


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1036

# RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-1-84
DATE FOR REVIEW 6-11-84
DATE DUE 6-15-84

Adopted w/a hearing ____
Adopted w/o hearing ✓
Temporary rule ____

Approved 6-15-84 MJC Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 6-15-84 Revisor approved 6/4/84 disapproved ____

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✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 5.31.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR 10.3.83, affidavit of no comment

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency misstates/understates comment period by one day.

✓ Affidavit of Mailing Notice or rulemaking
4.13.84 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
4.16.84 At least 30/20 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

# Office Memorandum

TO : THOMAS J. KALITOWSKI
Executive Director/PCA

DATE: 6/15/84

Attn: LEROY C. PADDOCK/Spec. Assist. Att. General

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-4692

MJC

SUBJECT: Proposed Rules Governing Procedures for Establishing a Permanent List of Releases or Threatened Releases of Hazardous Substances, Pollutants or Contaminants.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC: sa

AG copy

Pollution Control Agency

Adopted Rules Governing Hazardous Waste Priority Assessment Criteria

Rules as Adopted

7044.0100 SCOPE.

Chapter 7044 governs the procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants, or contaminants required by Minnesota Statutes, section 115B.17. This chapter establishes various classifications for sites with releases or threatened releases, describes the procedures for adding sites with releases or threatened releases to or deleting sites from the permanent list, provides for an annual review and update of the permanent list, establishes the funding priority among classifications and the funding priority within classifications, creates an annual project list, and specifies a ranking system to be used in scoring sites.

7044.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them, unless the context requires otherwise.

Subp. 2. **Miscellaneous terms.** The following terms have the meanings given them in the Environmental Response and Liability Act (ERLA), Minnesota Statutes, chapter 115B: agency, director, Federal Superfund Act, fund, hazardous substance, hazardous waste, natural resources, owner of real property, person, pollutant or contaminant, release, remedy or remedial action, remove or removal, respond or response, and water.

Subp. 3. **Advisory.** "Advisory" means a warning by the director, Minnesota Department of Health, Minnesota Department of Natural Resources, or the Minnesota Department of Agriculture issued to the public concerning a hazardous substance, pollution, or contamination at or near a facility.

Subp. 4. **Emergency.** "Emergency" means that there is an imminent risk of fire or explosion, that a temporary water supply is needed where an advisory has been issued, or that immediate adverse human health effects may be anticipated due to direct contact or inhalation and an advisory has been isssued.

Subp. 5. **Ground water or underground water.** "Ground water" or "underground water" has the meaning given in chapter 7060.

Subp. 6. **Rater.** "Rater" means a member of the agency staff designated by the director to evaluate releases or threatened releases.

Subp. 7. **Site.** "Site" means any place or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, placed, or otherwise come to be located including:

A. a building, structure, installation, equipment, pipe or pipeline (including a pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

B. a watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water.

Site does not include a consumer product in consumer use.

Subp. 8. **Target.** "Target" means affected populations or sensitive environments exposed or threatened with exposure due to a release or a threatened release.

7044.0300 CLASSIFICATION OF SITES.

The agency shall assign a site with a release or a threatened release to the following response action classes:

A. a declared emergency by the director;

B. the operation and maintenance at a site that has undergone previous response actions;

C. other response actions which may include the first year costs associated with operation and maintenance at a site; and

D. remedial investigations and feasibility studies

(RI/FS).

A site with a release or a threatened release may be assigned to more than one response action class and may be assigned more than once within a response action class if conditions at the site of the release or the threatened release or the diversity of hazardous substances, pollutants, or contaminants require multiple response actions. Assignment of a site with a release or a threatened release to a response action class must be based on the response action necessary to abate the known or suspected dangers associated with hazardous substances, pollutants, or contaminants at the site of the release or the threatened release. A site may be reclassified based on the findings and recommendations of a remedial investigation and feasibility study (RI/FS).

7044.0400 ADDITION OF SITES WITH RELEASES OR THREATENED RELEASES TO THE PERMANENT LIST OF PRIORITIES.

The agency shall rate sites with a release or a threatened release using the Hazard Ranking System (HRS) in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982), as amended by part 7044.1000. All sites must be evaluated using part 7044.1200. A site disqualified by part 7044.1200 is not eligible for placement on the permanent list of priorities. All eligible sites must be assigned to a response action class based on the criteria in part 7044.0300. The site of the release or the threatened release must be added to the permanent list of priorities during the next annual update as specified in part 7044.0600.

7044.0500 DELETION OF SITES FROM THE PERMANENT LIST OF PRIORITIES.

Subpart 1. **Requirement.** The agency shall delete a site from the permanent list of priorities at the next annual update following the completion of all response actions required at the site, or if the agency determines that the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance,

pollutant, or contaminant.

Subp. 2. **Deletion from a response action class.** The agency shall delete a site from a response action class on the permanent list of priorities at the next annual update following the completion of response actions for that class at the site, or if the agency determines that portion of the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

7044.0600 ANNUAL UPDATE OF THE PERMANENT LIST OF PRIORITIES.

The agency shall annually update the permanent list of priorities. Notice of the annual update of the permanent list of priorities together with a proposed updated list must be published in the State Register to solicit public comments at least 30 days prior to agency action. A site may be reclassified or rescored based on information obtained during the 30-day comment period or based on information from a completed RI/FS if the director determines the new or additional facts warrant a reclassification or rescoring. A site may not be reclassified or rescored based on prior remedial, removal, or response actions.

7044.0700 FUNDING PRIORITY OF CLASSES.

The agency shall allocate Environmental Response and Liability Act (ERLA) funds to classes in the following order:

A. All sites classified as part 7044.0300, item A (Class A) receive first priority over all other classes for agency action. The agency shall also allocate ERLA funds to be held in reserve during the next year to fund emergencies that may be declared during the year. The amount of the contingency fund must be estimated based on the funds expended on declared emergencies in previous years. If the contingency fund is depleted before the end of the year, funds allocated for Class C or D projects that are not yet committed are available for response actions that must be taken in connection with a declared emergency.

B. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, all sites classified as part 7044.0300, item B (Class B) receive next priority for ERLA funding. ERLA funds may not be spent for the purpose of operation or maintenance of a community water supply system with the exception of start-up operational and maintenance expenditures deemed necessary by the agency during the first year the system is in operation.

C. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, and all Class B sites have ERLA funds allocated, the agency shall allocate ERLA funds to part 7044.0300, item C (Class C) and to part 7044.0300, item D (Class D) sites.

D. The director may reallocate excess ERLA funds from one class to another if the funding priorities in parts 7044.0700 to 7044.0900 are complied with, and the director determines that a site on the permanent list of priorities is ready for the agency to proceed with a response action or RI/FS prior to the next annual update.

Class A contingency funds may not be transferred to another class.

7044.0800 FUNDING PRIORITY WITHIN CLASSIFICATIONS C AND D.

Sites listed in classifications C and D must be ranked according to their HRS scores. The director may allocate funds within each of the two classes to any site with a release or a threatened release that is within ten HRS points of the highest rated site within the class, based upon the cost of the necessary response actions; the effect of the release or the threatened release on public health, welfare, or the environment; and the administrative capabilities of the agency.

7044.0900 ANNUAL PROJECT LIST.

The agency shall establish a project list based on the amount of ERLA funds allocated by the agency for each class. The project list is a subset of the permanent list of priorities. The project list must contain the names of those

projects to which ERLA funding will be allocated and for which the response action or RI/FS is scheduled to begin during the year. Sites on the permanent list of priorities may be added to the project list and funded when the director determines that excess ERLA funds allocated by the agency are available as a result of, for example, a party assuming responsibility for work at a site or a cost saving in the response actions taken at a site. Class A sites not on the project list that develop or are brought to the attention of the director must be funded with Class A contingency funds as directed in part 7044.0700, item A. Before taking any removal and remedial action for a release or a threatened release of a hazardous substance, pollutant, or contaminant, the agency shall follow the procedures specified in Minnesota Statutes, section 115B.17. The project list must be revised annually. Funding for projects on the project list must remain in effect until the next project list is adopted or until the work for which the site was placed on the list is completed, whichever date is later.

7044.1000 HRS SCORING SYSTEM ADOPTED BY REFERENCE.

The agency shall rank sites utilizing the EPA's "Uncontrolled Hazardous Waste Ranking System" (commonly referred to as the HRS) published in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982) with the following modifications:

A. Substitute the words "ground water" for the word "aquifer" wherever the word "aquifer" appears in the Hazard Ranking System.

B. Substitute Figure 8-3 from the Minnesota Hydrologic Guide, United States Department of Agriculture, Soil Conservation Service, St. Paul, Minnesota, circa 1976, for Figure 4 of the Hazard Ranking System.

C. Substitute Figure 1-1 from the Minnesota Hydrologic Guide for Figure 5 of the Hazard Ranking System.

D. Substitute Figure 1-2 from the Minnesota Hydrologic Guide for Figure 8 of the Hazard Ranking System.

7044.1100 REIMBURSEMENT FOR PAST REPONSE ACTIONS.

Reimbursement claims, by a private person for expenditures made before July 1, 1983, to provide alternative water supplies deemed necessary by the agency and the Department of Health to protect the public health from contamination resulting from the release of a hazardous substance, must be filed with the agency within 12 months from the date parts 7044.0100 to 7044.1200 become effective. A reimbursement claim filed after the 12-month deadline is invalid. The agency shall consider reimbursement of only the reasonable expenses for the types of costs which would have been incurred by the agency. The agency shall determine the amount of ERLA funds to be allocated to reimbursement claims during the annual update.

7044.1200 PRESCREENING OF POTENTIAL HAZARDOUS WASTE SITES.

| Prescreening of Potential Hazardous Waste Sites | Yes | No |
|---|---|---|
| **Ground Water Route** | | |
| 1. If there is no observed release, is the containment score equal to zero? | ___ | ___ |
| 2. Is the toxicity/persistence score equal to zero? | ___ | ___ |
| **Surface Water Route** | | |
| 1. If there is no observed release, is the containment score equal to zero? | ___ | ___ |
| 2. Is the toxicity/persistence score equal to zero? | ___ | ___ |
| **Air Route** | | |
| 1. Does the observed release score equal zero? | ___ | ___ |
| 2. Are the reactivity/incompatibility and toxicity scores equal to zero? | ___ | ___ |
| **Fire and Explosion** | | |
| 1. Are the ignitability, reactivity, and incompatibility scores equal to zero? | ___ | ___ |
| **Direct Contact** | | |
| 1. Are the observed incident, accessibility, containment, or toxicity scores equal to zero? | ___ | ___ |

A site is not eligible for ERLA funding or inclusion on the

permanent list of priorities, as defined in part 7044.0400, if one or more questions in each of the five routes is answered "yes."

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 15 1984
Joan Anderson Growe
Secretary of State
10:05AM

APPROVED AS TO FORM AND LEGALITY
June 15 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassely
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Governing Procedures
For Establishing a Permanent
List of Releases or Threatened
Releases of Hazardous Substances,
Pollutants or Contaminants

ORDER ADOPTING RULES

Notice of the Minnesota Pollution Control Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on April 16, 1984, and was sent by United States mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §14.14 (Supp. 1983) on April 13, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, reviewing and considering the comments, and after determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED, that the rules 7044.0100-7044.1200, entitled "Procedures For Establishing a Permanent List of Releases or Threatened Releases of Hazardous Substances, Pollutants or Contaminants" are adopted, pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 115B.17 (Supp. 1983), as published in 8 S.R. 2270-2273, April 16, 1984, with the exception of the correction of the following typographical errors:

1. S.R. 2270, line 5 of 7044.0100: establishes not esgablishes;

2. S.R. 2272, line 3 of 7044.1100: from not after.

Dated this 31st day of May, 1984.

