

**Amendments to Rules Governing Wells and Borings, *Minnesota Rules*, Chapter 4725; and
Amendments to Rules Governing Explorers and Exploratory Borings, *Minnesota Rules*,
Chapter 4727**

Notices of Intent to Adopt Rules without Public Hearing

The Minnesota Department of Health (MDH) is revising Minnesota Rules, chapters 4725 (Wells and Borings) and 4727 (Explorers and Exploratory Borings) to reflect changes in the cement industry towards greener products.

Minnesota Rules, chapters 4725 and 4727 define Type I Portland cement by its conformity with ASTM Standard C150. The cement industry is replacing Type I Portland cement with a “low carbon” Type IL Portland-limestone cement. This new Type IL Portland-limestone cement conforms to ASTM Standard C595, not authorized under current rules governing Wells and Borings, and Explorers and Exploratory Borings. This revision redefines the Portland cement definition to include Type I and Type IL.

Notice of Intent to Adopt Rules without Public Hearing (Notice) for both chapters will be published on May 8, 2023, in the Minnesota State Register. Attached are copies of the Notices. Please refer to these Notices for more information on this Rulemaking.

For updates on rulemaking, please visit:

- [Rulemaking for Portland Cement – Wells and Borings](https://www.health.state.mn.us/communities/environment/water/wells/rules/portlandrulemaking4725.html)
(<https://www.health.state.mn.us/communities/environment/water/wells/rules/portlandrulemaking4725.html>).
- [Rulemaking for Portland Cement – Explorers and Exploratory Borings](https://www.health.state.mn.us/communities/environment/water/wells/rules/portlandrulemaking4727.html)
(<https://www.health.state.mn.us/communities/environment/water/wells/rules/portlandrulemaking4727.html>).

Please send this information to anyone you think may be interested.

If you have any questions, please contact:

Well Management Section
Minnesota Department of Health
P.O. Box 64975
St. Paul, Minnesota 55164-0975

health.wells@state.mn.us
651-201-4600 or 800-393-9808

To request this information in a different format, call: 651-201-4600.
05/04/2023

Minnesota Department of Health

Environmental Health Division

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Proposed Amendments to Rules Governing Wells and Borings, *Minnesota Rules*, Chapter 4725; Revisor's ID, R4754; OAH Docket No. 22-9000-38392

Introduction. The Department of Health (Department) intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until June 7, 2023.

Comments. You must submit any written comments via the Office of Administrative Hearings Rulemaking eComments website (<https://minnesotaoah.granicusideas.com/discussions>). You may review the rule, Statement of Need and Reasonableness (SONAR), and posted comments, at this site.

A copy of the proposed rule is published in the State Register and attached to this notice as mailed. A free copy of the rules is also available upon request from the agency contact person listed below.

You have until 4:30 PM, June 7, 2023, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and be posted on the Office of Administrative Hearings Rulemaking eComments website (<https://minnesotaoah.granicusideas.com/discussions>) by the due date. The Department encourages comments. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. Your request must be in writing and the agency contact person must receive it by 4:30 PM on June 7, 2023. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules. **Please do not post your request on the Office of Administrative Hearings website as it will not be considered a valid request. You must submit requests for hearing to the agency contact person directly.**

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If

a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Agency Contact Person. You must submit written requests for a public hearing to the agency contact person. The agency contact person is Linda Prail, Environmental Health Division, Minnesota Department of Health, 625 Robert Street North, P.O. Box 64975, St. Paul, MN 55164-0975, 651-201-5792, linda.prail@state.mn.us.

Questions. You may submit questions to the Agency Contact Person listed above.

Subject of Rules and Statutory Authority. The proposed rule revisions are to address changes in the cement industry resulting in the replacement of Type I Portland Cement (Type I PC) with a “low carbon” Type IL Portland-limestone cement (Type IL PC) that conforms to ASTM Standard C595, but not C150 as required under the current rules. As a result, Type I PC is generally scarce and, in certain parts of the state, unavailable, and Type IL PC, while available, is not authorized under our rules governing wells and borings. Type IL PC apparently performs as well as Type I PC in all ways relevant to our regulatory interests and is widely available throughout the state.

