be filled or excavated for the various types of applications reviewed in 1981, 1982 and 1983.

The following table lists the parameters that are utilized to calculate the annual cost of permit review.

Number of applications	910
Professional staff time in hours/application	7 hours
Average hourly rate including fringe/ application	\$16.80 - FY 84 \$17.40 - FY 85
Overhead (Federal Indirect Cost Rate FY 84)	27.9%

The representative time spent in review of the permit applications includes time of DOW Regional Hydrologists, Area Hydrologists and any other technical or paraprofessional regional staff; time of DOW central office staff which may be requested to conduct specialized technical analyses; and, for those permits which are forwarded to the central office for signature, the review time of central office professional, technical, and paraprofessional staff. Professional, technical, etc., staff time spent reviewing a permit ranges from about 1 hour or a little less for routine non-controversial projects, such as shoreline protection, etc., to several days for complex, controversial projects of statewide significance, such as hydropower projects, mining projects, large scale channel excavation, and large scale filling projects which require mitigation or wetland replacement. It is concluded that 7 hours represents the average time it takes to review one application, recognizing this figure may be bias because of lack of records on the actual time it takes to review comprehensive, controversial and complexed applications.

The estimated annual cost of professional and technical review is determined by multiplying the time it takes to review and analyze a permit application; by, the representative salary (including fringe and overhead) of all professional and technical staff involved in the review and analysis of a single permit application; and by, the representative number of permits annually issued or denied for which an additional permit application fee would be charged. Again, the number of permit applications used in making this projection is based upon analysis of permit review during 1981, 1982 and 1983.

The following table summarizes the annual costs of professional and technical permit review and anticipated annual permit receipts for the fiscal years 1985 through 1988.

	<u>FY 85</u>	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>
Costs*	\$141,800	\$148,900	\$156,300	\$164,200
Receipts	\$139,100	\$139,100	\$139,100	\$139,100

*Assuming 5% increase due to inflation.

Based on actual inflation and other factors, the need for adjustment of the additional permit application fee will have to be considered by July 1, 1985.

It is emphasized the "additional permit fee application fee" does not cover the clerical cost of receiving, recording and processing permit applications. This cost is covered by the \$30 permit application fee specified by Minn. Stat. § 105.44, subd. 10. The "additional permit application fee" does not include any time spent on field inspections or monitoring as Minn. Stat. § 105.44, subd. 10 allows these costs only to be recovered for projects that also involve an environmental assessment or an environmental impact statement under the provisions of Minn. Stat. 116D in addition to a water resources permit. When charged, field inspection fees and monitoring fees cover the actual cost of the field inspection or monitoring, as required by Minn. Stat. § 105.44, subd. 10.

1. In deriving the proposed "additional permit application fee" schedule, complexity is viewed as a characterization of the magnitude of impact a permitted project will have on the water resource. The parameters selected to identify complexity are length of shoreline affected measured in feet and volume of material filled or excavated measured in cubic yards. For example, the length of stream to be cleaned out, channelized, shortened, or straightened relates directly to the amount of fish and wildlife habitat which may be affected, the magnitude of change in downstream velocities of flow and corresponding changes in downstream sedimentation, the magnitude of change in downstream flooding, and the amount or spoil material that will have to be disposed of, etc.

The greater the length of shoreline alteration around a lake, the greater the potential for erosion and sedimentation into the lake, impact on fish and wildlife habitat, and alteration of the natural character of the lake. The greater the amount of fill placed in a wetland or lake, the greater the potential for erosion, sedimentation and degradation of water quality in the lake, impact on fish and wildlife habitat, change in natural character of the lake, change in flood water detention capabilities, and for diminishing other characteristics which are beneficial to the public.

For complex projects, discussion with prospective applicants often will be needed to identify the project cost upon which the additional permit application fee is to be charged. Thus a means is needed to allow for negotiation of project cost that is reasonable to both the applicant and DNR.