Cynthia C. Jepsen

CYNTHIA JEPSEN
Chairperson

Thomas Kalitowski

THOMAS J. KALITOWSKI
Executive Director

Rules as Proposed (all new material)

7044.0100 SCOPE.

Chapter 7044 governs the procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants, or contaminants required by Minnesota Statutes, section 115B.17. This chapter establishes various classifications for sites with releases or threatened releases, describes the procedures for adding sites with releases or threatened releases to or deleting sites from the permanent list, provides for an annual review and update of the permanent list, establishes the funding priority among classifications and the funding priority within classifications, creates an annual project list, and specifies a ranking system to be used in scoring sites.

7044.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them, unless the context requires otherwise.

Subp. 2. **Miscellaneous terms.** The following terms have the meanings given them in the Environmental Response and Liability Act (ERLA), Minnesota Statutes, chapter 115B: agency, director, Federal Superfund Act, fund, hazardous substance, hazardous waste, natural resources, owner of real property, person, pollutant or contaminant, release, remedy or remedial action, remove or removal, respond or response, and water.

Subp. 3. **Advisory.** "Advisory" means a warning by the director, Minnesota Department of Health, Minnesota Department of Natural Resources, or the Minnesota Department of Agriculture issued to the public concerning a hazardous substance, pollution, or contamination at or near a facility.

Subp. 4. **Emergency.** "Emergency" means that there is an imminent risk of fire or explosion, that a temporary water supply is needed where an advisory has been issued, or that immediate adverse human health effects may be anticipated due to direct contact or inhalation and an advisory has been isssued.

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Subp. 5. **Ground water or underground water.** "Ground water" or "underground water" has the meaning given in chapter 7060.

Subp. 6. **Rater.** "Rater" means a member of the agency staff designated by the director to evaluate releases or threatened releases.

Subp. 7. **Site.** "Site" means any place or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, placed, or otherwise come to be located including:

A. a building, structure, installation, equipment, pipe or pipeline (including a pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

B. a watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water.

Site does not include a consumer product in consumer use.

Subp. 8. **Target.** "Target" means affected populations or sensitive environments exposed or threatened with exposure due to a release or a threatened release.

7044.0300 CLASSIFICATION OF SITES.

The agency shall assign a site with a release or a threatened release to the following response action classes:

A. a declared emergency by the director;

B. the operation and maintenance at a site that has undergone previous response actions;

C. other response actions which may include the first year costs associated with operation and maintenance at a site; and

D. remedial investigations and feasibility studies (RI/FS).

A site with a release or a threatened release may be assigned to more than one response action class and may be assigned more than once within a response action class if conditions at the site of the release or the threatened release

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or the diversity of hazardous substances, pollutants, or contaminants require multiple response actions. Assignment of a site with a release or a threatened release to a response action class must be based on the response action necessary to abate the known or suspected dangers associated with hazardous substances, pollutants, or contaminants at the site of the release or the threatened release. A site may be reclassified based on the findings and recommendations of a remedial investigation and feasibility study (RI/FS).

7044.0400 ADDITION OF SITES WITH RELEASES OR THREATENED RELEASES TO THE PERMANENT LIST OF PRIORITIES.

The agency shall rate sites with a release or a threatened release using the Hazard Ranking System (HRS) in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982), as amended by part 7044.1000. All sites must be evaluated using part 7044.1200. A site disqualified by part 7044.1200 is not eligible for placement on the permanent list of priorities. All eligible sites must be assigned to a response action class based on the criteria in part 7044.0300. The site of the release or the threatened release must be added to the permanent list of priorities during the next annual update as specified in part 7044.0600.

7044.0500 DELETION OF SITES FROM THE PERMANENT LIST OF PRIORITIES.

Subpart 1. **Requirement.** The agency shall delete a site from the permanent list of priorities at the next annual update following the completion of all response actions required at the site, or if the agency determines that the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

Subp. 2. **Deletion from a response action class.** The agency shall delete a site from a response action class on the permanent list of priorities at the next annual update following the completion of response actions for that class at the site,

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or if the agency determines that portion of the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

7044.0600 ANNUAL UPDATE OF THE PERMANENT LIST OF PRIORITIES.

The agency shall annually update the permanent list of priorities. Notice of the annual update of the permanent list of priorities together with a proposed updated list must be published in the State Register to solicit public comments at least 30 days prior to agency action. A site may be reclassified or rescored based on information obtained during the 30-day comment period or based on information from a completed RI/FS if the director determines the new or additional facts warrant a reclassification or rescoring. A site may not be reclassified or rescored based on prior remedial, removal, or response actions.

7044.0700 FUNDING PRIORITY OF CLASSES.

The agency shall allocate Environmental Response and Liability Act (ERLA) funds to classes in the following order:

A. All sites classified as part 7044.0300, item A (Class A) receive first priority over all other classes for agency action. The agency shall also allocate ERLA funds to be held in reserve during the next year to fund emergencies that may be declared during the year. The amount of the contingency fund must be estimated based on the funds expended on declared emergencies in previous years. If the contingency fund is depleted before the end of the year, funds allocated for Class C or D projects that are not yet committed are available for response actions that must be taken in connection with a declared emergency.

B. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, all sites classified as part 7044.0300, item B (Class B) receive next priority for ERLA funding. ERLA funds may not be spent for the purpose of operation or maintenance of a community water supply

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system with the exception of start-up operational and maintenance expenditures deemed necessary by the agency during the first year the system is in operation.

C. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, and all Class B sites have ERLA funds allocated, the agency shall allocate ERLA funds to part 7044.0300, item C (Class C) and to part 7044.0300, item D (Class D) sites.

D. The director may reallocate excess ERLA funds from one class to another if the funding priorities in parts 7044.0700 to 7044.0900 are complied with, and the director determines that a site on the permanent list of priorities is ready for the agency to proceed with a response action or RI/FS prior to the next annual update.

Class A contingency funds may not be transferred to another class.

7044.0800 FUNDING PRIORITY WITHIN CLASSIFICATIONS C AND D.

Sites listed in classifications C and D must be ranked according to their HRS scores. The director may allocate funds within each of the two classes to any site with a release or a threatened release that is within ten HRS points of the highest rated site within the class, based upon the cost of the necessary response actions; the effect of the release or the threatened release on public health, welfare, or the environment; and the administrative capabilities of the agency.

7044.0900 ANNUAL PROJECT LIST.

The agency shall establish a project list based on the amount of ERLA funds allocated by the agency for each class. The project list is a subset of the permanent list of priorities. The project list must contain the names of those projects to which ERLA funding will be allocated and for which the response action or RI/FS is scheduled to begin during the year. Sites on the permanent list of priorities may be added to the project list and funded when the director determines that excess ERLA funds allocated by the agency are available as a

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OFFICE BY:

result of, for example, a party assuming responsibility for work at a site or a cost saving in the response actions taken at a site. Class A sites not on the project list that develop or are brought to the attention of the director must be funded with Class A contingency funds as directed in part 7044.0700, item A. Before taking any removal and remedial action for a release or a threatened release of a hazardous substance, pollutant, or contaminant, the agency shall follow the procedures specified in Minnesota Statutes, section 115B.17. The project list must be revised annually. Funding for projects on the project list must remain in effect until the next project list is adopted or until the work for which the site was placed on the list is completed, whichever date is later.

7044.1000 HRS SCORING SYSTEM ADOPTED BY REFERENCE.

The agency shall rank sites utilizing the EPA's "Uncontrolled Hazardous Waste Ranking System" (commonly referred to as the HRS) published in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982) with the following modifications:

A. Substitute the words "ground water" for the word "aquifer" wherever the word "aquifer" appears in the Hazard Ranking System.

B. Substitute Figure 8-3 from the Minnesota Hydrologic Guide, United States Department of Agriculture, Soil Conservation Service, St. Paul, Minnesota, circa 1976, for Figure 4 of the Hazard Ranking System.

C. Substitute Figure 1-1 from the Minnesota Hydrologic Guide for Figure 5 of the Hazard Ranking System.

D. Substitute Figure 1-2 from the Minnesota Hydrologic Guide for Figure 8 of the Hazard Ranking System.

7044.1100 REIMBURSEMENT FOR PAST REPONSE ACTIONS.

Reimbursement claims, by a private person for expenditures made before July 1, 1983, to provide alternative water supplies deemed necessary by the agency and the Department of Health to protect the public health from contamination resulting from the

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release of a hazardous substance, must be filed with the agency within 12 months from the date parts 7044.0100 to 7044.1200 become effective. A reimbursement claim filed after the 12-month deadline is invalid. The agency shall consider reimbursement of only the reasonable expenses for the types of costs which would have been incurred by the agency. The agency shall determine the amount of ERLA funds to be allocated to reimbursement claims during the annual update.

7044.1200 PRESCREENING OF POTENTIAL HAZARDOUS WASTE SITES.

| Prescreening of Potential Hazardous Waste Sites | Yes | No |
|---|---|---|
| **Ground Water Route** | | |
| 1. If there is no observed release, is the containment score equal to zero? | ___ | ___ |
| 2. Is the toxicity/persistence score equal to zero? | ___ | ___ |
| **Surface Water Route** | | |
| 1. If there is no observed release, is the containment score equal to zero? | ___ | ___ |
| 2. Is the toxicity/persistence score equal to zero? | ___ | ___ |
| **Air Route** | | |
| 1. Does the observed release score equal zero? | ___ | ___ |
| 2. Are the reactivity/incompatibility and toxicity scores equal to zero? | ___ | ___ |
| **Fire and Explosion** | | |
| 1. Are the ignitability, reactivity, and incompatibility scores equal to zero? | ___ | ___ |
| **Direct Contact** | | |
| 1. Are the observed incident, accessibility, containment, or toxicity scores equal to zero? | ___ | ___ |

A site is not eligible for ERLA funding or inclusion on the permanent list of priorities, as defined in part 7044.0400, if one or more questions in each of the five routes is answered "yes."

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD487

Agency: Pollution Control Agency

Division: Solid and Hazardous Waste Division

Agency Contact: Lee Paddock 296-7703

Part Numbers: 7044.0100 to 7044.1200

Title: Proposed Rules Governing Hazardous Waste Priority Assessment Criteria

Type of Rules: Permanent

Incorporations by Reference:

| Part Number: | Material Incorporated: |
|---|---|
| 7044.1000 | Minnesota Hydrologic Guide |

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Maryanne V. Hruby
Assistant Revisor
Phone: 297-2948
Date: March 12, 1984

# Pollution Control Agency

## Notice of Intent to Solicit Outside Opinion Regarding Criteria for Determining Priorities for Hazardous Waste Site Cleanup under Section 17 of the Environmental Response and Liability Act

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is seeking information from sources outside the agency regarding criteria for determining priorities for hazardous waste site cleanup under section 17 of the Environmental Response and Liability Act.

The Environmental Response and Liability Act authorized the agency to establish a temporary list of priorities for cleanup. That list was published at 7 S.R. 1778, June 13, 1983. The Act also requires a permanent priority list to be established based on rules adopted by the agency. These rules must establish criteria for assigning priorities to sites based upon the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the following:

1. the population at risk;
2. the hazardous potential of the hazardous substance at the facilities;
3. the potential for contamination of drinking water supplies;
4. the potential for direct human contact;
5. the potential for destruction of sensitive ecosystems;
6. the administrative and financial capabilities of the agency; and
7. other appropriate factors.

The agency requests information or comments on how the factors listed above should be taken into account in prioritizing sites, other factors which should be used in prioritizing sites, and any other information or comments related to the prioritization of sites. Written or oral information or comments may be submitted to Dale Trippler at the address listed below or at (612) 296-7774, during regular business hours.

Dale Trippler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B-2
Roseville, Minnesota 55113

Information or comments will be accepted until November 10, 1983.