Minnesota Statutes, section 103I.101, subdivision 5, authorizes the Department to adopt rules for regulating Wells and Borings.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department may modify the proposed rules as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules, unless the agency follows the procedure under part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Statement of Need and Reasonableness. The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is posted at <https://www.health.state.mn.us/communities/environment/water/wells/rules/portlandrulemaking4725.html> and is now available for the cost of reproduction by contacting the agency contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption and Review of Rules. If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will then submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be

notified of the date the Department submits the rules to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

April 17, 2023

Date



Brooke Cunningham MD, PhD

Commissioner

P.O. Box 64975

St. Paul, MN 55164-0975

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Wells and Borings

AGENCY: Department of Health

REVISOR ID: R-4754

MINNESOTA RULES: Chapter 4725

INCORPORATIONS BY REFERENCE:

Part 4725.0150, item E: ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959: ASTM C595, "Standard Specification for Blended Hydraulic Cements," is not subject to frequent change and is available for loan or inspection from the Minnesota Department of Health or through the Minitex interlibrary loan system.

The attached rules are approved for
publication in the State Register

Sandy Glass-Sirany

Sandy Glass-Sirany
Senior Assistant Revisor

1.1 **Department of Health**1.2 **Proposed Permanent Rules Relating to Wells and Borings**1.3 **4725.0100 DEFINITIONS.**1.4 *[For text of subparts 1 to 30m, see Minnesota Rules]*

1.5 Subp. 30n. **Neat-cement grout.** "Neat-cement grout" means a fluid mixture in the
1.6 proportion of 94 pounds of Portland cement and not more than six gallons of water. Bentonite
1.7 up to five percent by weight of cement (4.7 pounds of bentonite per 94 pounds of Portland
1.8 cement) may be used to reduce shrinkage. Not more than 0.6 additional gallons of water
1.9 may be added for each one percent of bentonite. Admixtures to reduce permeability or
1.10 control setting time must meet ASTM Standard C494/C494M-04. The minimum density
1.11 of neat-cement grout using regular (Type I or II) Portland cement without bentonite
1.12 or entrained air is 15.0 pounds per gallon. The minimum density of regular neat-cement
1.13 grout with bentonite and without entrained air is:

1.14 *[For text of items A to D, see Minnesota Rules]*1.15 *[For text of subparts 30o to 34, see Minnesota Rules]*1.16 Subp. 34a. **Portland cement.** "Portland cement" means a:

1.17 A. construction material that conforms to ASTM Standard C150-04a, "Standard
1.18 Specification for Portland Cement."; or

1.19 B. Type II blended Portland-limestone cement that conforms to ASTM Standard
1.20 C595, "Standard Specification for Blended Hydraulic Cements."

1.21 *[For text of subparts 35 to 40, see Minnesota Rules]*1.22 Subp. 40a. **Rapid setting cement.** "Rapid setting cement" means a:

1.23 A. Type III Portland cement as designated in ASTM Standard C150-04a, an;

2.1 B. Type IL-HE Portland-limestone cement as designated in ASTM Standard C595,
 2.2 "Standard Specification for Blended Hydraulic Cements";

2.3 C. API Class C cement; or

2.4 D. any Portland cement containing calcium chloride or sodium chloride in an
 2.5 amount between two and four percent by weight of Portland cement, or gypsum in an amount
 2.6 between 20 and 100 percent by weight of Portland cement.

2.7 [For text of subparts 40b to 54, see Minnesota Rules]

2.8 **4725.0150 INCORPORATIONS BY REFERENCE AND ABBREVIATIONS.**

2.9 This part indicates documents, specifications, and standards that are incorporated by
 2.10 reference in this chapter. This material is not subject to frequent change and is available
 2.11 from the source listed, for loan or inspection from the Minnesota Department of Health, or
 2.12 through the Minitex interlibrary loan system. To borrow or inspect a reference, e-mail the
 2.13 Minnesota Department of Health Well Management section at health.wells@state.mn.us,
 2.14 or go to Search Minnesota Department of Health Library and Beyond
 2.15 (www.minnesotadepartmentofhealthlibrary.on.worldcat.org/discovery). The abbreviations
 2.16 listed in parenthesis after the source name are used in this chapter.

2.17 [For text of items A to D, see Minnesota Rules]

2.18 E. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA
 2.19 19428-2959.

2.20 [For text of subitems (1) to (5), see Minnesota Rules]

2.21 (6) ASTM C595, "Standard Specification for Blended Hydraulic Cements."

2.22 ~~(6)~~ (7) ASTM D2466-02, "Standard Specification for Poly (Vinyl Chloride)
 2.23 (PVC) Plastic Pipe Fittings, Schedule 40."