Using the proposed "additional permit application fee" schedule, the fee charged generally will be the largest of the fees determined for the three identified project parameters. Exceptions are noted in the following statements on this rule.

Inspection of the additional permit application fee schedule finds that as the cost or complexity of the project increases, the fee rate decreases. In comparing the additional application fee with the Dam Safety fee schedule contained in 6 MCAR § 1.5034 and the 1982 Edition of the Uniform Building Code, the proposed "additional permit application" fees generally are significantly lower.

For example, for a dam that costs \$3,000 the Dam Safety Rules require a fee of \$75. For a building that costs \$3,000, the Uniform Building Code requires a fee of \$38.50. For a \$3,000 project requiring an "additional permit application fee", that fee would be \$30 provided one of the complexity parameters didn't control. For a dam that costs \$1,000,000 the Dam Safety Rules require a fee of \$13,500. For a building costing \$1,000,000, the Uniform Building Code would require a fee of \$2,683. For a \$1,000,000 project requiring an "additional permit application" fee, that fee would be \$1,250.

To require an additional permit application fee of \$13,500, the affected shoreline would have to be 25 miles, the volume of excavation or fill would have to be 132,500 yards (equivalent to a volume of 1100 ft. square and 3 ft. deep), or the cost of the project would have to be \$13,250,000. To require an additional permit application fee of \$2,683, the length of shoreline affected would have to be 4.6 miles, volume of excavation or filling would have to be 29,330 yards (equivalent to a volume of 463 ft. square and 3 ft. deep), or the cost of the project would have to be \$2,433,000.

2. Determining the difference between the existing channel length and the proposed channel length in the reach of watercourse to be altered is the critical shoreline length measurement for projects where the channel length is to be actually reduced. The greater the reduction in length of channel in a given reach of watercourse, the greater will be the increase of velocities of flow and related flood flows. Damages to fish and wildlife resources are likely to increase also along with sediment flow and channel erosion. Thus the fee will be directly related to potential for negative impact for this

type of project. However, volumes of material excavated along a completely new channel alignment will not be used to determine the additional permit application fee since in most cases the excavation will not be located in, over, or under protected waters. Often the fill from the new channel will be placed in the old channel. It is not intended to count this filling in determination of the additional permit application fee.

3. Payment of the minimum additional permit application fee of \$20.00 will eliminate over payment in instances where a limited permit must be issued, and satisfy for at least half of the permits issued, the additional application fee without having to bill the applicant for the additional amount due. Failure to pay the minimum additional permit application fee, at the time the application is submitted will have the same consequence for the same reason of not submitting the \$30 permit application fee, in conjunction with submittal of the application.

4. For water level control structures, the shoreline parameter may result in an unduly high additional permit application fee for situations where a project applicant has already acquired or will have to acquire flooding or flowage easements from the other landowner. By referring to Example 4, which concludes the statement on this rule, it can be seen for a relatively small structure, the fees which would be attributed to a length of shoreline affected would be \$750. Had the acreage of the impoundment resulting from the proposed project be increased to 100 acres, the affected shoreline would be approximately 7400 ft. and the fee would have been \$990.

Based on the amount of fill, the fee for Example 4 would be \$350. In comparison, the dam safety fee for an equal cost dam would only be \$95 ($2.5\% \times 3800$). Since dam safety requirements including the dam safety fee schedule have been promulgated to address increased hazard that dams pose to public health, safety and welfare, water level control structures not of a size subject to the dam safety rules should not be subject to fees greater than that would be required for a water level control structure of equal cost that is subject to dam safety fees, except the minimum additional permit application fee of \$20.00 will be charged in all cases.

5. Use of riprap, because of its natural appearance and effectiveness in resisting the erosive action of waves or flowing water, is the preferred method of providing shoreline protection. Its use is required to prevent further change or damage to shoreline environment or can be placed with little or no encroachment on the water environment. To encourage the use of riprap as a protective measure, the "additional permit application" fee is limited to \$20. Further, recovering shoreland lost to erosion or other natural forces can be very expensive. Such a project is protective in nature and not intended to encroach upon or significantly alter the water resource for developmental purposes. Therefore, the additional permit application fee is limited to \$20.00.