September 26, 1983

Sandra S. Gardebring
Executive Director

# Department of Transportation

## Petition of Fillmore County for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Fillmore County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for the replacement of Bridge #9950 on County Road 104, 0.6 mile north of Trunk Highway 30 in Pilot Mound Township, over Money Creek.

The request is for a variance from 14 MCAR § 1.5032 H.1.d., Rules for State Aid Operations under Minnesota Statute, chapters 161 and 162 (1978) as amended, so as to permit a design speed of 35 miles per hour instead of a required design speed of 40 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 20th day of September, 1983

Richard P. Braun
Commissioner of Transportation

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Cynthia Jepsen, do hereby certify that I am a member and the Chairperson of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and and properly called and held on the 27th day of March, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that Sandra Gardebring, Director of the Minnesota Pollution Control Agency be and she hereby is granted authority and directed to sign an Order of Agency directing that Notice be given of the Agency's intent to adopt without a public hearing rules governing procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants or contaminants; to sign the Notice thereof; and to perform any and all acts incidental thereto including making editorial changes to the rules requested by the Office of the Revisor of Statutes. In the event a public hearing becomes necessary, the Director is granted authority and directed to call a hearing for the purpose of promulgating the rules referenced herein, perform any and all acts incidental thereto including signing an Order for Hearing and Notice of Hearing, and act as the Agency's representative at any hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of March, 1984.

Cynthia C Jepsen
CYNTHIA JEPSEN
Chairperson

Dana R Dahlberg
Attest by one other Agency member

CERTIFICATE OF AGENCY'S RESOLUTION ADOPTING RULES

I, Cynthia Jepsen, do hereby certify that I am a member and the Chairperson of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 31st day of May, 1984, that a quorum was present at said meetng, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby approves and adopts Minn. Rules 7044.0100-7044.1200, Procedures for Establishing a Permanent List of Releases or Threatened Releases of Hazardous Substances, Pollutants, or Contaminants, as attached, pursuant to the authority vested in the Agency by Minn. Stat.§ 115B.17 (Supp. 1983).

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's Certificate as required by Minn. Stat. §14.08 (Supp 1983).

BE IT FURTHER RESOLVED, that the Agency adopts the attached Findings of Fact and Conclusions and Order Adopting Rules.

BE IT FURTHER RESOLVED, that the Chairperson and the Executive Director are hereby authorized to execute the above-named documents.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 31st day of May, 1984.

Cynthia C. Jepsen
CYNTHIA JEPSEN
Chairperson

Attest by one other Agency member

STATE OF MINESOTA

MINNESOTA POLLUTION CONTROL AGENCY

Proposed Rules Governing Procedures For Establishing a Permanent List of Releases or Threatened Releases of Hazardous Substances, Pollutants or Contaminants

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

It is hereby ordered this 11th day of April, 1984, that Notice of Intent to Adopt Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and be published in the State Register.

Sandra Gardebring

SANDRA S. GARDEBRING
Director
Minnesota Pollution Control Agency

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Rules Governing Procedures For Establishing a Permanent List of Releases or Threatened Releases of Hazardous Substances, Pollutants or Contaminants

AFFIDAVIT REGARDING COMMENTS RECEIVED PURSUANT TO NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Dale Tripplehorn being duly sworn on oath deposes and says:

1. That he is the person named in the Notice of Intent to Solicit Outside Opinion (8 S.R. 611, October 3, 1984) as the person to receive comments on the Agency's intent to adopt rules concerning the above-entitled subject.

2. That no person submitted written comments in response to the above-described notice.

Dale Tripplehorn

Subscribed and sworn to before me
this 31 st day of May, 1984.

Maryanne Gibbons
Notary Public

MARYANNE GIBBONS
NOTARY PUBLIC MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 28 1985

Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

REPEALER. Minnesota Rules, parts 1410.0100, 1410.0200, 1410.0300, 1410.0400, 1410.0500, 1410.0600, 1410.0700, 1410.0800, 1410.0900, 1410.1000, 1410.1100, 1410.1200, 1410.1300, 1410.1400, 1410.1500, 1410.1600, 1410.1700, 1410.2000, 1410.2100, 1410.2200, 1410.2300, 1410.2400, 1410.2500, 1410.2600, 1410.3000, 1410.3100, 1410.3200, 1410.3300, 1410.3400, 1410.3500, 1410.3600, 1410.3700, 1410.3800, 1410.3900, 1410.4000, 1410.4100, 1410.4200, 1410.4400, 1410.4500, 1410.4600, 1410.4700, 1410.4800, 1410.4900, 1410.5000, 1410.5100, 1410.5200, 1410.5300, 1410.5400, 1410.5500, 1410.5600, 1410.5700, 1410.5800, 1410.5900, 1410.6000, 1410.6100, 1410.6200, 1410.6300, 1410.6400, 1410.6500, 1410.6600, 1410.6700, 1410.6800, 1410.6900, 5220.3100, 5220.3300, 5220.3400, 5220.3500, 5220.3700, 5220.3800, 5220.3900, 5220.4000, 5220.4100, 5220.4200, 5220.4300, 5220.4301, 5220.4302, 5220.4303, 5220.4304, 5220.4305, 5220.4800, 5220.4900, 5220.5100, 5220.5200, 5220.5300, 5220.5400, 5220.5500, 5220.5600, 5220.5700, 5220.6500, 5220.6600, 5220.6700, 5220.6800, 5220.6900, 5220.7000, 5220.7100, and 5220.7200 are repealed.

# Pollution Control Agency

## Proposed Rules Governing Hazardous Waste Priority Assessment Criteria

### Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends, without a public hearing, to adopt the above-referenced proposed rules. The Agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (Supp. 1983).

The proposed rules are authorized by Minn. Stat. § 115B.17, subd. 13 (Supp. 1983). One free copy of the rules is available on request from the Agency. Please contact the person whose name and address appears below.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon by the Agency to support the proposed rules. Copies of the Statement of Need and Reasonableness and of the proposed rules are available and may be obtained by contacting:

Dale Trippler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B2
Roseville, MN 55113
Telephone: (612) 296-7774

? should be May 16

Interested persons have until 4:30 p.m. on May 15, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed rules.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the comment period, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.11-14.20 (Supp. 1983).

Persons who wish to submit oral or written comments or a written request for a public hearing should submit such comments or request to Dale Trippler at the Agency address previously stated (telephone: (612) 296-7774), no later than 4:30 p.m. on May 15, 1984. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

should be May 16

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Upon adoption of the rules by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be sent to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Dale Trippler at the address previously stated.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (Supp. 1983), "Small business considerations in rulemaking," that the Agency has determined that the proposed rules will not have an impact on small businesses in Minnesota since the rules solely govern internal Agency decisions as to how it will spend funds available to it under the Environmental Response and Liability Act.

The rule proposed for adoption establishes procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants, or contaminants including (1) classifications for sites with releases or threatened releases, (2) procedures for adding sites to and deleting sites from the list, (3) an annual review and update of the permanent list, (4) funding priorities among classifications and within classifications, (5) an annual project list, and (6) a ranking system to be used in scoring sites.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Dale Trippler at the address previously stated.

Sandra S. Gardebring
Executive Director
Minnesota Pollution Control Agency

## Rules as Proposed (all new material)

**7044.0100 SCOPE.**

Chapter 7044 governs the procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants, or contaminants required by Minnesota Statutes, section 115B.17. This chapter establishes various classifications for sites with releases or threatened releases, describes the procedures for adding sites with releases or threatened releases to or deleting sites from the permanent list, provides for an annual review and update of the permanent list, esgablishes the funding priority among classifications and the funding priority within classifications, creates an annual project list, and specifies a ranking system to be used in scoring sites.

**7044.0200 DEFINITIONS.**

**Subpart 1. Scope.** As used in this chapter, the following terms have the meanings given them, unless the context requires otherwise.

**Subp. 2. Miscellaneous terms.** The following terms have the meanings given them in the Environmental Response and Liability Act (ERLA), Minnesota Statutes, chapter 115B: agency, director, Federal Superfund Act, fund, hazardous substance, hazardous waste, natural resources, owner of real property, person, pollutant or contaminant, release, remedy or remedial action, remove or removal, respond or response, and water.

**Subp. 3. Advisory.** "Advisory" means a warning by the director, Minnesota Department of Health, Minnesota Department of Natural Resources, or the Minesota Department of Agriculture issued to the public concerning a hazardous substance, pollution, or contamination at or near a facility.

**Subp. 4. Emergency.** "Emergency" means that there is an imminent risk of fire or explosion, that a temporary water supply is needed where an advisory has been issued, or that immediate adverse human health effects may be anticipated due to direct contact or inhalation and an advisory has been issued.

**Subp. 5. Ground water or underground water.** "Ground water" or "underground water" has the meaning given in chapter 7060.

**Subp. 6. Rater.** "Rater" means a member of the agency staff designated by the director to evaluate releases or threatened releases.

**Subp. 7. Site.** "Site" means any place or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, placed, or otherwise come to be located including:

A. a building, structure, installation, equipment, pipe or pipeline (including a pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

B. a watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water.

Site does not include a consumer product in consumer use.

Subp. 8. Target. "Target" means affected populations or sensitive environments exposed or threatened with exposure due to a release or a threatened release.

7044.0300 CLASSIFICATION OF SITES.

The agency shall assign a site with a release or a threatened release to the following response action classes:

A. a declared emergency by the director;

B. the operation and maintenance at a site that has undergone previous response actions;

C. other response actions which may include the first year costs associated with operation and maintenance at a site; and

D. remedial investigations and feasibility studies (RI/FS).

A site with a release or a threatened release may be assigned to more than one response action class and may be assigned more than once within a response action class if conditions at the site of the release or the threatened release or the diversity of hazardous substances, pollutants, or contaminants require multiple response actions. Assignment of a site with a release or a threatened release to a response action class must be based on the response action necessary to abate the known or suspected dangers associated with hazardous substances, pollutants, or contaminants at the site of the release or the threatened release. A site may be reclassified based on the findings and recommendations of a remedial investigation and feasibility study (RI/FS).

7044.0400 ADDITION OF SITES WITH RELEASES OR THREATENED RELEASES TO THE PERMANENT LIST OF PRIORITIES.

The agency shall rate sites with a release or a threatened release using the Hazard Ranking System (HRS) in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982), as amended by part 7044.1000. All sites must be evaluated using part 7044.1200. A site disqualified by part 7044.1200 is not eligible for placement on the permanent list of priorities. All eligible sites must be assigned to a response action class based on the criteria in part 7044.0300. The site of the release or the threatened release must be added to the permanent list of priorities during the next annual update as specified in part 7044.0600.

7044.0500 DELETION OF SITES FROM THE PERMANENT LIST OF PRIORITIES.

Subpart 1. Requirement. The agency shall delete a site from the permanent list of priorities at the next annual update following the completion of all response actions required at the site, or if the agency determines that the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

Subp. 2. Deletion from a response action class. The agency shall delete a site from a response action class on the permanent list of priorities at the next annual update following the completion of response actions for that class at the site, or if the agency determines that portion of the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

7044.0600 ANNUAL UPDATE OF THE PERMANENT LIST OF PRIORITIES.

The agency shall annually update the permanent list of priorities. Notice of the annual update of the permanent list of priorities together with a proposed updated list must be published in the *State Register* to solicit public comments at least 30 days prior to agency action. A site may be reclassified or rescored based on information obtained during the 30-day comment period or based on information from a completed RI/FS if the director determines the new or additional facts warrant a reclassification or rescoring. A site may not be reclassified or rescored based on prior remedial, removal, or response actions.

7044.0700 FUNDING PRIORITY OF CLASSES.

The agency shall allocate Environmental Response and Liability Act (ERLA) funds to classes in the following order:

A. All sites classified as part 7044.0300, item A (Class A) receive first priority over all other classes for agency action. The agency shall also allocate ERLA funds to be held in reserve during the next year to fund emergencies that may be declared during the year. The amount of the contingency fund must be estimated based on the funds expended on declared emergencies in previous years. If the contingency fund is depleted before the end of the year, funds allocated for Class C or D projects that are not yet committed are available for response actions that must be taken in connection with a declared emergency.

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B. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, all sites classified as part 7044.0300, item B (Class B) receive next priority for ERLA funding. ERLA funds may not be spent for the purpose of operation or maintenance of a community water supply system with the exception of start-up operational and maintenance expenditures deemed necessary by the agency during the first year the system is in operation.

C. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, and all Class B sites have ERLA funds allocated, the agency shall allocate ERLA funds to part 7044.0300, item C (Class C) and to part 7044.0300, item D (Class D) sites.

D. The director may reallocate excess ERLA funds from one class to another if the funding priorities in parts 7044.0700 to 7044.0900 are complied with, and the director determines that a site on the permanent list of priorities is ready for the agency to proceed with a response action or RI/FS prior to the next annual update.

Class A contingency funds may not be transferred to another class.

**7044.0800 FUNDING PRIORITY WITHIN CLASSIFICATIONS C AND D.**

Sites listed in classifications C and D must be ranked according to their HRS scores. The director may allocate funds within each of the two classes to any site with a release or a threatened release that is within ten HRS points of the highest rated site within the class, based upon the cost of the necessary response actions; the effect of the release or the threatened release on public health, welfare, or the environment; and the administrative capabilities of the agency.

**7044.0900 ANNUAL PROJECT LIST.**

The agency shall establish a project list based on the amount of ERLA funds allocated by the agency for each class. The project list is a subset of the permanent list of priorities. The project list must contain the names of those projects to which ERLA funding will be allocated and for which the response action or RI/FS is scheduled to begin during the year. Sites on the permanent list of priorities may be added to the project list and funded when the director determines the excess ERLA funds allocated by the agency are available as a result of, for example, a party assuming responsibility for work at a site or a cost saving in the response actions taken at a site. Class A sites not on the project list that develop or are brought to the attention of the director must be funded with Class A contingency funds as directed in part 7044.0700, item A. Before taking any removal and remedial action for a release or a threatened release of a hazardous substance, pollutant, or contaminant, the agency shall follow the procedures specified in Minnesota Statutes, section 115B.17. The project list must be revised annually. Funding for projects on the project list must remain in effect until the next project list is adopted or until the work for which the site was placed on the list is completed, whichever date is later.

**7044.1000 HRS SCORING SYSTEM ADOPTED BY REFERENCE.**

The agency shall rank sites utilizing the EPA's "Uncontrolled Hazardous Waste Ranking System" (commonly referred to as the HRS) published in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982) with the following modifications:

A. Substitute the words "ground water" for the word "aquifer" wherever the word "aquifer" appears in the Hazard Ranking System.

B. Substitute Figure 8-3 from the Minnesota Hydrologic Guide, United States Department of Agriculture, Soil Conservation Service, St. Paul, Minnesota, circa 1976, for Figure 4 of the Hazard Ranking System.

C. Substitute Figure 1-1 from the Minnesota Hydrologic Guide for Figure 5 of the Hazard Ranking System.

D. Substitute Figure 1-2 from the Minnesota Hydrologic Guide for Figure 8 of the Hazard Ranking System.

**7044.1100 REIMBURSEMENT FOR PAST RESPONSE ACTIONS.**

Reimbursement claims, by a private person for expenditures made before July 1, 1983, to provide alternative water supplies deemed necessary by the agency and the Department of Health to protect the public health from contamination resulting from the release of a hazardous substance, must be filed with the agency within 12 months after the date parts 7044.0100 to 7044.1200 become effective. A reimbursement claim filed after the 12-month deadline is invalid. The agency shall consider reimbursement of only the reasonable expenses for the types of costs which would have been incurred by the agency. The agency shall determine the amount of ERLA funds to be allocated to reimbursement claims during the annual update.

**7044.1200 PRESCREENING OF POTENTIAL HAZARDOUS WASTE SITES.**

| Prescreening of Potential Hazardous Waste Sites | Yes | No |
|---|---|---|
| Ground Water Route | | |
| 1. If there is no observed release, is the containment score equal to zero? | _____ | _____ |

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

Proposed Rules Governing Procedures
For Establishing a Permanent
List of Releases or Threatened
Releases of Hazardous Substances,
Pollutants or Contaminants

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY )

Penny Nickles, being duly sworn, deposes and says:

That on the 13 day of April, 1984, at the City of Roseville, County of Ramsey, State of Minnesota, s/he served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the United States mail for first class mailing at said City of Roseville, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Pollution Control Agency for the purpose of receiving notice of the proposed adoption of rules by the Pollution Control Agency.

Penny Nickles

Subscribed and sworn to
before me this 13th
day of April, 1984.

Margaret Frank
Notary Public



Edward J. Schwartzbauer
Dorsey and Whitney
2200 First Bank Place East
Minneapolis, MN 55402

Timothy Thornton
Rider, Bennett, Egan & Arundel
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Minneapolis, MN 55402

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Afton, MN 55001

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Representative Karen Clark
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Minneapolis, MN 55407

Representative Randy Staten
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Representative Charles Hoffman
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STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

Proposed Rules Governing Procedures
For Establishing a Permanent
List of Releases or Threatened
Releases of Hazardous Substances,
Pollutants or Contaminants

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. § 14.14 (Supp. 1983), that their names be placed on file with the Minnesota Pollution Control Agency (Agency) for the purpose of receiving notice of the proposed adoption of rules by the Agency is accurate and complete as of 10:00 a.m., this 12 day of April, 1984.

Elaine A. Zoch

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Rules of the Pollution Control Agency Governing the Procedures for Establishing a Permanent List of Releases and Threatened Releases of Hazardous Substances, Pollutants or Contaminants, 7044.0100-7044.1200

STATEMENT OF NEED AND REASONABLENESS

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I. Introduction.

The subject of this proceeding is the establishment of State rules for determining priorities among releases and threatened releases of hazardous substances, pollutants or contaminants (7044.0100-7044.1200). Rulemaking on the proposed rules was mandated by Minnesota Statutues 1983, Section 115B.17.

When the Minnesota Pollution Control Agency (hereinafter "Agency" or "MPCA") authorized the initiation of rulemaking, it found the proposed rules non-controversial in nature and proceeded with rulemaking in accordance with statutory provisions governing the adoption of non-controversial rules, Minnesota Statutes 1982, Sections 14.21-14.28. Accordingly, the rulemaking proceedings of the proposed rules are governed by that statute and no hearing will be conducted on the adoption of the rules unless seven or more persons submit to the Agency a written request for such a hearing during the public notice period.

In accordance with the requirements of Minnesota Statutes 1982, Section 14.23 this Statement of Need and Reasonableness was prepared and completed prior to the date that the proposed adoption of the rules was noticed in the State Register. The Statement of Need and Reasonableness is divided into several parts. Part II. is an overview of the proposed rules. Part III. is a description of the historical background leading to the development of these rules. Part IV. contains the Agency's explanation of the need for the proposed rules. Part V. contains the Agency's explanation of the reasonableness of the proposed rules. Part VI. contains the small business consideration in

rulemaking required when proposing rules in Minnesota. Part VII. contains the statement on economic impact of the proposed rules. Part VIII. is the conclusion. Part IX. contains a list of the exhibits relied on by the Agency to support the proposed rules. The exhibits are available for review at the Agency's office at 1935 West County Road B-2, Roseville, Minnesota 55113.

II. Overview of the Proposed Priority Assessment Criteria Rules.

The Agency is proposing the adoption of rules to fulfill the requirements set forth in the Minnesota Environmental Response and Liability Act (ERLA), Minnesota Statutes 1983, Section 115B.17. ERLA requires the Agency to establish State criteria for determining priorities among releases or threatened releases of hazardous substances, pollutants or contaminants by July 1, 1984. The proposed rules establish various classifications for sites with releases or threatened releases; describe the procedures for adding sites with releases or threatened releases to or deleting sites from a permanent priority list; provide for an annual review and update of the permanent list; establish the funding priority among classifications and the funding priority within classifications; create an annual project list; and specify a ranking system to be used in scoring sites. The rules will replace the temporary list of priorities adopted by the Agency in July, 1983, as required by Minnesota Statutes 1983, Section 115B.17.

Part 7044.0100 outlines the scope of the rule and 7044.0200 defines several terms used throughout the rule.

Part 7044.0300 establishes the four classifications a site or portion of a site could be assigned to based on the response action(s) necessary to abate or

prevent the dangers associated with releases or threatened releases of hazardous substances, pollutants or contaminants. These classifications are: a declared emergency by the Director; the operation and maintenance at a site that has undergone previous response actions; other response actions which may include the first year costs associated with the initial operation and maintenance expenditures at a site; and remedial investigations and feasibility studies (RI/FS).

Part 7044.0400 describes the procedures the Agency must follow to add a site with releases or threatened releases to the permanent list of priorities. The Agency must rate a site using the United States Environmental Protection Agency's (EPA's) hazard ranking system (HRS), evaluate a site for its eligibility for placement on the permanent list of priorities, assign a site to a response action class(es) based on the criteria in 7044.0300, and finally, add eligible sites to the permanent list of priorities during the next annual update.

Part 7044.0500 sets the conditions necessary for a site to be deleted from the permanent list of priorities or the conditions necessary for a site to be deleted from a response action class on the permanent list of priorities. A site is to be deleted from the permanent list of priorities at the next annual update following the completion of all response actions required at the site or if the Agency determines that the site no longer poses a threat to public health or welfare or the environment from a release or threat of release of a hazardous substance, pollutant or contaminant. A site is to be deleted from a response

action class on the permanent list of priorities at the next annual update following the completion of response actions for that class at the site or if the Agency determines that that portion of the site no longer poses a threat to public health or welfare or the environment from a release or threat of release of a hazardous substance, pollutant or contaminant.

Part 7044.0600 requires the Agency to publish in the State Register a notice of the annual update of the priority list and solicit public comment. The notice and the proposed list must be published in the State Register at least 30 days prior to Agency adoption of the updated list. The rule also allows for a site to be re-classified or re-scored based on information obtained during the 30-day comment period or based on information from a completed RI/FS if the Director determines that new or additional facts warrant a re-classification or re-scoring. The rule does not allow a site to be re-scored based on prior remedial, removal or response actions.

Part 7044.0700 establishes the order in which ERLA funds must be allocated to classes by the Agency. Declared emergencies by the Director (Class A) are funded first. A contingency fund is then to be established to fund declared emergencies which may arise between funding allocations. The operation and maintenance of sites that have undergone previous response actions (Class B) is to be funded next. ERLA funds are not to be spent for the operation and maintenance of municipal water supply systems with the exception of start-up operation and maintenance expenditures deemed necessary by the Agency during the first year such a system is in operation. Remaining ERLA funds are to be

allocated to other response actions (Class C), which may include the costs associated with the first-year operation and maintenance expenditures at a site, and RI/FS's (Class D). Finally, the Director may re-allocate any excess ERLA funds from one class of response action to another under specific criteria that are presented in 7044.0700 D.

Part 7044.0800 allows the Director to allocate ERLA funds to Class C and D sites which are within 10 HRS points of the highest rated site within each class. The Director's decision is to be based on the cost of the necessary response actions, the effect of the release or threatened release on public health, welfare or the environment, and the administrative capabilities of the Agency.

Part 7044.0900 directs the Agency to establish an annual project list based on the funds allocated and the estimated costs of projects that can be funded pursuant to 7044.0700-7044.0800. Class A sites not on the project list which develop or are brought to the attention of the Director are to be funded with Class A contingency funds. If excess funds become available, either through cost savings or assumption of responsibility by a party at specific sites, the Director may add sites from the permanent list of priorities to the project list following the procedures specified in Minnesota Statutes 1983, Section 115B.17. The rule retains funding for non-responsible party sites until the adoption of the next project list or until the response action for which the site was placed on the list is completed, whichever date is later.

Part 7044.1000 adopts the HRS by reference. The words "ground water" are substituted for the word "aquifer" whenever the word "aquifer" appears in the

HRS. Agency regulations require protection for all ground water, not just underground water currently in use for a potable water supply, agriculture, or industrial use. Also three figures from the Minnesota Hydrologic Guide were substituted for maps showing generalized hydrologic conditions for the continental United States.

Part 7044.1100 requires that claims by any private person for reimbursement of expenditures made before July 1, 1983 to provide alternative water supplies be submitted to the Agency within twelve months after the date the rule becomes effective. Reimbursement claims are limited to reasonable costs for actions of the type which would have been taken by the Agency to abate or prevent a release or a threatened release.

Part 7044.1200 is an exhibit which will be used to pre-screen potential hazardous waste sites for eligibility for inclusion on the permanent list of priorities. The questionnaire asks at least one question relating to the hazard potential of each of the five routes evaluated by the HRS. The purpose of this exhibit is to eliminate sites which neither pose a danger from fire, explosion, direct contact and inhalation because of adequate containment; nor have substances which are toxic, persistent, or reactive.

## III. The Legal and Historical Background to the Priority Assessment Criteria Rules.

Minnesota Statutes 1983, Section 115B.17, subdivision 13, required the Agency, by November 1, 1983, to establish a temporary list of priorities among releases or threatened releases for the purpose of taking remedial action and, to the

extent practicable consistent with the urgency of the action, for taking removal action. The temporary list adopted in July, 1983 remains in effect until the proposed permanent priority assessment criteria rules are adopted as required by ERLA. The permanent rules are to be adopted by July 1, 1984. After the proposed permanent rules are adopted, a permanent list of priorities will be established and will be modified from time to time, according to the criteria set forth in the priority assessment criteria rules. Before the list is established, the Agency must publish the proposed list in the State Register and allow the public 30 days to comment on the list.

The Agency developed the temporary list of priorities using a three step process. First, the Agency reviewed all known sites with releases or threatened releases to determine whether a responsible person(s) had assumed responsibility for remedial or removal action at the site. Sites with releases or threatened releases were included on the temporary list of priorities only if: a) no responsible person(s) existed or could be located; or b) the Agency determined that, based upon past and ongoing staff actions at the site at the time, the responsible person(s) had refused to assume responsibility for necessary remedial or removal actions at the site.

Second, the Agency assigned all sites which qualified under step one to the response action(s) necessary to abate or prevent a release or threatened release of a hazardous substance, pollutant or contaminant. The Agency established four response action classes and designated a funding order to control how ERLA funds should be spent among classes in the event that insufficient funds were available to fund all projects on the temporary list of priorities.

The third step in the process of developing a temporary list of priorities involved ordering sites within classes on the list using HRS scores provided by EPA. This ranking of sites within classes further specified how funds were to be spent. Those sites which were not rated by EPA under the HRS were included at the bottom of the list of sites within each response class and designated as "not ranked" under the HRS score column.

The temporary list of priorities identified the source of funding for each site as: 1) only State Superfund monies; 2) only federal Superfund monies; or 3) a combination of federal and State Superfund monies. The reason for determining the source of funding is that ERLA requires the Director or the Agency to determine the extent to which any costs expended under ERLA for remedial or removal actions may be recovered under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et. seq. (CERCLA). Federally funded sites were included on the temporary list of priorities in order to provide a comprehensive picture of the status of the State's site cleanup program.

The temporary list of priorities allows for quarterly modification as additonal information regarding responsible persons and necessary remedial or removal actions becomes available. Notice of any modification to the temporary list of priorities will be published in the State Register for the purpose of soliciting public comments. The temporary list of priorities has not been modified since its adoption.

A notice was published in the State Register on October 3, 1983 stating the Agency's intention to draft State criteria for determining priorities among

releases and threatened releases and soliciting public comments. Two responses were received during the comment period. One respondent reserved comments until the proposed rules are published in the State Register but did express a concern that "the rules be as objective as possible for the benefit of industry." The other respondent suggested the Agency use a grading system developed by the Occupational Health and Safety Administration and adopted by EPA to grade protective clothing.[1] While the protective clothing grading system may work for its intended purpose, the grading system has no mechanism for evaluating potential migration routes and prioritizing site situations as does the HRS.

IV. Need for the Proposed Priority Assessment Criteria Rules.

Minnesota Statutes 1982, Section 14.23 requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rules. In general terms this means the Agency must set forth the reasons for its proposal and the reasons must not be arbitrary or capricious. However, to the extent need and reasonableness are separate, need has come to mean a problem exists which requires administrative attention and reasonableness means the solution proposed by the Agency is a proper one.

Need is a broad test not easily applied to an evaluation of each proposed rule. In this broad sense, the need for rules to determine priorities among releases and threatened releases is established by Minnesota Statutes 1983, Section 115B.17.

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[1]Occupational Health and Safety Administration Regulations, 29 CFR 1910, 1975.

A. ERLA Authorization Process.

The Agency is currently operating under the temporary list of priorities. The temporary list was developed in accordance with the mandate in Minnesota Statutes 1983, 115B.17, and is by definition intended as interim guidance for the expenditure of State Superfund monies until permanent rules are adopted.

B. Requirements of Minnesota Statutes 1983, Section 115B.17.

The Minnesota Legislature mandated the Agency to promulgate rules establishing State criteria for determining priorities among releases and threatened releases. After rules are adopted, a permanent priority list will be established, and may be modified from time to time, according to the criteria set forth in the rules. The proposed rules and the ensuing permanent priority list will replace the current temporary list of priorities.

ERLA requires the temporary and the permanent rules to be based on the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the population at risk, the hazardous potential of the hazardous substances at the facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the administrative and financial capabilities of the Agency, and other appropriate factors.

The proposed rules address each of the above factors. The HRS system evaluates each of the above factors in deriving the site score, except for the administrative and financial capabilities of the Agency. The classification system is designed to reflect the type of response action necessary to abate or

prevent a release or threatened release. The funding order of classes, particularly Classes C and D, consider the administrative and financial capabilities of the Agency. The proposed rules specifically address funding criteria to deal with future situations where funds may be insufficient to meet the financial needs of all four classes and decisions will have to be made as to which sites within specific classes will be funded. These decisions will be made taking into account, among other factors, the administrative and financial capabilities of the Agency.

## V. Reasonableness of the Proposed Priority Assessment Criteria Rules.

### A. Introduction.

The Agency is required to make an affirmative presentation of facts establishing the reasonableness of the proposed rules, Minnesota Statutes 1982, Section 14.23. Reasonableness is the opposite of arbitrariness and caprice and means there is a rational basis for the Agency's action.

The staff considered several alternatives in the development of final rules for determining the priority assessment criteria for releases or threatened releases as mandated by ERLA. The following discussion will address the major options considered, their positive and negative aspects, and the reasons for selecting the rules proposed.

### B. Part 7044.0200: Definitions.

Part 7044.0200 adopts most of the definitions in ERLA. Only those definitions which do not pertain to the proposed rules were omitted. The terms defined in

ERLA are used in the same or similar context in the proposed rules. Since the terms have already been established by statute, adoption by reference seemed the most reasonable alternative. Terms not defined in ERLA but included in the proposed rules are required by Agency statutes or are essential elements in the rules.

The terms "advisory" and "emergency" are defined because both terms are pivotal in the assignment of sites to Class A making them eligible for immediate funding. An advisory may be issued by any of four State agencies when one or more of the agencies determines the public should be aware of the existence of a hazardous substance, pollutant or contaminant at or near a site. An advisory does not necessarily imply an emergency situation. However, the issuance of an advisory is necessary in two of the three cases identified as emergencies.

The primary reason for an advisory is to allow the designated agencies to advise the public of situations which the agencies determine are a potential threat to public health or welfare but may not be of sufficient magnitude, extent, or character to justify declaring an emergency. The determination by the designated agencies of when an advisory should be issued depends upon the circumstances encountered at or near a facility and a variety of environmental standards which may apply to the circumstances. Therefore, the definition is general in its nature.

The term "emergency" is strictly defined because declaring an emergency assigns a site to Class A according to 7044.0300 and the site receives immediate funding through 7044.0700. One or more of three conditions are necessary to qualify for an emergency designation as defined in 7044.0200.

The first condition is an imminent risk of fire or explosion. An imminent risk of fire or explosion means a situation exists which requires an immediate response to avert a pending catastrophe. In this case the issuance of an advisory and the declaration of an emergency would be warranted. The second condition where an emergency may be declared is the discovery of a contaminated drinking water supply. An emergency could be declared if the Agency or the Minnesota Department of Health has issued an advisory to the affected population and determines that the situation is severe enough to present a risk of either chronic or acute adverse health effects on the user population and therefore a temporary water supply is needed. Finally, an emergency could also be declared at a site where there is the possibility of immediate adverse health effects due to direct contact or inhalation of a hazardous substance, pollutant or contaminant and an advisory has been issued.

An advisory is meant to serve as an interim action which alerts the surrounding population of some danger posed by a hazardous substance, pollutant, or contaminant at or near a site. A declaration of an emergency indicates the Director has determined the situation warrants an immediate response action. The determination by the Director of when an emergency situation exists shall be based on facts known to the Director or a reliance upon the facts and conclusions drawn by other relevant departments or agencies.

"Ground water" is defined in the proposed rules because the words "ground water" or "underground water" are substituted for the word "aquifer" through the HRS. EPA's version of the HRS uses "aquifer," but "aquifer" implies a geologic

formation containing and capable of yielding a useable quantity of water for human consumption, agriculture, or industrial purposes. Agency rule 6 MCAR §4.8022 and ERLA require protection of waters in the environment regardless of quantity as well as those water resources directly used for human purposes. Therefore "ground water" more accurately represents the environmental resources eligible for protection in Minnesota and eligible for ERLA funding.

HRS clearly makes a distinction between ground water and ground water of concern. That distinction is determined by the potential population likely to use a specific ground water supply. Because HRS is designed to evaluate both ground water and ground water of concern, the HRS scores will adequately account for the effects on a useable water supply (referred to in the HRS as the "ground water of concern") and the environmental resource (referred to as "ground water").

The term "rater" is defined as a member of the Agency staff designated by the Director to evaluate releases or threatened releases. Since ERLA gives primary responsibility to the Agency for implementing the provisions of ERLA, it is reasonable to conclude that the Agency staff should have the ultimate responsibility to evaluate a site. This does not preclude others outside the Agency from rating a site, however, in the event a dispute arises between the rating of a site, the score of the designated Agency staff shall prevail.

The term "site" has the same meaning given to "facility" in ERLA. The term "facility" has a different meaning in other Agency hazardous waste rules

dealing with the generation of hazardous substances, the identification, the transportation and the management of hazardous wastes, specifically rules required by the Resource Conservation and Recovery Act (RCRA). The change in terms was made to avoid any confusion which may have arisen among the public and industry in understanding the Agency's intent in applying various RCRA related rules and the ERLA rules.

The term "target" is used throughout the HRS. The term target can refer to either an affected population or a sensitive environment exposed or threatened with exposure due to a release or threatened release. Both population and sensitive environment are classed under the general title of targets and are assigned a relative value in the HRS scoring system. It is reasonable to group human populations and sensitive environments under the same title because both may be adversely affected by the release of hazardous substances, pollutants or contaminants.

C. Part 7044.0300: Classification of Sites.

Part 7044.0300 establishes a classification system for assigning a site with a release or threatened release to a response action class. The temporary list of priorities assigned sites to four categories. The proposed rule uses an approach similar to the temporary list of priorities with slightly different response action categories. It is assumed that each site will have certain unique characteristics but the general response action could be reasonably assigned to one or more of the four classes of action designated in 7044.0300. While the four classes of the proposed rule are slightly different than those of

temporary list of priorities, the modifications are based on experience gained over the past year. The proposed classifications are designed to more adequately reflect the types of response actions taken in dealing with hazardous substances, pollutants or contaminants at a site.

D. Part 7044.0400: Addition of Sites with Releases or Threatened Releases to the Permanent List of Priorities.

Part 7044.0400 requires the Agency to score every site using HRS, evaluate the site for ERLA funding eligibility using Part 7044.1200, and assign the site to a specific classification for the necessary response actions. All eligible sites with an HRS score would be added to the permanent list during the next annual update. From a statutory perspective, alterations of the list would not pose a problem since ERLA states the Agency's "permanent priority list shall be established and may be modified from time to time, according to the criteria set forth in the rules." (Minnesota Statutes 1983, §115B.17)

Other options were proposed and rejected for various reasons. The rule was originally drafted so that only sites classified as an emergency (Class A) or sites with a Determination of Inadequate Response (DIR) assigned by the Board would qualify for State Superfund monies. Both triggers (or conditions) are required for funding according to ERLA, but not exactly in the form currently used by the Agency. Also, the question arose as to whether the permanent list of priorities should include only eligible sites scheduled for immediate funding or all known sites. The proposed rules contain two parts pertaining to the creation of lists. Part 7044.0400 creates a permanent list of priorities which

includes a list of all eligible sites. Part 7044.0900 requires the Agency to create a list of sites eligible for funding during the next year. A discussion of the second list will be addressed later in this document. Another option considered was to list all sites with HRS scores of 10 points or more. This arbitrary cutoff was suggested based on the fact that the EPA uses a cutoff of 28.5 HRS points for inclusion on the National Priorities List (NPL). The EPA cutoff was artificially mandated when Congress specifically directed EPA to create a list of 400 of the worst hazardous wastes sites in the United States. An HRS score of 28.5 just happened to be the cutoff number for the NPL. Since the Legislature did not restrict the number of sites we can consider, an arbitrary cutoff would be very difficult to justify. Future legislative appropriations will, in effect, determine a minimum HRS score.

The main advantage of listing all sites with HRS scores is that the Agency will establish, through the permanent list of priorities, a complete picture of the sites which may need attention throughout the State of Minnesota. Like the Construction Grants List in the Division of Water Quality, the Agency may never be able to get to everything on the list, but at least we will know the extent of the problem, and where the problems are. The Legislature, through additional appropriations, will have to decide the extent of the Agency's response to sites on the list.

E. Part 7044.0500: Deletion of Sites from the Permanent List of Priorities.

Part 7044.0500 identifies the conditions necessary for a site to be deleted from

the permanent list of priorities. ERLA does not specifically address whether a site should be deleted from the permanent list of priorities, but since ERLA gives the Agency the authority to modify the list from time to time, deletions and re-ranking should be possible under the same modification clause cited above.

The proposed rule describes two situations where a site or portion of a site may be deleted from the permanent list or from a particular class on the list. Sites would be dropped during the annual update when the Board makes a determination that all response actions are completed at a site; or that the response actions are completed at a site within a response action class. ERLA funding will be available only to sites listed on the permanent list of priorities. Therefore a site or a portion of a site must remain on the list until all response actions have been completed. When all the response actions are completed, the site or the completed portion of a site must be removed from the permanent list of priorities so that other sites can receive ERLA funding.

F. Part 7044.0600: Annual Update of the Permanent List of Priorities. Part 7044.0600 requires updating of the permanent list of priorities on an annual basis. An annual update is reasonable because most tasks require at least one year to complete, except for emergency actions. More frequent opportunities to delete have been suggested. The idea of monthly, quarterly or semi-annual updates was rejected because it would require excessive staff time and would add unduly to the already busy Board schedules. Also, ERLA requires

public notice in the State Register with a minimum of 30 days for public comment on any change to the permanent list of priorities. Therefore more frequent changes in the permanent list of priorities would require an almost constant process of formal revision. The staff is already extremely busy trying to resolve the current list of sites. More frequent modifications to the permanent list of priorities would only reduce the Agency's responsiveness and effectiveness in dealing with releases or threatened releases.

G. Part 7044.0700: Funding Priority of Classes.

Part 7044.0700 establishes the order in which ERLA funds must be allocated to classes by the Agency. The first draft of the permanent rule was written similarly to the temporary list of priorities, in which class determines the funding order. Then sites within the class are ranked by HRS scores to determine the funding order within a class. The temporary list of priorities requires the Agency to fund all Class A sites before funding any Class B sites. Then all Class B sites must be funded before funding any Class C sites and so forth. All Class A through Class C sites would have to be funded before any Class D (RI/FS) sites could be funded. This is the simplest solution but was considered to be inflexible and may result in an imbalance of sites within certain classes being done during future years. In this scenario, the Agency may not have sufficient staff to deal with all the fundable Class A-C projects, and the Agency will be best served by a mix of response action projects and studies each year so that the work load is evenly maintained given the staff available.

Another approach considered was for the Director to determine the order of funding, the dollar amount for each site each year, which sites to fund, develop the project list, and finally present the whole package to the Board for its approval. This approach gives the Director (and ultimately the Board) the greatest flexibility but provides little opportunity to the public for understanding or predicting where, when or how much State Superfund monies are likely to be spent on specific projects. Because of the weaknesses mentioned above, this approach was rejected.

The basic reason for having the Board allocate monies to response action classes is to involve the Board in the primary decision-making process and to emphasize the importance of funding a broad range of projects. Funding decisions are appropriately made by the Board because it represents the public at-large. The Board is given strict guidelines within which to operate. The guidelines are meant to insure appropriate and adequate response to emergency sites and to the operation and maintenance of sites that have undergone previous response actions. The guidelines provide a degree of predictability about when, where and how ERLA funds will be spent. The rule states that the Board must allocate funds to: Class A sites (emergency sites); Class A contingency fund; Class B sites; Class C and Class D sites. The Board is given some latitude in determining the amount of dollars allocated to each class. The Board will determine, based on the class allocations, how many sites in Class C or D are to be started or completed.

An advantage of this approach is that it recognizes that long-term operation and maintenance are as important as the initial remedial actions in

some cases. If the operation and maintenance of a site are to be provided through State Superfund, rather than as an Agency budget line item or as the responsibility of a local governmental jurisdiction, then the rule should allow sufficient funds to be made available for that purpose each year.

Dedicating funds for long-term operation and maintenance may decrease the Agency's ability to react to new higher priority sites and/or new sites of equal priority. However, the operation and maintenance of a hazardous waste site may be the most important phase of a complete remedy. Without the continued operation and maintenance of a site, the more immediate response action may prove to have been of little impact. Also, a particular site could deteriorate into an emergency situation.

The funding order of sites with releases or threatened releases is based on: the class assigned, the HRS score, and the amount of ERLA monies allocated to a class by the Board each year. The funding order for Class C and D sites allows for a degree of discretion by the Director as to which sites within 10 HRS points will be funded. Part 7044.0800 addresses funding within Class C and D and will be discussed later in this document.

It is reasonable to fund Class A sites before all others because of the immediate danger to the public or the environment posed by a release or threatened release classified as an emergency. The establishment of a Class A contingency fund is a reasonable method of insuring that funds are available to respond to emergency releases or threatened releases which may occur between funding requests.

It is reasonable to fund the operation and maintenance (O and M) at a site that has undergone previous response actions after emergencies because funds have already been spent at a site to mitigate or remove the release or threatened release. If an O and M site were not assured a high priority of continued funding, the original site may not qualify for federal funding under CERCLA. Furthermore, it is important to provide for O and M at a site so that the conditions which existed previously do not recur necessitating the expenditure of additional remedial action funds to once again temporarily stabilize the hazards posed by the site. Agency experience in dealing with site responses to releases or threatened releases has been that the expenses associated with remedial actions to cleanup a site are far more extensive than the annual O and M costs. Therefore, it is reasonable to try to fund sites at the O and M stage which should be a relatively small annual cost when compared to either remedial responses or an RI/FS.

It is reasonable to allow the Director to reallocate excess funds between funding allocations because ERLA specifically requires the proposed rules to consider "the administrative and financial capabilities of the Agency." The Director has the responsibility to run the Agency as efficiently as possible with the staff and monies available. Without this provision in the proposed rule it is possible that ERLA funds could go unused for extended periods until the Agency develops a new annual project list. If this situation were to occur, valuable time would be lost in cleaning up known hazardous waste sites in Minnesota.

Class A contingency funds can not be transferred to another class because an emergency situation can occur at any time in the funding cycle. The proposed rules consider emergencies as the highest priority and therefore it is reasonable to insure that an emergency fund is available at all times to handle any emergency which may arise.

It is reasonable to provide guidance on the order in which to fund sites to insure that ERLA funds are allocated to sites posing the greatest threat or potential threat to the public's health or welfare or to the environment. This guidance should limit funds from being allocated to classes for factors unrelated to their relative adverse environmental impacts.

H. Part 7044.0800: Funding Priority Within Classifications C and D. Part 7044.0800 allows the Director to allocate ERLA funds to Class C and D sites which are within 10 HRS points of the highest rated sites within each class. The rule allows the Director the flexibility to allocate the staff in the most productive manner and to take into consideration the financial resources available. The rule also permits the Director to balance the staff's work load between remedial actions and studies so that the flow of work is maintained for the staff available. ERLA provides for this flexibility when it states that, "... the rules by this subdivision shall be based upon the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible...the administrative and financial capabilities of the Agency, and other appropriate factors." (115B.17, subdivision 13.)

The scoring system used in HRS requires the rater to select the most appropriate whole number to represent specific conditions. In carrying through the

mathematical calculations necessary to arrive at a site score, the lowest possible level of significance is at two significant digits. In other words, the output, the route score, cannot contain more significant digits than the input, the data used. Therefore, HRS scores which are within 10 points of the highest rated site within a class may be of relatively the same importance.

It is reasonable to allow the Director a degree of discretion in determining the number of and which Class C and D sites within 10 HRS points to fund during the coming year because it is the responsibility of the Director to take into consideration the financial and administrative resources of the Agency. While the financial resources in ERLA are substantial, the Agency staff is limited and can effectively manage a limited number of sites during a year. Therefore, the discretion allows the Director to balance the staff's workload and maintain a balance of remedial action sites and RI/FS's. The RI/FS's are essential to developing a complete understanding of the site situation so that an accurate classification and HRS score can result.

I. Part 7044.0900: Annual Project List.

Part 7044.0900 directs the Agency to establish an annual project list based on the funds allocated and the estimated costs of projects that can be funded pursuant to 7044.0700-7044.0800. The primary reasons for this rule is to provide the Board and the public with a work plan for the coming year and to lock ERLA funding into specific projects. The rule allows the project list to be modified by the Director if additional funds become available and if another site is ready to proceed.

It is reasonable to develop an annual project list to provide the Agency with a degree of stability and flexibility in reacting to releases or threatened releases. The project list must be a subset of the permanent list of priorities so all the sites have gone through the public notice procedure in 7044.0600. The project list stabilizes funding for specific site projects for a one year period. The flexibility aspect lies in the ability of the Director to add projects to the list without a public notice period when additional funds become available.

The rule also allows the Agency to respond to new Class A sites discovered between the annual updates of the permanent list of priorities. It is reasonable to permit the Agency to respond to an emergency situation at the earliest possible date. Without this provision, the public's health or welfare or the environment might be placed in unreasonable danger.

J. Part 7044.1000: HRS Scoring System Adopted by Reference.

Part 7044.1000 adopts the HRS by reference. It is reasonable to use the HRS because all releases or threatened releases must be rated using HRS to determine a site's eligibility for federal Superfunds, a requirement of ERLA. The HRS has been criticized by reviewers and their concerns are addressed in the Federal Register (Vol. 47, No. 137, July 16, 1982). The staff concur with EPA that the HRS works reasonably well in evaluating hazardous waste sites. Furthermore, when the HRS is used in conjunction with the response action classification scheme and the pre-screening questionnaire its effectiveness is enhanced.

Development of a different system or modified HRS would mean that sites would have to be scored twice; once for federal monies and again to determine State status. Although some additional staff time may be needed, it was not expected to be a noticeable drain of staff time. The principle reason against having two completely different scoring systems is that a site with two different scores, one to qualify for federal grant monies and one to establish State eligibility, could cause confusion among the public, the Board and the Legislature.

The temporary list of priorities addressed the major concerns expressed by critics of the HRS during its development stage through the use of four categories grouped according to the response action necessary. Four response action categories are proposed for this rule also, but, the response action categories specifically address declared emergencies and the need for operation and maintenance (O and M). The new O and M category should resolve the staff concern of how to retain necessary funding once the initial capital costs are expended and monies are needed to operate and maintain a site. Also, as the rule is currently written, sites can be assigned to more than one class or to the same class several times if immediate response actions or long-term maintenance is needed for different aquifers and locations within the same site.

The only other ranking system currently in use which is substantially different from the HRS is Michigan's Site Assessment System (SAS). A test of HRS and SAS was conducted by the staff. Seven sites were evaluated using HRS. Agency press releases were the sole source of information and each site was ranked by two experienced staff members and one person inexperienced in the use of HRS. The

scores varied for each person rating the sites, but the relative position of the sites followed a similar pattern. A major problem with the test involved the experienced raters' familiarity with the sites. Their knowledge of the sites interfered with the test in that they sometimes filled in information missing from the press release, the result being that one experienced rater scored five of seven sites quite differently than the other two raters. We feel this difference does not reflect a flaw in the rating system but is a reflection of a different set of facts used to evaluate the sites. After completing the third site, one experienced rater used only the information provided, the result being that he and the unexperienced rater arrived at almost identical scores for the remaining four sites. The three raters felt the press releases did not contain sufficient information to fairly evaluate the sites and that a more detailed report on each site would have provided more similar scores by all.

The average time spent rating a site using HRS was 13.1 minutes, 13.4 minutes and 40.6 minutes with the inexperienced person taking the longest time per site.

Only one site was scored using SAS because of time constraints. All three raters lack experience with SAS. One person took 4 hours and 20 minutes to score one site. Two people more experienced in rating hazardous waste sites took 2 hours and 40 minutes, and 2 hours and 17 minutes to score the site using SAS. A site cannot be rated using SAS with the information provided in a press release. A considerable amount of additional data had to be added to the press release to achieve a meaningful score. The staff did not feel that the SAS was better than the HRS. Considering the extra staff time needed and the need for far more data to rank a site with the SAS, the HRS is the preferred system.

The words "ground water" are substituted for the word "aquifer" because Agency regulations (6 MCAR §4.8022) require "preventing any new pollution, and abating existing pollution" in the underground waters of the State. The term "aquifer" implies a source or supply of ground water in sufficient quantities to be useable for human consumption, agricultural uses, or industrial needs. "Ground water" is any water in any quantity contained below the surface of the earth in the saturated zone. Agency rules define underground water and specifically state in part of the definition that "the term ground water shall be synonymous with underground water." ERLA requires the proposed rules to "be based upon the relative risk or danger to public health or welfare or the environment" taking into account to the extent possible "the potential for destruction of sensitive ecosystems" as well as other human health related concerns. The Agency is required by regulation and by ERLA to protect the environment in addition to human health or welfare when considering releases or threatened releases to the ground water. It is reasonable to substitute "ground water" for "aquifer" because of the dual requirements necessitated by ERLA and Agency regulations to protect both human health and the environment.

The Minnesota maps are substituted for the United States hydrologic maps to provide the rater with a clearer picture of the site specific hydrologic events that can be expected at a site. The only difference between the two sets of maps is a scale change. It is reasonable to make the substitution of maps to increase the reliability of judging the hydrologic conditions at a site. Because the Agency will only rate sites in Minnesota, a majority of the information provided by the United States maps is extraneous.

K. Part 7044.1100: Reimbursement for Past Response Actions.

Part 7044.1100 requires claims by any private person for reimbursement of expenditures made before July 1, 1983 for provision of alternative water supplies to be submitted to the Agency within twelve months after the date these rules become effective. Reimbursement claims are limited to any reasonable costs for actions of the type which would have been taken by the Agency to respond to a release.

The intent of this rule is to provide a reasonable time for the public to submit any claims for reimbursement of expenditures and establish for the Agency a specific time frame within which ERLA funds may have to be allocated to meet reimbursement claims. One year from the date the rule becomes effective is a reasonable amount of time to allow the public to submit their claims. It would be unreasonable to expect the Agency to set aside for an indefinite time a portion of State Superfund monies to cover future claims which may or may not arise.

L. Part 7044.1200: Prescreening of Potential Hazardous Waste Sites.

Part 7044.1200 is a prescreening questionnaire used to determine the eligibility of releases or the threatened releases for inclusion on the permanent list of priorities. The HRS will generate a score for almost any site even though very minimal danger exists because the hazardous substances, pollutants or contaminants are considered non-toxic/persistent or non-reactive. While the HRS score for such a site would be extremely small, without this rule to screen sites, the permanent list of priorities might become unnecessarily

long. It is reasonable to limit the sites listed on the permanent list of prioritites to only those sites which pose at least some danger to the public health, welfare or to the environment.

VI. Small Business Considerations in Rulemaking.

The Agency is required to address in this document the impact a proposed new rule may have on small businesses and to make an effort to reduce the impacts where possible (Minnesota Laws 1983, 14.115).

The proposed rules establish State criteria for determining priorities among releases or threatened releases as required by ERLA. The proposed rules' sole purpose is to direct the administration of the State Superfund program and therefore they do not have any direct or indirect economic impacts on small business.

VII. Economic Impact of the Proposed Priority Assessment Criteria Rules.

Minnesota Statutes, Section 116.07, subdivision 6 states as follows:

> In excercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible and practical under the circumstances.

This statute has general applicability to all actions of the Agency. In the rulemaking context, this statute has been interpreted by the Agency to mean that, in determining whether to adopt proposed rules or amendments, the Agency

must consider, among other evidence, the impact which economic factors may have on the feasibility and the practicability of the proposed rules or amendments.[2]

As stated previously, the proposed rules' sole purpose is to direct the administration of the State Superfund program and therefore they do not have any direct or indirect economic impacts on the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic and other economic factors.

VIII. Conclusion.

The Agency staff has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed rules governing procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants or contaminants, Chapter 7044. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed rules.

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[2]In Finding No. 4 of the Agency's Findings of Facts and Conculsions in the Matter of the Proposed Revision to Minnesota Rule APC 1, 6 MCAR §4.0001, Relating to Ambient Air Quality Standards, the Agency discussed the requirements of Minnesota Statutes, Section 116.07, subdivision 6 as follows:

> ...in order for the Agency to duly consider economic factors when it determines whether to adopt the amendments to Minnesota Rule APC 1, the record upon which the Agency will make its determination must include data on the economic impacts of those amendments. These economic impacts, however, need not be quantified with absolute certainty in order to be considered. Further, these economic impacts may include costs other than the cost of complying with a proposed rule. For instance, material losses, crop losses, health costs, and impacts on tourism are also economic factors that should be duly considered by the Agency in determining whether to adopt the amendments to Minnesota Rule APC 1.

IX. List of Exhibits.

The following documents were utilized by Agency staff in developing these rules and are relied on by the Agency as support for the reasonableness of Chapter 7044.

"Comments of FMC Corporation on Environmental Protection Agency's Proposed National Priorities List and the Listing of FMC's Fridley Facility," February 28, 1983, of Counsel William W. Warren, et.al.

Federal Register: 47 F.R. 10975-76, March 12, 1982; 47 F.R. 31187-31192, July 16, 1982; 47 F.R. 31219-31243, July 16, 1982.

"Hazardous Waste Management: A Survey of State Legislation 1982," by the National Conference of State Legislatures' Solid and Hazardous Waste Project, 1982.

Occupational Health and Safety Administration Regulations, 29 CFR 1910, 1975.

"Preliminary Risk Evaluation for Suspected Hazardous Waste Disposal Sites in Connecticut," Dennis Unities, et. al., U.S. Environmental Protection Agency National Conference on Management of Uncontrolled Hazardous Waste Sites Symposium Proceedings, October 15-17, 1980, Washington, D.C. pages 25-29.

"Rating the Hazardous Potential of Waste Disposal Facilities," Charles Kufs, et.al. U.S. Environmental Protection Agency National Conference on Management of Uncontrolled Hazardous Waste Sites Symposium Proceedings, October 15-17, 1980, Washington, D.C. pages 30-41.

State of Florida -- Water Quality Assurance Act of 1983.

State of Michigan -- "Site Assessment System (SAS) for the Michigan Priority Ranking System under the Michigan Environmental Response Act (Act 307, P.A. 1982)," (Draft), State of New York -- 27-0900 through 0923; 27-1301 through 1319, Environmental Conservation Law, May 1983.

State of Minnesota -- State Superfund Bill, May 2, 1983.

State of New Jersey -- N.J.A.C., 7: 26-1, 4, 7-12, Hazardous Waste Regulations
N.J.A.C., 7: 14A-4, 6, 11, Hazardous Waste Regulations
N.J.A.C., 7: 1E1.1 et seq.

"Survey of Investigative Procedures used by a Number of States When Examining a Possible Hazardous Waste Site, B.J. Battig, October 1983.

U.S. Department of Agriculture, Hydrology Guide for Minnesota, Soil Conservation Service, St. Paul, Minnesota, Circa 1976.

U.S. Environmental Protection Agency -- Uncontrolled Hazardous Waste Site Ranking System -- A User's Manual (Draft), June 10, 1982.

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed Rules Governing Procedures
For Establishing a Permanent
List of Releases or Threatened
Releases of Hazardous Substances,
Pollutants or Contaminants.

FINDINGS OF FACT
AND CONCLUSIONS

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 31st day of May, 1984. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Agency, after considering all of the evidence adduced upon the records, files and proceedings hereing, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Agency published its notice of intent to adopt the above-captioned rules, together with the proposed rules, in the State Register on April 16, 1984 (8 S.R. 2270).

2. On April 13, 1984, the Agency gave the same notice by United States mail to all persons who have registered their names with the Agency pursuant to Minn. Stat. §14.14 (Supp. 1983).

3. The notice of the Agency's intent to amend the rules afforded all interested persons 30 days to submit data and views on the proposed rules. The notice was in all respects in

compliance with the requirements of Minn. Stat. §14.22 (Supp. 1983).

4. The Agency prepared a Statement of Need and Reasonableness and made it available to the public upon the date of mailing of the notice of intent to adopt the rules.

5. The 30 day comment period, as set out in the notice, expired on May 15, 1984.

6. During the comment period, the Agency received 3 written comments.

7. The Agency finds that no modifications to the proposed rules are supported by the data and views submitted to the Agency within the comment period.

8. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the amendments to the rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely and adequate notice of the intent to adopt rules without a public hearing.

3. All relevant legal and procedural requirements of statute

and rule have been complied with.

4. The Agency is making no modifications to the proposed rules and therefore has made no substantial change in the rules.

MINNESOTA POLLUTION CONTROL AGENCY

Cynthia C Jepsen

Cynthia Jepsen
Chairperson

Thomas Kalitowski

Thomas J. Kalitowski
Executive Director

Dated: May 31, 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

June 1, 1984

Mr. Mike Miles
Assistant Attorney General
Office of the Attorney General
Administration Building
St. Paul, MN 55155

Re: Proposed rules Governing Procedures For Establishing a Permanent List of Releases or Threatened Releases of Hazardous Substances, Pollutants or Contaminants

Dear Mr. Miles:

On May 31, 1984, the Minnesota Pollution Control Agency adopted Minn. Rule §§ 7044.0100-7044.1200, Procedures for Establishing a Permanent List of Releases and Threatened Releases of Hazardous Substances, Pollutants, or Contaminants.

1. Rules as adopted (original and three copies).

2. Order Adopting Rules (two copies).

3. Certificate of Agency's Resolution Adopting Rules.

4. Notice of Intent to Solicit Outside Opinion (8 S.R. 611, October, 1984).

5. Affidavit Regarding Comments Received Pursuant to Notice of Intent to Solicit Outside Opinion.

6. Order for Notice of Intent to Adopt Rules Without a Public Hearing.

7. Certificate of Agency's Authorizing Resolution.

8. Notice of Intent to Adopt Rules Without A Public Hearing and rules as proposed (8 S.R. 2270, April 16, 1984).

9. Copies of the written comments received during the comment period.

10. Affidavit of Mailing, Notice of Intent to Adopt Rules Without A Public Hearing, as mailed, and mailing list.

RECEIVED
JUN 1 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

11. Certificate concerning mailing list.

12. Rules as proposed.

13. Findings of Fact and Conclusions.

14. Statement of Need and Reasonableness.

15. Statement of Compliance with Rulemaking Procedures.

16. Affidavit Regarding Notification of Submission to Attorney General.

Very truly yours,

LEROY C. PADDOCK
Special Assistant
Attorney General

RECEIVED
JUN 1 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

**FMC Corporation**

Northern Ordnance Division
4800 East River Road
Minneapolis Minnesota 55421
612 571 9201 Telex 29 0432

15 May 1984

REC'D FMC
MAY 25 1984
MINN. POLLUTION CONTROL AGENCY

Mr. Dale Trippler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B2
Roseville, MN 55113-2785

Subject:
Proposed Rules Governing Procedures
for Establishing a Permanent List of Releases

Northern Ordnance Division of FMC Corporation has the following comments to the subject proposed rules:

1. Part 7044.0500 Subparts 1 and 2 describe how sites previously listed can be deleted from annual updates if "the site no longer poses a threat to public health or welfare on the environment from a release or threatened release...". However, no definition is provided for the term "threat". Is the agency going to develop a means to determine what a "threat" is or are they going to use water quality criteria like they have in the past or proposed or existing drinking water standards or the "catchall" non-degradation statutes to define what a threat is?

   Such an approach could be ambiguous and up to the discretion of the agency. The term should be clearly defined.

2. Part 7044.0600 concerns the Annual Update of the Permanent List priorities allowing a 30-day period to comment on a proposed updated list. This time period is not adquate to collect, develop and submit comments on such an update. U.S. EPA allows 60 days to submit comments to such a list. The state should be consistent with the Federal guidelines in this matter.

Thank you for considering FMC's comments.

Very truly yours,

FMC CORPORATION
Northern Ordnance Division

William W. Warren
Counsel

pg

Honeywell

May 15, 1984

Mr. Dale Trippler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B2
Roseville, MN. 55113

Subject: MPCA Proposed Rules Governing Procedures for Establishing a Permanent List of Releases of Hazardous Substances, Pollutants or Contaminants

Dear Mr. Trippler:

I am responding on behalf of Honeywell in regard to the above referenced proposed rules. Honeywell is not requesting a public hearing on these proposed rules, however, we feel a response in support of the thirty (30) day public comment period for annual up-dates of the permanent list of priorities is in order.

Recently Honeywell was not able to comment on the MPCA Hazardous Waste Site Log due to an insufficient amount of response time prior to final publication and release. In this case the letter from the agency to Honeywell was dated April 19, but was not received until May 7. As you know, the final edition of the log was released on May 1. Since this log and the permanent list of priorities will be combined into one document, as discussed in our phone conversation on May 15, the thirty day public comment period should help eliminate the problem discussed above.

Sincerely,

Kenneth G. Ford, P.E.
Corporate Manager
Environmental Affairs

KGF:bvc

MAY 15 1984
MINN. POLLUTION CONTROL AGENCY

Northern States Power Company

414 Nicollet Mall
Minneapolis, Minnesota 55401
Telephone (612) 330-5500

May 14, 1984

Mr. Dale Trippler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B2
Roseville, MN 55113

RECEIVED
MAY 15 1984
MINN. POLLUTION CONTROL AGENCY

Re: Proposed Rules Governing Procedures for Establishing a Permanent List of Releases or Threatened Releases of Hazardous Substances, Pollutants or Contaminants

Northern States Power Company takes this opportunity to address two comments towards the proposed rules.

- The proposed rules ordain that all sites which come to the attention of the agency be assigned classifications and rating priorities if there are releases or threatened releases from those sites. The purpose of establishing this priorities list for hazardous waste sites is to determine the appropriate order of allocating funds from the state superfund for response action. Because of this, it is NSP's position that a site with a release or threatened release should not be placed on the list of priorities if one or more responsible persons is assuming responsibility for the necessary response action. In this instance, a responsible person who was cooperating fully with the agency would avoid the adverse publicity associated with having a site on the state priorities list.

  To effectuate this result, NSP suggests adding a sentence to the definition of "site" at MR 7044.0200 subp. 7 as follows:

  > "Site does not include a location where one or more responsible persons is assuming responsibility for the necessary response action".

- The change in designation from aquifer to groundwater broadens the areas to be considered to include virtually all of the land in Minnesota because most of the land has groundwater below. The change in definition to groundwater is so expansive that the rule could just as well be changed to eliminate consideration of groundwater altogether. EPA's consideration of a "sites" potential to affect an aquifer should be retained in the Minnesota rule.

If you have any questions regarding these comments, please call me at 330-6391.

C. Gary Anderson
Senior Consultant
Regulatory Liaison

sw

CENTRAL-LAKE STATES REGIONAL CENTER
Department of Paper Science & Engineering
Western Michigan University
Kalamazoo, MI 49008
(616) 383-0919

ncasi

NATIONAL COUNCIL OF THE PAPER INDUSTRY FOR AIR AND STREAM IMPROVEMENT, INC.

May 11, 1984

MAY 16 1984
MINN. POLLUTION CONTROL AGENCY

Mr. Dale Trippler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B2
Roseville, MN 55113

Dear Mr. Trippler:

We have read the proposed rules governing procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants or contaminants and would like to offer a few comments on the use of EPA's Hazard Ranking System. We prepared these comments for EPA when the system was under review at EPA in 1982. They are enclosed for your consideration.

If you have any questions, please feel free to contact me.

Sincerely,

Reid A. Miner
Regional Manager

RAM:eak

pc Russell Blosser
NCASI Member Mills in Minnesota
Minnesota Forest Industries

NATIONAL COUNCIL OF THE PAPER INDUSTRY FOR AIR AND STREAM IMPROVEMENT, INC.
260 MADISON AVE. NEW YORK, N.Y. 10016 (212) 532-9000

Duane W. Marshall
Regulatory Affairs Program Manager
(212) 532 9435

April 28, 1982

Mr. William N. Hedeman, Jr., Director
Office of Emergency and Remedial Response (WH-548)
Environmental Protection Agency
401 M. St., S.W.
Washington, D.C. 20460

Re: Hazardous Substances; National Oil and Hazardous Substances Pollution Contingency Plan; Proposed Rule (FR 47 (49) 10972-95)

Dear Mr. Hedeman:

Comments contained herein are directed principally toward a number of technical issues that arise in application of the ranking model proposed as part of a Hazard Ranking System to be used in the development of a National Priority List. The comments are drawn from observations made by James J. McKeown, NCASI Northeast Regional Manager who has had responsibility for a broad array of environmental modelling activities carried out within the National Council technical studies program.

## I Conceptual Approach

Conceptually, the use of a ranking model as a tool to aid in identifying those sites which most warrant planned removal and remedial action is a positive approach. Furthermore, the model proposed acceptably identifies the major factors which warrant consideration in distinguishing the relative risk posed by individual sites. Documents descriptive of the model also express a proper understanding in limitations to its use. It is those limitations, however, that compel that the model not be used for absolute ranking in the absence of or a substitute for sound technical judgments derived from site examination. There are also several structural aspects to the model which warrant additional scrutiny.

## II Structural Aspects of the Model

### A. Inconsistency in Factoring Sub-Indices

In taking a segmented approach in the development and application of a ranking model, one usually strives for an element of consistency in factoring the various sub-indices. Failure to do so tends to mask major factors of consequence to the ranking. The proposed model is not consistent in its factoring. The groundwater route provides a convenient illustration. Among route characteristics, the rating factors are based on (a) a non-equal step approach for aquifer depth, (b) an equal increment approach for net precipitation and (c) a geometric approach for unsaturated zone permeability. Differences of this nature introduce a possible flaw into the validity of the model.

### B. Aggregation of Rating Values

The additive and multiplicative approaches used in deriving a rating value for individual routes are appropriately applied. However, in aggregating the rating values for each pathway, one must be sensitive to the prospect that the overall rating value might suggest, as an anomaly of the aggregation procedure, a priority which is inconsistent with risks reflected by rating values for the individual pathways.

Inherent with the use of a root-sum-square aggregation is a significant ambiguous zone in which the risk posed by a specific facility may well be exaggerated. Opportunity for that occurence may be reduced by use of a higher exponent in a root-sum-power aggregation or, alternatively, a root mean square aggregation. However, it should be recognized that the latter suffers a deficiency in that the overall rating value may not reflect that a high risk is associated with one of the individual pathways. In other words, a high risk associated with groundwater contamination, for instance, may be eclipsed in the overall rating value.

To address that circumstance, one might incorporate into the overall rating scheme the use of a maximum operator. For instance, a rating value for the groundwater route which exceeds a designated threshold would suggest the need for further analysis and, possibly, higher placement in the National Priority List.

## III Summary

Use of the proposed ranking model is seen as a constructive approach, subject to the forementioned limitations and shortcomings. Its validity, however, remains to be demonstrated through application. In going forward with its use, the Agency

should critically review early rankings with an eye toward making necessary adjustments.

At your convenience, our staff would welcome the opportunity to discuss further with you any of the points raised in these comments.

Very truly yours,

Duane W. Marshall
Regulatory Affairs
Program Manager

DWM:lb

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

Proposed rules Governing Procedures
For Establishing a Permanent
List of Releases or Threatened
Releases of Hazardous Substances,
Pollutants or Contaminants

STATEMENT OF COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Special Assistant Attorney General LeRoy C. Paddock, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

LeRoy C. Paddock

LEROY C. PADDOCK
Special Assistant
Attorney General

Dated: May 31, 1984

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Rules Governing Procedures
For Establishing a Permanent
List of Releases or Threatened
Releases of Hazardous Substances,
Pollutants or Contaminants

AFFIDAVIT REGARDING
NOTIFICATION OF
SUBMISSION TO
ATTORNEY GENERAL

STATE OF MINNESOTA ) ss.
COUNTY OF RAMSEY )

Dale Trippler, being duly sworn on oath deposes and says:

1. That he is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing as published in the State Register (8 S.R. 2270, April 16, 1984) and as mailed to interested persons on April 13, 1984, as the person to receive requests for notification on the date that the Agency submits the above-entitled rules to the Attorney General for review.

2. That no person requested to be notified of the date that the Agency submits the rules to the Attorney General for review.

Dale Trippler

Subscribed and sworn to before me
this 31st day of May, 1984.

Margaret Frank
Notary Public

MARGARET FRANK
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985