- 3.1 ~~(7)~~ (8) ASTM D2487-00, "Standard Classification of Soils for Engineering
3.2 Purposes (Unified Soil Classification System)."
- 3.3 ~~(8)~~ (9) ASTM D2683-14, "Standard Specification for Socket-Type
3.4 Polyethylene Fittings for Outside Diameter-Controlled Polyethylene Pipe and Tubing."
- 3.5 ~~(9)~~ (10) ASTM D3035-15, "Standard Specification for Polyethylene (PE)
3.6 Plastic Pipe (DR-PR) Based on Controlled Outside Diameter."
- 3.7 ~~(10)~~ (11) ASTM F480-02, "Standard Specification for Thermoplastic Water
3.8 Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40, and
3.9 SCH 80."
- 3.10 ~~(11)~~ (12) ASTM F714-13, "Standard Specification for Polyethylene (PE)
3.11 Pipe (DR-PR) Based on Outside Diameter."
- 3.12 ~~(12)~~ (13) ASTM F876-20, "Standard Specification for Crosslinked
3.13 Polyethylene (PEX) Tubing."
- 3.14 ~~(13)~~ (14) ASTM F877-20, "Standard Specification for Crosslinked
3.15 Polyethylene (PEX) Hot- and Cold-Water Distribution Systems."
- 3.16 ~~(14)~~ (15) ASTM F1055-16, "Standard Specification for Electrofusion Type
3.17 Polyethylene Fittings for Outside Diameter Controlled Polyethylene and Crosslinked
3.18 Polyethylene (PEX) Pipe and Tubing."
- 3.19 ~~(15)~~ (16) ASTM F1807-19b, "Standard Specification for Metal Insert Fittings
3.20 Utilizing a Copper Crimp Ring, or Alternate Stainless Steel Clamps, for SDR9 Cross-linked
3.21 Polyethylene (PEX) Tubing and SDR9 Polyethylene of Raised Temperature (PE-RT)
3.22 Tubing."

4.1 ~~(16)~~ (17) ASTM F1960-19a, "Standard Specification for Cold Expansion
4.2 Fittings with PEX Reinforcing Rings for Use with Cross-linked Polyethylene (PEX) and
4.3 Polyethylene of Raised Temperature (PE-RT) Tubing."

4.4 ~~(17)~~ (18) ASTM F2080-19, "Standard Specification for Cold-Expansion
4.5 Fittings with Metal Compression-Sleeves for Crosslinked Polyethylene (PEX) Pipe and
4.6 SDR9 Polyethylene of Raised Temperature (PE-RT) Pipe."

4.7 ~~(18)~~ (19) ASTM F2620-19, "Standard Practice for Heat Fusion Joining of
4.8 Polyethylene Pipe and Fittings."

4.9 *[For text of items F to J, see Minnesota Rules]*



STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Amendments of
Minnesota Rules, chapter 4725, Wells and Borings;
Revisor ID: R-4754; OAH Docket No. 22-9000-38392

Environmental Health Division

Well Management Section

May 2023

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website:
<https://www.health.state.mn.us/communities/environment/water/wells/rules/portlandrulemaking4725.html>.
- 2) View older rule records at: [Minnesota Rule Statutes https://www.revisor.mn.gov/rules/status/](https://www.revisor.mn.gov/rules/status/)
- 3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Linda Prail, Environmental Health Division, Minnesota Department of Health, 625 Robert Street North, P.O. Box 64975, St. Paul, MN 55164-0975, 651-201-5792, linda.prail@state.mn.us.
- 4) How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes, section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), subitem (A).
- 5) How to read a sample Minnesota Rules citation: Minn. R. 7150.0205, subp. 3(B)(3)(b)(i), is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, subitem (3), unit (b), subunit (i).

Introduction, Background, and General Need

The Minnesota Department of Health (MDH or the department) is proposing minor amendments to Minnesota Rules, chapter 4725 governing wells and borings to address changes in the cement industry. The rule at issue is authorized under Minnesota Statutes, section 103I.101, and furthers the legislature's intent to "protect the health and general welfare by providing a means for the development and protection of the natural resource of groundwater in an orderly, healthful, and reasonable manner."¹

Minnesota Rules, chapter 4725 defines Portland cement (PC) by its conformity with the American Society of International Association for Testing and Materials (ASTM) Standard C150 and provides for its use in myriad of processes regulated under the rule.² Type I PC is one type of PC that conforms to ASTM Standard C150 and that may be used under the current rule to complete certain projects requiring neat-cement grout.³ MDH recently learned that the cement industry is replacing Type I PC with a "low carbon" Type II Portland-limestone cement (Type II PC) that conforms to ASTM Standard C595, but not C150 as required under the current rules. As a result, Type I PC is generally scarce and, in certain parts of the state, unavailable, and Type II PC, while available, is not authorized under our rules governing wells and borings.