6. Except for State and Federal agencies, public agencies are to pay permit fees. Because projects undertaken by public agencies are undertaken in the public interest with the same public funds (often scarce) that are utilized to pay the required permit fees, it is reasonable to place an upper limit on the amount of monies that are transferred from one public agency to another to satisfy fee requirements.

In comparison with engineering or design costs which are generally figured to be at least 10% of project costs, \$500 is not unreasonable to place on the additional permit application fee for public agency projects for which the public interest may be optimized through the permit review function. For smaller projects which have little or no direct engineering or design costs to the sponsor public agency, the permit review phase of the Division will often entail defacto engineer and design.

7. If a dispute develops between the applicant and the Division, it is not unreasonable for the Commissioner to request a cost estimate prepared by a qualified professional entity to achieve resolution. With probably no exception, any project costing in excess of \$250,000 will have a cost estimate conducted by a qualified professional entity.

8. It is not reasonable to charge an additional permit application fee for a project that also requires a dam safety fee to be paid.

9. For projects where a portion of the additional permit application fee is due, upon completion of review of the proposed project, the balance due will be billed to the applicant along with a statement describing the scope of permit to be issued. This procedure eliminates the possibility of the applicant over paying the required additional permit application fee in the event the scope of permit to be issued is limited from that which was applied for. It allows the balance of the money that will eventually be paid in additional permit application fees to earn interest for the applicant while review of the project is being finalized.

It also allows the applicant to request a hearing if not in agreement with the limited permit to be issued, provided the bond requirements are met and the hearing is requested in 30 days of receipt of billing and scope of permit statement. It is noted that this procedure is a departure from past practice with regard to requesting contested case hearings. Since the commissioner has authority to hold a hearing on any permit application, such a new practice should not present any difficulty in implementation. Not requesting a hearing during this thirty day period will not jeopardize the right of the applicant to request a hearing if after paying any due additional permit application fee and issuance of the permit, the applicant changes his/her mind and decides to request a hearing. In this case, the bonding requirements still have to be met and the hearing has to be requested within 30 days of mailed notice of the permit action.

10. Other than paying the permit application fee and minimum additional permit application fee, no additional fee is due if a permit is denied. This minimizes payment of fees on the part of the applicant, even though cost of permit application review and processing will likely be greater to the state for denial actions than for a majority of projects for which a permit can be issued.

11. If the outcome of a hearing results in the issuance of a permit that was initially denied or for the issuance of a permit of greater scope than was originally issued, the only fees required will be those that may be due based on this rule for additional fees and the scope of project for which a permit will be issued. The magnitude of payment of fees is treated as a routine permit, even though the costs to the state for the contested case will be substantially greater.

12. Doubling the additional permit application fee for permit applications filed after the work that has been applied for has been wholly or partially completed (except for emergency work as may be provided for in existing permit rules and policies) is intended to discourage work undertaken in violation of the law by penalizing those that violate the law in contrast to those fee paying applicants that abide with the law. Failure to comply with permit laws or permit requirements is grounds for restoration as provided for in Minn. Stat., 105.461 and 105.462.

The following are examples of the application of the additional permit application fee schedule:

1. Given: A bridge across a protected water costs \$250,000 for the portion of the structure located in or over protected waters. The volume of fill material in protected waters is 50 cu. yds., whereas the shoreline affected is 140 ft (70 ft.) of shoreline at each end of the bridge.

Calculation:

APA Fee based on cost = \$500
APA Fee based shoreline affected = \$120
APA Fee based on volume of fill = \$50
APA Fee charged = \$500

(This is the maximum additional permit application fee which can be charged a public agency, such as a city/county or township, watershed district, etc. If the applicant were Mn DOT or the Federal Government, there would be no fee at all because State and Federal Agencies are exempt. If the applicant would be the University of Minnesota, the \$500 additional permit application fee would be charged because Minn. Stat. § 16.011 does not define the University of Minnesota as a State Agency).

2. Given: A resort owner on a lake in northern Minnesota proposes to protect his shoreline from erosion with the use of riprap. The length of shoreline to be protected is 300 ft. The volume of riprap required is 350 cu. yd. and the cost is estimated to be \$7,000.

Calculation:

APA Fee based upon cost = \$70
APA Fee based on shoreline affected = \$200
APA Fee based upon volume of fill = \$225
APA Fee charged = \$20

(The additional permit application fee is limited by the rules to \$20 for protection of shoreline from erosion by placement of riprap).

3. Given: Same situation as example 2 except the protection is desired utilizing a railroad tie retaining wall 300 ft. long and three feet high. Cost is estimated to be \$3,000.

Calculations:

APA Fee based on cost = \$30
APA Fee based on shoreline affected = \$200
APA Fee based upon volume of material = \$27
APA Fee charged = \$200

If protection is not riprap full fee is paid.

4. Given: A water level control structure is proposed by a local landowner in cooperation with a sportsmans club that will result in raising the normal water level of a 20 acre protected wetland 2 ft. The contributing watershed is 278 acres, however, the watercourse draining the watershed exhibits definable bed and banks beginning at the existing outlet of the wetland which is also the location of the proposed structure. The resulting increase in water level will increase the shoreline from 3,300 ft. to 5,000 ft. and water surface area to 40 acres. The 500 ft. long structure will require 1,00 yds. of material. The cost will be \$3,800.

Calculations:

APA Fee based on 1% of cost = \$38
APA Fee based on 2.5% of cost = \$95
APA Fee based on shoreline = \$750
APA Fee based on volume of material = \$350
APA Fee charged = \$95

Shoreline parameter is not used for water level control structures. Check is made to make sure APA does not exceed dam safety fee schedule. Since the fee based on volume of material exceeds the dam safety fee schedule rate, the dam safety fee rate applies.

5. Given: A strip of fill is desired by a private riparian lot owner to gain access to open water of a 400 acre lake in central Minnesota. The applicant proposes to fill a 50 ft. strip of lake bed extending from the OHW to the existing water line and install sufficient seasonal dock from the end of the fill strip to navigable depths. The project would be limited because the rules permit a fill strip 15 ft. wide at the base with 2 to 1 side slopes. Average depth of fill is 2 ft. Volume of material required is 20 yds. Length of shoreline affected equals 15 ft. Cost of project is \$225.

APA Fee based on cost = \$20
APA Fee based on shoreline = \$20
APA Fee based on volume = \$20
APA Fee charged = \$20

The temporary dock to be installed requires no permit, thus there are no fees required for this part of the project.

6. Given: Same project as five except average depth of needed fill would be 3 feet instead of 2 feet. Since the rules only permit a 15 ft. bottom width, this would leave only a 3 ft. top width, the applicant chose to put in a permanent dock extending 50 feet from the OHW to the waters edge. Cost of this project is estimated to be \$800. Dock will have total width of 6 feet.

APA Fee based on cost = \$20
APA Fee based on shoreline = \$20
APA Fee based on volume = not applicable.
APA Fee charged = \$20

If the lake involved would be 500 acres or greater in size, no fee would have been involved since no permit would be required for the size of permanent dock proposed. The seasonal dock remains exempt from permit requirements in this instance.

7. Given: A protected watercourse one quarter mile long is to be cleaned of sediments by the landowner. Although 4 small meanders will be smoothed out, there will be no effective change in length of the stream along the reach for which the clean out is proposed. The volume of material to be removed averages approximately 1 yard of material for each 2 foot reach of stream, for a total volume of excavation of 660 yds. Cost of project is estimated to be \$2,500.

