

# DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received

**Minnesota Department of Health**

**Environmental Health Division**

**Proposed Amendment to Rules Relating to Submerged Closed Loop Heat Exchangers, Minnesota Rules, chapter 4725; Revisor's ID Number R-4811; OAH docket number 65-9000-40335**

**Introduction.** The Minnesota Department of Health 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 and/or a written request that a hearing be held on the proposed rules until **4:30 p.m. on Thursday, December 12, 2024.**

**Hearing.** If 25 or more persons submit a written request for a hearing on the rules by **4:30 p.m. on Thursday, December 12, 2024**, the agency will hold a virtual public hearing **on Thursday, February 27, 2025, starting at 9:00 a.m.** The hearing will continue until all interested persons present have been heard, but in no event later than 4:00 p.m. You can participate in the virtual hearing, which will be conducted by an Administrative Law Judge from the Office of Administrative Hearings, via WebEx by using this link along with the associated access code and password:

For a video and audio connection, join the hearing through an internet connection:

- Web link:  
<https://minnesota.webex.com/minnesota/j.php?MTID=md0eef3b171c57d0a1cdc0f6732a3f287>
- Meeting Number (access code): 2487 666 5829
- Password: aCsm9PuUj32

For audio-only connection, join the virtual hearing by telephone:

- Call: 1-855-282-6330 (toll-free number), or 1-415-655-0003 (toll number)
- Access code: 248 766 65829

- Password: 22769788

To find out whether the agency will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person listed below or check the agency website at

<https://www.health.state.mn.us/communities/environment/water/wells/rules/sclherule.html>  
**after December 12, 2024, and before the possible hearing on February 27, 2025.**

**Subject of Rules.** Minnesota Statutes, section 103I.208, subdivision 3 (effective May 24, 2023), directs the Minnesota Department of Health (the Department) to promulgate permanent rules for the permitting and installation of submerged closed loop heat exchangers (SCLHE). Changes to well screen configurations and isolation distances are not addressed in the current proposed rule revisions. The Department will consider revisions to these subjects next year during expedited rulemaking, authorized by Minnesota Statutes, section 103I.208, subdivision 3.

A SCLHE consists of an array of components that includes piping, a heat exchanger, submersible pumps, and heat transfer fluid. SCLHE systems are different from other geothermal technologies currently regulated by Minnesota Rules, chapter 4725, because they are installed within a water-supply well and operate by exchanging thermal energy between groundwater and a closed loop containing heat transfer fluid. Currently regulated geothermal technologies under this chapter exchange thermal energy with subsurface soil or groundwater that is pumped directly to a building.

These systems, as currently understood by the Department, operate by circulating groundwater from the aquifer into the water-supply well. Groundwater is moved across a heat exchanger to facilitate the transfer of thermal energy. The heat transfer fluid circulates in a closed loop from the heat exchanger to an HVAC system located in a nearby building. The groundwater is then discharged into a different part of the same aquifer and the cycle repeats. There may be other configurations or components used in SCLHE systems as technology advances or other businesses design and market new systems.

MDH is proposing to revise Minnesota Rules, chapter 4725, under its existing rulemaking authority (Minnesota Statutes, section 103I.101, subdivision 5) to:

- address references to obsolete standards,
- clarify activities to construct and seal wells or borings and activities to install and remove other geothermal technology regulated by this chapter and SCLHE, and
- correct an error with geothermal technology requirements to align with national industry piping material standards.

**Statutory Authority.** The statutory authority to adopt these rules is Minnesota Statutes, section 103I.208, subdivision 3. Additional authority comes from section 103I.101, subdivision 5.

**Publication of proposed rules.** A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed. The proposed rules may be viewed at:

<https://www.health.state.mn.us/communities/environment/water/wells/rules/sclherule.html>.

**Statement of Need and Reasonableness.** The statement of need and reasonableness (SONAR) contains a summary of the justification for the proposed rules, a description of who will be affected by the proposed rules, and an estimate of the probable cost of the proposed rules. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. The SONAR may also be viewed at:

<https://www.health.state.mn.us/communities/environment/water/wells/rules/sclherule.html>.

**Agency Contact Person.** The agency contact person is Avery Guertin at Minnesota Department of Health, Environmental Health Division, PO Box 64975, St. Paul, Minnesota 55164-0975, 651-201-5959, [avery.guertin@state.mn.us](mailto:avery.guertin@state.mn.us). You may contact the agency contact person with questions about the rules.

**Public Comment.** You have until **4:30 p.m. on Thursday, December 12, 2024**, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules.

Your comment must be in writing and received by the due date. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change you propose. Any comments that you have about the legality of the proposed rules must be made during this comment period. All evidence that you present should relate to the proposed rules. If the proposed rules affect you in any way, the agency encourages you to participate. All comments or responses received are public data and will be available for review.

Submit written comments via the [Office of Administrative Hearings Rulemaking eComments website \(https://minnesotaoah.granicusideas.com/\)](https://minnesotaoah.granicusideas.com/) or by U.S. Mail delivered to the agency contact person, Avery Guertin at Minnesota Department of Health, Environmental Health Division, P.O. Box 64975, St. Paul, Minnesota 55164-0975.

All comments or responses received are public data and will be available for review on the eComments website.

**Request for a Hearing.** In addition to submitting comments, you may also request that the agency hold a public hearing on the rules. You must make your request for a public hearing in

writing by **4:30 p.m. on Thursday, December 12, 2024, to the agency contact person listed above.** You must include your name and address in your written request for hearing. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. You are also encouraged to state the reason for the request and any changes you want made to the proposed 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.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the agency will hold a public hearing unless a sufficient number of persons 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 bring about the withdrawal, and ask for written comments on this action. If the agency is required to hold a public hearing, it will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Cancellation of Hearing.** The agency will cancel the hearing scheduled for February 27, 2025, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-201-5959 after Thursday, December 12, 2024, to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the agency will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The agency will hold the hearing on the date and at the time and place listed above. The hearing will continue until 4:00 p.m. or until all interested persons have been heard, whichever occurs first. Administrative Law Judge O'Reilly is assigned to conduct the hearing. Judge O'Reilly can be reached by contacting William Moore, Rules Coordinator, Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7893, and [william.t.moore@state.mn.us](mailto:william.t.moore@state.mn.us).

**Hearing Procedure.** If the agency holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules.

You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the Administrative Law Judge may order this five-day comment period extended for a longer period but for no more than 20 calendar days.

After the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the [Office of Administrative Hearings Rulemaking eComments website \(https://minnesotaoah.granicusideas.com/\)](https://minnesotaoah.granicusideas.com/) no later than 4:30 p.m. on the due date. If using the eComments website is not possible, you may submit post-hearing comments in person or via United States mail addressed to the agency contact person at the address listed above. All comments or responses received are public data and will be available for review on the eComments website.

This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge, through William Moore, the OAH Rules Coordinator listed above.

**Modifications.** The agency may modify the proposed rules either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted during the public comment and rule hearing process. The adopted rules may not be substantially different than these proposed rules unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the agency will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the agency must publish a copy of the changes in the *State Register*.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure after a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State, or register with the agency to receive notice of future rule proceedings by requesting this at the hearing or by writing to the agency contact person stated above.

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may 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.

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

11/5/2024

Date

/s/ Wendy Underwood

Wendy Underwood  
Deputy Commissioner