Type II PC apparently performs as well as Type I PC in all ways relevant to our regulatory interests and is widely available throughout the state. MDH learned from staff conversations with their counterparts in Michigan and Wisconsin that those states are pursuing these same types of regulatory updates to deal with their own Type I PC shortages. Wisconsin has begun an emergency process which will lead to a permanent rule, similar to the rule amendments proposed here.⁴ Michigan is working to address industry shortages through permanent rulemaking.⁵ Type II PC is widely available, and its use can be authorized in rule by addressing the definition of *Portland cement*, and with other associated minor revisions as described below and proposed through this amendment process.

This urgent rule revision is necessary to avoid economic hardships for contractors and potential public health risks where wells or borings cannot be constructed or sealed due to an ongoing cement shortage of a widely used product. Every unused boring that is not properly sealed poses a safety, health, and environmental risk because it is a potential contaminant pathway to the groundwater. Without these proposed rule amendments to address the regulatory prohibition on Type II PC, the scarcity of Type I PC will cause significant economic hardships and could create barriers to timely sealing of wells or borings. While there is a process in place for varying the rule on a case-by-case basis to allow for the use of Type II PC,⁶ the additional steps would create considerable delay in addressing each request to seal a well or

¹ Minn. Stat. §§ 103I.001 (quoted above); 103I.101, subd. 5(4) (specific 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 Compare Minn. R. 4725.0100, subparts 34a (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*), 23c (defining "Concrete" as a mixture including *Portland cement*), 30n (defining "Neat-cement grout" as a mixture including *Portland cement*), and 40a (defining "Rapid setting cement" as including a type of *Portland cement*) with, e.g., Minn. R. 4725.3050 (establishing requirements for grouting wells and borings during construction and authorizing materials containing Portland cement).

³ See Minn. R. 4725.0100, subp. 30n (defining "Neat-cement grout" as a mixture that may include Type I PC).

⁴ <https://dnr.wisconsin.gov/sites/default/files/topic/Rules/DG0722EDG0822ScopeStatement.pdf>

⁵ <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Groups/ERRC/Packets/Package-2022-39-EQ-RFR.pdf>

⁶ Minn. R. 4725.0410.

boring, and MDH is statutorily obligated to collect \$275 per variance request.⁷ The resulting delays in sealing projects pose increased risks to groundwater.

Scope of the proposed amendments:

The following Minnesota Rule parts are affected by the proposed changes:

- Part 4725.0100, subparts 30n (defining Neat-cement grout), 34a (defining Portland cement), and 40a (defining Rapid setting cement); and
- Part 4725.0150, item E (adding ASTM Standard C595 to list of incorporations by reference in the rule).

Public participation, stakeholder involvement, and Additional Notice Plan:

In addition to the statutorily required notices, the department will make the following notification efforts.

Minn. Stat. § 14.14 requires that in addition to its required notices, “each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.” The department will comply with these statutory requirements governing additional notification as detailed in this section.

The department has made reasonable efforts to notify and involve the public and stakeholders in the rule process, including discussing proposed rule amendments with the Minnesota Advisory Council on Wells and Borings and publishing the Request for Comments in the State Register. The department’s plan to further notify additional parties is as follows:

- 1) Publish its Notice of Intent to Adopt Rules Without a Hearing on the proposed rule amendments on the MDH Well Management Section dedicated a website for this rule revision:
<https://www.health.state.mn.us/communities/environment/water/wells/rules/portlandrulemaking4725.html>.
- 2) Provide specific notice to the stakeholders listed below. The department will send an electronic notice with a hyperlink to electronic copies of the Notice of Intent to Adopt Rules Without a Hearing on the proposed rule amendments, SONAR, and proposed rule to the following entities at least 33 days before the Notice is published in the State Register. In instances where an email address was not available or could not be obtained, the department will send a copy of the Notice via U.S. mail. These stakeholders include:
 - Official Agency Rulemaking list;
 - Licensed Well Contractors;
 - Delegated Well Programs;
 - Advisory Council on Wells and Borings;
 - Minnesota State Agencies, including Department of Natural Resources, Minnesota Department of Transportation, Minnesota Pollution Control Agency, Department of