APA Fee based on cost = \$25
APA Fee based on shoreline affected = \$0
APA Fee based on volume of material = \$316
APA Fee charged = \$316

8. Given: A private landowner applies to straighten a small meandering protected watercourse such that a half mile reach of the stream is reduced in length by 1,000 feet. Total cost is \$15,000.

APA Fee based on cost = \$125
APA Fee based on shoreline affected = \$350
APA Fee based on volume of material = \$0 (Not applicable)
APA Fee charged = \$350

Volume of material is not applicable for projects of this type.

B. Field Inspection Fees.

1. All the field inspection fee provisions are being reworded for clarity and to reflect the previously indicated changes in the law which allow charging of field inspection fees only for projects requiring environmental review. The \$25.00 minimum charge is specified by Minn. Stat. § 105.44, subd. 10.

a. Charging for salaries has not changed from the existing rule, however, identifying fringes and overhead included in the salary determination has been added for clarity. The fringe benefit plus salary base constitutes the salary from which overhead is determined by applying as a percentage the overhead negotiated annually between the State of Minnesota and Federal Government.

b. Transportation expenses has been better defined to make sure all transportation costs relating to inspections are received and where applicable, are based on current rate structure.

c. Language is changed to make sure expenses such as purchase and repair as well as rental associated with use of special equipment and supplies can be recovered.

d. Living expenses are added. Costs of hotel, motel, meals, etc. can be significant and are legitimate expenses which may be associated with inspection (or monitoring).

e. Charging for inspection and consulting services has not changed.

f. Sometimes it is difficult to distinguish between inspecting and monitoring. Laboratory tests such as analysis of soil samples or analyses of survey data collected, either as a part of an inspection or required monitoring program are legitimate expenses.

C. Fees for Monitoring Activities.

1. New language is needed to identify when fees for monitoring are required, pursuant to Minn. Stat. § 150.44, subd. 10.

a. Costs of monitoring are still to be paid by permittee. Repetitive language regarding the recovery of State expense is eliminated because it is better stated in 6 MCAR § 1.5002 C.2. that follows.

b. The manner in which permittee is notified of monitoring requirements has not changed.

2. Since it is difficult at times to distinguish between monitoring and inspection, the category of costs associated with either should be the same.

3. There still may be costs to the state for monitoring activities even if the permittee is allowed to undertake or arrange for his/her own monitoring.

4. No monitoring fee is charged for dams subject to Rules of Dam Safety since fees are already charged that are based on a special dam safety fee schedule.

D. This rule also has a proposed effective for the same reason as has Rule 6 MCAR 1.5000.

6 MCAR § 1.5003. Annual Water Appropriation Processing Fee.

A. & B. This rule replaces the portion of the existing rule relating to Water Appropriation Record Processing Fees. The schedule for the Annual Water Appropriation Processing Fee is stated in Minn. Stat. § 105.416 as amended in 1983.

C.1. The Commissioner is required by Minn. Stat. § 105.416 to give notice of Annual Water Appropriation Processing Fees due and furnish the permittees with the necessary forms for reporting the amount of water due. The fee has to be paid even if no water was used under the authority of the permit in force. This is no change from the existing rule which also is required by the indicated statute.

2. The fee and report as before are still due each February 15th.

3. The consequence of terminating the permit is intended to discourage non-payment of the processing fee.

JUSTIFICATION
DIVISION II
Fees for Underground
Storage of Gas or Liquid

6 MCAR § 1.5010 Fee schedule for underground storage of gas or liquid.

The Commissioner of Natural Resources is required by Minnesota Statutes 84.58, subdivision 8 to charge fees to defray costs of receiving, recording, processing, etc. permit applications and related activities authorized by a permit for the underground storage of gas or liquid. The revised fee rules for the underground storage of gas or liquid were generated because changes in Minnesota Law governing these fees makes it necessary to revise the existing permit fee rules 6 MCAR § 1.5000.

6 MCAR § 1.5010 - Fee schedule for underground storage of gas or liquid.

A. General

The schedule is established pursuant to Minn. Stat. § 84.58, subd. 8. It provides for payment of permit application fees and additional fees for processing and analyzing the application and issuing the permit. It also includes fees for the inspection and monitoring of activities authorized by the permit.

B. Permit Application Fee.

1. A \$30 permit application fee is proposed for each permit application. This fee will cover the clerical cost of receiving, recording and initial processing of the permit application.

2. If the permit fee does not accompany the application, the applicant will be so notified and there will be no further action taken on the application until the fee is submitted. The intent of this proposed requirement is to minimize the time spent by the State on permit applications which are not submitted in good faith or with the intent of not implementing project if authorized.

C. Additional Fees.

Pursuant to Minnesota Statute § 84.58, subd. 8, the Commissioner is authorized to charge additional fees for the actual costs of processing, reviewing, analyzing and inspection prior to issuing the permit and for inspection and monitoring of activities authorized by the permit. These fees include the following:

1. Salaries, including fringe benefits and overhead, of all Department personnel engaged in the review, analysis and processing of the application, issuance of the permit and activities authorized by the permit based on records of actual hours, or fractions thereof, worked on the application, permit issuance or post permit issuance activities.

2. Transportation to and from the project site, laboratories and other documented travel costs involved with the permit application, permit issuance and activities authorized by permit. All travel costs shall be based on actual amounts charged to the State or on per mile fee schedules for use of vehicles established by the Department of Administration or applicable bargaining unit agreements.

3. Lodging and expenses of Department personnel when engaged in activities involving permit application, issuance and authorized permit activities. Costs will be based on amounts established by the Department of Administration or applicable bargaining unit agreements.

4. Costs of work done by consultants hired by the State in relation to review, analysis and processing of an application or during issuance of a permit including project related travel costs, lodging and all other expenses borne by the State. This also includes consultant expenses for project related activities after the permit has been issued.

5. Actual costs incurred by the State in relation to public hearing for permit applications or amendment of existing permit.

6. Cost of office operations, computer services and supplies related to permit applications, issuance and permit authorized activities.

7. Cost of laboratory expenses and analysis of data related to permit application, issuance and activities authorized by permit.

8. Cost of equipment purchase, rental or repair related to permit application, issuance and activities authorized by permit.

D. Refund of Fees.

The permit application fee for permit applications shall not be refunded for any reason, even if the application is denied or withdrawn. In relation to the additional fees subsequent to permit application or the inspection and monitoring fees after permit issuance, the applicant or permittee shall be given the opportunity to discuss all aspects of the fee and shall be given an opportunity to appeal the fee determination.

E. Billing and Payment of Fees.

The Commissioner shall submit an itemized bill to the applicant or permittee. In the case of an applicant, a permit shall not be issued until all fees owing subsequent to permit application have been paid. In the case of a permittee, fees are payable within 30 days of receipt; failure to pay is grounds for suspending the permit or for taking other legal action as required.

STATEMENT OF NEED AND REASONABLENESS
FEES FOR WATER RESOURCES PERMITS
AND
FEES FOR UNDERGROUND STORAGE OF GAS OR LIQUID

Attachment #2

Minn. Stat. § 16A.128 [FEE ADJUSTMENTS].

Subdivision 1. [APPROVAL REQUIRED; AMOUNTS.] The fees fixed for the various accounts for which appropriations are made by law may not be increased or decreased except with the approval of the commissioner of finance. If the fee or fee adjustment is required by law to be fixed by rule, the approval by the commissioner must be included in the statement of need and reasonableness. All these fees must be reviewed at least once each six months, and, except in special fee situations as determined by the commissioner, adjustments must be made to the end that the total fees received must approximate the amount appropriated for the several accounts, plus the portion of the general support costs and statewide indirect costs of the agency that is attributable to the function for which the fee is charged.

Subd. 2. [PROCEDURE.] Fees that are based on actual direct costs of a service, are one-time in nature, are not significant in terms of revenue as in the case of minor copying fees, are only billed within or between state agencies, or are specifically exempted by law from approval by the commissioner of finance, need not be set by rule unless specifically required by law. All other fees not set by law must be set by rule. Fee adjustments authorized under this section may be made pursuant to the procedure for noncontroversial rules in sections 14.21 to 14.28, but without a public hearing, which the notice of intention to adopt the rules must state, when the total fees estimated to be received during the fiscal biennium will not exceed the sum of all direct appropriations, indirect costs, transfers in, and salary supplements for that purpose for the biennium. This exemption from the public hearing requirements of the Administrative Procedure Act does not apply to adjustments of fees expended pursuant to open appropriations of dedicated receipts.

Minn. Stat. § 84.58 PERMIT FOR UNDERGROUND STORAGE

Subd. 8. Permit fees. Each application for a permit authorized by sections 84.57 to 84.621, shall be accompanied by a permit fee in the amount required by a fee schedule established by the commissioner pursuant to rules and regulations adopted in the manner provided by chapter 15. The schedule may provide minimum fees for various classes of permits, and additional fees, which may be imposed subsequent to the application, based upon the cost of receiving, processing, analyzing and issuing the permit, and the actual inspecting and monitoring the activities authorized by the permit, including but not limited to costs of consulting services. No fee may be imposed on any state or federal governmental agency applying for a permit. The fee schedule may provide for the refund of a fee, in whole or in part, under circumstances prescribed by the commissioner. All money received pursuant to this subdivision shall be deposited in the general fund. So much money as is necessary is annually appropriated from the general fund to pay any refund authorized by this subdivision. The time limitations prescribed by subdivision 3, do not apply to an application for a permit which is not accompanied by the appropriate fee.

Minn. Stat. § 105.41 APPROPRIATION AND USE OF WATER

Subd. 5. Records of the amount of water appropriated or used shall be recorded for each such installation and such readings and the total amount of water appropriated shall be reported annually to the commissioner of natural resources on or before February 15 of the following year upon forms to be supplied by the commissioner.

The records shall be submitted with an annual water appropriation processing fee in the amount established in accordance with the following schedule of fees for each water appropriation permit in force at any time during the year: (a) irrigation permits, \$10 for each permitted 40 acres or portion thereof; (b) for nonirrigation permits, \$5 for each ten million gallons or portion thereof permitted each year, but not to exceed a total fee of \$250 per permit. The fee is payable regardless of the amount of water appropriated during the year. Failure to pay the fee is sufficient cause for revoking a permit. No fee may be imposed on any state agency, as defined in section 16.011, or federal governmental agency holding a water appropriation permit.

Minn. Stat. § 105.44 PROCEDURE UPON APPLICATION

Subd. 10 [PERMIT FEES.] Each application for a permit authorized by sections 105.37 to 105.64, shall be accompanied by a permit application fee in the amount of \$30 to defray the costs of receiving, recording, and processing the application. The commissioner may charge an additional permit application fee in excess of the fee specified above, in accordance with a schedule of fees adopted by rules promulgated in the manner provided by section 16A.128, which fee schedule shall be based upon the project's costs and the complexity of the permit applied for.

For projects requiring a mandatory environmental assessment pursuant to chapter 116D the commissioner may charge an additional field inspection fee of not less than \$25 for each permit applied for under sections 105.37 to 105.64. The commissioner shall establish pursuant to rules adopted in the manner provided by section 16A.128, a schedule for field inspection fees which shall include actual costs related to field inspection such as investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit.

Except as provided below, the commissioner may not issue a permit until all fees required by this section relating to the issuance of a permit have been paid. The time limits prescribed by subdivision 4, do not apply to an application for which the appropriate fee has not been paid. Field inspection fees relating to monitoring of an activity authorized by a permit may be charged and collected as necessary at any time after the issuance of the permit. No permit application or field inspection fee may be refunded for any reason, even if the application is denied or withdrawn. No permit application or field inspection fee may be imposed on any state agency, as defined in section 16.011, or federal governmental agency applying for a permit.