⁷ Minn Stat. § 103I.101, subd. 6

Labor and Industry;

- Local Units of Government, including Minnesota Association of Townships, Association of Minnesota Counties;
- Associations, including Minnesota Rural Water Association, Minnesota Water Well Association, Portland Cement Association, Minnesota Solid Waste Administrators Association, Iron Mining Association of Minnesota, Minnesota Ground Water Association, Minnesota chapter of American Institute of Professional Geologists, and Minnesota chapter of Society of Mining, Metallurgy, and Exploration;
- Businesses, including TCC Materials; and
- Legislative contacts, including Chairs, Vice Chairs, Ranking Minority Members, and Committee Administrators for appropriate committees.

The department will post all relevant information and documents to its dedicated a website for this rule.

GovDelivery was used to send the Request for Comments (RFC) to all Well Management Program Rulemaking and Well and Boring Contractors and Delegated Programs subscribers as well as to an identified list of potential interested stakeholders. For identified individuals without an email address, postal service mail was used to send the RFC.

Statutory authority

Minnesota Statutes, 1031.101, subdivision 5(4), is the 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.”

Rule-by-Rule Analysis: Need and Reasonableness

Proposed change to Minnesota Rules:

4725.0100 DEFINITIONS – Subparts 30n, and 34a:

Minnesota Rules, part 4725.0100, defines the terms used throughout the chapter. MDH proposes expanding the definitions in this part of “Neat-cement grout” at **subpart 30n** and “Portland cement” at **subpart 34a** to include Type IL PC in addition to the authorized Type I PC.

The cement industry is shifting towards a more environmentally friendly version of PC by replacing Type I PC with a “low carbon” Type IL PC. As a result, Type I PC is generally scarce and unavailable in certain parts of the state. The department staff received many communications from Licensed Well Contractors regarding the lack of the Type I PC and how that was or had potential to affect their business operations. Type IL PC conforms to ASTM Standard C595, but not C150 as authorized under the current rules. MDH consulted with industry experts and learned that Type IL PC is considered equivalent to Type I PC.

Michigan⁸ and Wisconsin⁹ are pursuing similar regulatory updates to deal with the Type I PC shortages. Type IL PC is widely available, and its use can be authorized in rule by addressing this definition.

For these reasons, the revisions to these definitions are needed and reasonable.

⁸ <https://dnr.wisconsin.gov/sites/default/files/topic/Rules/DG0722EDG0822ScopeStatement.pdf>

⁹ <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Groups/ERRC/Packets/Package-2022-39-EQ-RFR.pdf>

Subp. 40a. Rapid setting cement. In addition, MDH proposes revising its definition of “Rapid setting cement” at **subpart 40a** to reflect changes made by the industry to shift towards “low carbon” PC products. Type III PC is a rapid setting form of PC that conforms to ASTM Standard C150 and that the rule allows. It is anticipated Type III PC could be replaced by Type IL-HE (high-early) PC with the cement industry’s shift. Type IL-HE PC conforms to ASTM Standard C595, which is not authorized under current rule. Type IL-HE PC is designed to be equivalent to Type III PC according to industry experts.

For these reasons, the revision to this definition is needed and reasonable.

4725.0150 INCORPORATION BY REFERENCE AND ABBREVIATIONS

This rule part identifies, among other things, those ASTM Standards incorporated into Minnesota Rules chapter 4725 by reference. The department proposes to add ASTM Standard C595 to the list because it is the standard to which the newly added form of Portland Cement conforms. Subitems will need to be renumbered to retain proper alphabetic and numeric order in light of this amendment.

Regulatory analysis

Minnesota Statutes, section 14.131, requires state units to address the following subjects in the SONAR:

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The proposed rule revisions may affect:

- People wanting or needing to have a well or boring constructed or sealed on their property,
- Governments wanting or needing to have a well or boring constructed or sealed on Government property, and
- Businesses who need, use, or provide well or boring services.

These people, governments, and businesses with projects where Type I PC could not be sourced because of the shortage, will be able to proceed with Type IL PC with this addition.

Cement industry experts indicated to MDH that there is no anticipated cost difference between Type I PC and Type IL or Type IL-HE PC. People, governments, and businesses are not expected to bear additional costs because of this proposed rule change.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

These minor rule revisions will not add any additional work or cost to MDH or any other State agency. Without these rule revisions and because of the Type I PC shortage, MDH will see a substantial increase in work processing variance requests and fees. Unauthorized use of Type IL PC will result in unnecessary enforcement to ensure compliance with Minnesota Rules.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

These revisions are specific to add an additional eligible type of PC to the rule. Type IL PC is considered by MDH, the industry, and nearby State regulatory units as equivalent to Type I PC. This rule revision is beneficial in that it solves the significant shortage of authorized PC while ensuring the protection of human health and the environment. MDH knows of no other products for expanding

the existing rules to include as an alternative for Type I PC, making this the least costly and least intrusive product to achieve the purpose of the proposed rule.

- D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.**

No alternatives exist for MDH to seriously consider.

- E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

None of these people, governments, or businesses will incur any additional costs because of this rule revision. This revision gives them another option for PC by allowing them to proceed with projects under the current shortage of Type I PC. MDH consulted with industry experts and found no cost difference between Type I PC and Type IL PC.

- F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

People, governments, and businesses have suffered project delays because of the shortage of the form of Portland Cement (Type I PC) authorized under the existing rule. This proposed rule revision will allow access to more authorized types of PC needed to complete projects.

- G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

There are no federal regulations about PC used for wells and borings.

- H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.**

There are no federal regulations about PC used for wells and borings, and this rule revision does not affect any other State rules.

Health Equity

This rule revision does not cause any health inequities and may help move needed projects in rural areas of Minnesota.

Performance-based rules

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of MDH's regulatory objectives while allowing maximum flexibility to regulated parties and to MDH meeting those objectives. This rule is performance-based to the extent that it allows flexibility to regulated parties by adding allowable materials to be used when performing regulated work.

Consult with MMB on local government impact

As required by Minnesota Statutes, section 14.131, MDH consulted with Minnesota Management and Budget (MMB) about the impact the proposed rules might have on local governments. MDH did this by sending to the MMB Commissioner copies of the proposed rule and SONAR before MDH published the *Notice of Intent to Adopt Rules Without a Public Hearing*. A copy of our correspondence with MMB is

attached as Appendix A.

Impact on local government ordinances and rules

MDH research has determined that the proposed amendments will not have any effect on local ordinances or regulations.

Costs of complying for small business or city

As stated above, there will be no increase in costs for any affected party, including a small business or city.

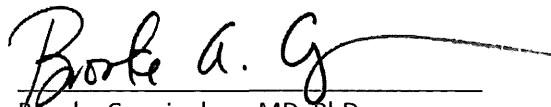
List of witnesses

MDH does not anticipate having any non-agency witness if a hearing is held. The only witnesses would be MDH staff who are involved in rulemaking for these proposed rules.

Conclusion

MDH has established the need and reasonableness of each proposed revisions to Minnesota Rules, chapter 4725. MDH has provided necessary notice and documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the foregoing, the proposed amendments are both needed and reasonable.



Brooke Cunningham MD, PhD
Commissioner
P.O. Box 64975
St. Paul, MN 55164-0975

APPENDIX A
m DEPARTMENT
OF HEALTH

Protecting, Maintaining and Improving the Health of All Minnesotans

March 1, 2023

Ms. Hannah Millang
Executive Budget Officer
Minnesota Management and Budget
658 Cedar St., Ste. 400
St. Paul, MN 55155

Re: Proposed Amendments to Rules Governing Wells and Borings, Minnesota Rules, chapter 4725; Revisor's ID Number RD4754; OAH Docket No. 22-9000-38392

Dear Ms. Millang:

Minnesota Statutes, section 14.131, requires that an agency engaged in rulemaking consult with the Commissioner of Minnesota Management and Budget "to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."

Enclosed for your review are copies of the following documents on the above-referenced rule revisions:

1. January 5, 2023, Revisor's draft of the proposed rule; and
2. March 2023 draft SONAR.

If you or any other representative of the Commissioner of Minnesota Management & Budget has questions about the proposed rule revisions, please email me at josh.skaar@state.mn.us. If necessary, you can also call me at 651-368-0751.

Sincerely,

/s/ Josh Skaar

Josh Skaar
Senior Associate General Counsel
Rulemaking Coordinator
Minnesota Department of Health
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Enclosures: