

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1374 Docket No. 05.0009.0696

DATE RECEIVED 6/12
REVIEW DATE 6/15
DUE DATE 6/16

APPROVED 6/16
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion
6/16/86 Date published in State Register
none Comments

Petition for Adoption of a Rule

✓ Board's Authorizing Resolution

✓ Proposed rule
M Revisor's Certificate

✓ Notice of Intent to Adopt Rule
116.07 subd 4 Statutory Authority ok
yes Small business statement
no Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
3/6/87 Date (30/25 days before adoption

✓ Publication in State Register
3/9/87 Date 30/25 days before adoption

✓ Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting
4/28/87 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Mamie Segall Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

✓ Affidavit ~~of Mailing Notice to Attorney General~~

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : June 22, 1987

TO : NANCY J. LARSON
Pollution Control Specialist
520 Lafayette Road

FROM : MIKE MILES
Assistant Attorney General

PHONE : 6-6555

SUBJECT : In the Matter of the Adopted Rules Relating to Hazardous Waste; Closure, Post-Closure, and Financial Assurance.

The above-referenced rule has been approved as to its legality by the Attorney General on June 16, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM:nah

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

Pollution Control Agency

Adopted Permanent Rules Relating to Hazardous Waste; Closure, Post-closure, and Financial Assurance

Rules as Adopted

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the agency shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the agency finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or B, the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. If the permit is a permit described in part 7001.0020, item B, the following additional requirements apply:

A. The new owner or operator shall submit a revised permit application to the director no later than 90 days before the scheduled change in ownership or control.

B. The previous owner or operator shall comply with the financial requirements of parts 7045.0498 to 7045.0524 until the new owner or operator has demonstrated compliance with the

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requirements to the director. The new owner or operator must demonstrate compliance within 180 days after the date of the change in ownership or control of the facility. Upon demonstration of compliance to the director, the director shall notify the previous owner or operator in writing that the owner or operator is no longer required to comply with parts 7045.0498 to 7045.0524.

Subp. 3. [Unchanged.]

Subp. 4. **Revocation without reissuance.** The director shall give notice to the permittee of a proposal to revoke a permit without reissuance. This notice must state that within 30 days of the receipt of the notice the permittee may request a contested case hearing be held on the proposed action. If the permittee requests a contested case hearing, the agency shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, parts 1400.5100 to 1400.8402.

7001.0560 GENERAL INFORMATION REQUIREMENTS FOR PART B OF APPLICATION.

Part B of the application must contain the following information:

A. [Unchanged.]

B. Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses must contain all information that is necessary to treat, store, or dispose of the wastes properly in accordance with parts 7045.0450 to 7045.0544.

C. to K. [Unchanged.]

L. A copy of the closure plan and, where applicable, the post-closure plan required by parts 7045.0486 and 7045.0490, including, if applicable, the specific information in parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8.

M. For disposal units that have been closed, documentation that a notice has been placed in the deed or

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appropriate alternative instruments as required by part 7045.0496.

N. The most recent closure cost estimate for the facility prepared in accordance with part 7045.0502 and a copy of the documentation required to demonstrate financial assurance under part 7045.0504. For a new facility, a copy of the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

O. If applicable, the most recent post-closure cost estimate for the facility prepared in accordance with part 7045.0506 and a copy of the documentation required to demonstrate financial assurance under part 7045.0508. For a new facility, a copy of the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

P. to U. [Unchanged.]

7001.0650 INTERIM STATUS.

Subpart 1. **Qualifying for interim status.** Except as provided in subpart 2, during the period after the submission of Part A of a hazardous waste facility permit application to the Environmental Protection Agency or to the director and before a final determination by the agency on the permit application, the owner or operator of an existing hazardous waste facility shall be considered to be in compliance with the requirement to obtain a permit if the director finds that the Environmental Protection Agency has granted the owner or operator interim status or if the director finds:

A. and B. [Unchanged.]

Subp. 2. **Failure to obtain interim status from EPA.** Notwithstanding the provisions of subpart 1, an owner or operator of a hazardous waste facility who, before April 23, 1984, was required to apply for and obtain interim status from the Environmental Protection Agency but who failed to obtain this interim status is not eligible to obtain interim status

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from the agency for that facility.

Subp. 3. and 4. [Unchanged.]

Subp. 5. **Changes during interim status.** An owner or operator who has interim status may conduct the following activities as prescribed:

A. The owner or operator may treat, store, or dispose of hazardous wastes not previously specified in Part A of the application if the owner or operator submits a revised Part A of the permit application before commencement of the treatment, storage, or disposal.

B. The owner or operator may increase the design capacity of the facility if, before implementation of the increase, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the change, and if the director approves the increase in writing. The director shall approve the change if the director finds that there is a lack of available treatment, storage, or disposal capacity at other permitted hazardous waste facilities.

C. The owner or operator may add new processes or change the processes for the treatment, storage, or disposal of hazardous waste if, before implementation of the addition or change, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the addition, and if the director approves the addition or change in writing. The director shall approve the addition or change if the director finds that:

(1) [Unchanged.]

(2) the addition or change is necessary for the owner or operator to comply with federal, Minnesota, or local requirements, including the interim status standards in parts 7045.0552 to 7045.0642.

D. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A of the permit application not later than 90 days before the scheduled change. When a transfer of ownership or operational control of a facility occurs, the former owner or

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operator shall comply with the requirements of parts 7045.0608 to 7045.0624 that relate to financial requirements, until the new owner or operator has provided to the director a demonstration of compliance with parts 7045.0608 to 7045.0624. The new owner or operator must demonstrate compliance within six months. All other interim status duties must be transferred immediately upon the change of ownership or operational control of the facility. If the director finds that the new owner or operator has complied with parts 7045.0608 to 7045.0624, the director shall notify the former owner or operator in writing that the required demonstration by the new owner or operator has been made and the former owner or operator no longer needs to comply with parts 7045.0608 to 7045.0624 as of the date of the demonstration.

Subp. 6. **Compliance with interim status standards.** During the interim status period the owner or operator shall comply with the interim status standards in parts 7045.0552 to 7045.0642.

Subp. 7. [Unchanged.]

7001.0730 MODIFICATION OF PERMITS; REVOCATION AND REISSUANCE OF PERMITS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Minor modifications of permits.** In addition to the corrections or allowances listed in part 7001.0190, subparts 2 and 3, if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in parts 7001.0100 to 7001.0130:

A. to C. [Unchanged.]

D. to change the expected year of closure under part 7045.0486, subpart 3, item F;

E. to change schedules for final closure under part 7045.0486, subpart 3, item E;

F. to K. [Unchanged.]

Subp. 5. [Unchanged.]

7045.0020 DEFINITIONS.

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Subpart 1. and 2. [Unchanged.]

Subp. 2a. **Active life.** "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the director receives certification of final closure.

Subp. 3. to 24. [Unchanged.]

Subp. 24a. **Final closure.** "Final closure" means the closure of all hazardous waste management units at the facility in accordance with the approved facility closure plan and all applicable closure requirements.

Subp. 25. to 36. [Unchanged.]

Subp. 36a. **Hazardous waste management unit.** "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

Subp. 37. to 64. [Unchanged.]

Subp. 65. **Partial closure.** "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of parts 7045.0450 to 7045.0544 or 7045.0552 to 7045.0642 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and containment systems, a landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

Subp. 66. to 108. [Unchanged.]

7045.0486 CLOSURE.

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Subpart 1. **Scope.** Except as part 7045.0450 provides otherwise, the provisions of subparts 2 to 6 and part 7045.0488 apply to the owner or operator of a hazardous waste facility.

Subp. 2. **Closure performance standard.** The owner or operator shall close the facility in a manner minimizing the need for further maintenance. Closure procedures must result in controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, in accordance with the closure requirements including, the requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; 7045.0542, subpart 8.

Subp. 3. **Submittal and contents of closure plan.** The owner or operator of a hazardous waste facility shall submit a closure plan with the permit application, and the closure plan must be approved by the agency as part of the permit issuance procedure. The approved closure plan shall become a condition of any permit. The agency's approval must ensure that the approved closure plan is consistent with subparts 2, 4, and 5, and part 7045.0488, and the applicable closure requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8.

A copy of the approved closure plan and all revisions to the plan must be furnished to the director upon request, including request by mail, until final closure is completed and certified. The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must at least include all of the following:

A. A description of how each hazardous waste management unit will be closed, and how the facility will be

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finally closed. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of subparts 2, 5, part 7045.0488, and the applicable closure requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8 will be met.

B. An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type of off-site hazardous waste management units to be used, if applicable.

C. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, facility equipment, structures, and soils during partial and final closure, including, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard.

D. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, ground water monitoring, leachate collection, and run-on and run-off control.

E. A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure.

F. An estimate of the expected year of closure for facilities that use trust funds to establish financial assurance

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under part 7045.0504 or 7045.0508 and that are expected to close before the expiration of the permit.

Subp. 4. **Amendment of plan.** The owner or operator must submit a written request to the director for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the agency's permitting procedures in chapter 7001. The written request must include a copy of the closure plan amendments for approval. The owner or operator may request a permit modification to amend the closure plan at any time before notification of partial or final closure of the facility. The owner or operator shall request a permit modification to amend the plan whenever:

A. changes in operating plans or facility design affect the closure plan; or

B. there is a change in the expected year of closure for those facilities that use trust funds to establish financial assurance as provided in subpart 3; or

C. in conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

The director may request modifications to the plan under the conditions described in items A to C. The owner or operator must submit the modified plan within 60 days of the director's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the director will be approved in accordance with the agency's permitting procedures in chapter 7001. The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days before the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event.

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Subp. 5. **Notification of partial and final closure.**

A. The owner or operator shall notify the director in writing at least:

(1) 60 days before the date the owner or operator expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

(2) 45 days before the date the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units remaining to be closed.

B. The date on which the owner or operator "expects to begin closure" is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional volumes of hazardous waste" if the owner or operator in fact receives hazardous wastes within one year after the last volume was received. The director may approve an extension to this one-year limit if the owner or operator of a hazardous waste management unit can demonstrate to the director that the unit or facility has the capacity to receive additional hazardous wastes and he or she has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

If the facility's permit or interim status is terminated,

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or if the facility is otherwise ordered by judicial decree or compliance order to cease receiving hazardous waste or to close, then the requirement in this item does not apply. However, the owner or operator shall close the facility in accordance with established deadlines.

Subp. 6. **Removal of wastes and decontamination or dismantling of equipment.** Nothing in this part precludes the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved closure plan at any time before or after notification of partial or final closure.

7045.0488 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site all hazardous waste in accordance with the approved closure plan. The director may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90-day period, that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all permit requirements and:

A. the activities required to comply with the approved closure plan will, of necessity, take longer than 90 days to complete; or

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

C. the owner or operator complies with all applicable requirements for requesting a modification to the permit.

If the owner or operator of a facility required to maintain

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financial assurance for closure, post-closure care, or corrective action fails to make a required payment or to substitute alternative financial assurance when required to do so, the director shall order the owner or operator to begin closure activities.

Subp. 2. **Time extension for closure activities.** The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous waste at the hazardous waste management unit or facility. The director may approve a longer closure period if the owner or operator demonstrates at least 30 days before expiration of the 180-day period that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements and:

A. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, there is a reasonable likelihood the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

C. the owner or operator complies with all applicable requirements for requesting a modification to the permit.

If operation of the site is recommended, the director may defer completion of closure activities until the new operation is terminated.

Subp. 3. **Disposal or decontamination of equipment, structures, and soils.** During the partial and final closure periods, all contaminated facility equipment, structures, and soils must be properly disposed of or decontaminated unless otherwise specified in parts 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8, and 7045.0538, subpart 7. By

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removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of parts 7045.0205 to 7045.0304.

Subp. 4. **Certification of closure.** Within 60 days after each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit is closed, and within 60 days after final closure is completed, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan.

Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for closure under part 7045.0504, subpart 10.

7045.0490 POST-CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Submittal of post-closure plan.** The owner or operator of a facility shall submit a post-closure plan with the permit application, and the plan must be approved by the agency as part of the permit issuance procedure. The approved post-closure plan will become a condition of any permit issued.

Owners or operators of surface impoundments and waste piles which are not otherwise required by part 7045.0532, subpart 7 or 7045.0534, subpart 7 to prepare a post-closure plan, must submit a post-closure plan to the director within 90 days after the owner or operator or the director determines that the unit must be closed as a landfill and is subject to the post-closure care requirements of parts 7045.0490 to 7045.0496.

Subp. 3. **Post-closure plan; amendment of plan.** A copy of the approved plan and all revisions to the plan must be

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furnished to the director upon request, including request by mail until final closure of the facility. After final closure has been certified, the person or office in item C must keep the approved post-closure plan during the remainder of the post-closure period. For each hazardous waste management unit subject to post-closure care requirements the plan must identify the activities which will be carried on after closure and the frequency of these activities, and it must include at least:

A. [Unchanged.]

B. a description of the planned maintenance activities and frequencies at which they will be performed to ensure the integrity of the cap and final cover or other containment systems according to parts 7045.0532 to 7045.0538, and the function of the facility monitoring equipment according to parts 7045.0484 and 7045.0532 to 7045.0538; and

C. the name, address, and telephone number of the person or office to contact about the disposal facility during the post-closure period. This person or office must keep an updated post-closure plan during the post-closure period.

The owner or operator may submit a written request for a permit modification to amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure period in accordance with the agency's permitting procedures in chapter 7001. The owner or operator shall request a permit modification to amend the plan whenever changes in operating plans, or facility design, or events which occur during the active life of the facility including partial and final closures, or during the post-closure period affect the post-closure plan. He or she shall also amend the plan whenever there is a change in the expected year of final closure, if applicable. In addition, the director may request modifications to the post-closure plan under these conditions.

When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time. The owner or operator must submit a

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written request for a permit modification at least 60 days before the proposed changes in operating plans or facility design, or no later than 60 days after the unexpected events which affect the post-closure plan occur. If the director requests modification of the post-closure plan, the owner or operator must submit the modified plan no later than 60 days after the director's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the director will be approved, disapproved, or modified in accordance with the agency's permitting procedures in chapter 7001.

7045.0492 POST-CLOSURE CARE AND USE OF PROPERTY.

Subpart 1. **Post-closure care requirements.** Post-closure care requirements are as follows:

A. Post-closure care of each hazardous waste management unit subject to parts 7045.0490 to 7045.0496 must continue for 30 years after the date of completing closure of the unit and must consist of at least monitoring and reporting according to parts 7045.0484 and 7045.0532 to 7045.0538, and the maintenance of monitoring and waste containment systems, according to parts 7045.0484 and 7045.0532 to 7045.0538.

B. Any time preceding closure of a hazardous waste management unit subject to the post-closure care requirements or final closure, or at any time during the post-closure period for a particular unit, the director may reduce the post-closure care period in accordance with the agency's permit modification procedures in chapter 7001 for the hazardous waste management unit or facility, if all disposal units have been closed if it is found that the reduced period is sufficient to protect human health and the environment. This determination must be based on leachate or ground water monitoring results, waste characteristics, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicating the hazardous waste management unit or facility is secure.

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C. Before the time that the post-closure care period is due to expire, the director may extend the post-closure care period in accordance with the agency's permit modification procedures in chapter 7001 for the hazardous waste management unit or facility if it is found that the extended period is necessary to protect human health and the environment. This determination must be based on factors such as leachate or ground water monitoring results that indicate a potential for migration of hazardous waste at levels which may be harmful to human health and the environment.

D. All post-closure care activities must be in accordance with the approved post-closure plan.

Subp. 2. **Continuation of security requirements.** The director may require, at partial and final closure, continuation of any of the security requirements during part of or all of the post-closure period after the date of completing closure when hazardous wastes may remain exposed after completion of partial or final closure or when access by the public or domestic livestock may pose a hazard to human health.

Subp. 3. **Post-closure use of property.** Post-closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed by the owner or operator to disturb the integrity of the final cover, liners, or any other components of any containment system or the function of the facility's monitoring systems, unless the owner or operator can demonstrate to the director either in the post-closure plan or by petition that the disturbance:

A. and B. [Unchanged.]

Subp. 4. **Certification of completion of post-closure care.** Within 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the approved post-closure

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plan. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for post-closure care under part 7045.0508, subpart 10.

7045.0494 NOTICE TO LOCAL LAND AUTHORITY.

Subpart 1. **Submission of survey plat.** No later than submission of the certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified.

Subp. 2. **Post-closure notices.** Within 60 after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall comply with all requirements of Code of Federal Regulations, title 40, section 264.119 (1983). The owner or operator shall identify the type, location, and quantity of the waste to the best of his or her knowledge and in accordance with any records he or she has kept. A change in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occurs after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority

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with jurisdiction over local land use and to the director.

7045.0496 NOTICE IN DEED TO PROPERTY.

Subpart 1. **Deed notation.** Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit the owner or operator shall:

A. record, in accordance with state law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(1) the land has been used to manage hazardous waste;

(2) the land use is restricted; and

(3) the survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or other hazardous waste disposal unit of the facility required in part 7045.0494 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

B. submit a certification signed by the owner or operater that he or she has recorded the notation specified in this subpart, including a copy of the document in which the notation has been placed, to the director.

Subp. 2. **Changes to the deed.** If at any time the owner or operator or a subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove the hazardous wastes and hazardous waste residues, the liner, if any, or contaminated underlying and surrounding soil, he or she must request a permit modification to amend the post-closure plan in accordance with the agency's permitting procedures in chapter 7001. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of part 7045.0492, subpart 3. If the owner or operator is granted approval to conduct removal activities, he

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or she may request that the director approve either:

A. removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

B. addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

By removing hazardous waste and hazardous waste residue, the liner, if any, and the contaminated soil, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter.

7045.0498 FINANCIAL REQUIREMENTS.

Subpart 1. [Unchanged.]

Subp. 2. **Definitions.** The following definitions apply:

A. When used in parts 7045.0498 to 7045.0524, the following terms have the meanings given.

(1) "Closure plan" means the plan for closure prepared in accordance with part 7045.0486.

(2) "Corrective action plan" means the plan for corrective action prepared in accordance with part 7045.0484, subparts 2, item D, and 14.

(3) and (4) [Unchanged.]

(5) "Current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities" means the most recent of the estimates prepared in accordance with Code of Federal Regulations, title 40, section 144.62 (a), (b), and (c).

(6) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0506, subparts 1, 2, and 3.

(7) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the later corporation is deemed a "subsidiary" of the parent corporation.

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(8) "Post-closure plan" means the plan for post-closure care prepared according to parts 7045.0490 to 7045.0496.

B. The following terms are used in the specifications for the financial tests for corrective action, closure, post-closure care, and liability coverage. The following definitions are intended to assist in the understanding of parts 7045.0498 to 7045.0524 and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(1) to (8) [Unchanged.]

C. In the liability insurance requirements the terms "bodily injury" and "property damage" have the meanings given these terms by applicable state law. However, these terms do not include liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The following definitions of several of the terms are intended to assist in the understanding of parts 7045.0498 to 7045.0524 and are not intended to limit their meanings in a way that conflicts with general insurance industry usage:

(1) to (4) [Unchanged.]

7045.0502 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with parts 7045.0486 and 7045.0488 and applicable closure requirements in parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8. The closure cost estimate must equal the cost of final closure at the point in the facility's active life when the extent and

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manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

A. The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if the operator can demonstrate that on-site disposal capacity will exist at all times through the life of the facility.

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days before each anniversary of the date on which the financial instruments used to comply with part 7045.0504 were established. Owners and operators using the financial test or corporate guarantee must adjust the closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in part 7045.0504, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. Adjustments must be made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** During the active life

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of the facility, the owner or operator shall revise the closure cost estimate within 30 days after the director approves the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall supply the following to the director upon request, including request by mail until final closure is completed: the latest closure cost estimate prepared in accordance with subparts 2 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted closure cost estimate.

7045.0504 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure trust fund.** The following apply to closure trust funds:

A. to J. [Unchanged.]

K. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial closure expenditures only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the director shall determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining operating life of the facility will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, in accordance with subpart 10,

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that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

L. The director shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** The following apply to surety bonds that guarantee payment into a closure trust fund:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. **Surety bond guaranteeing performance of closure.** The following apply to surety bonds that guarantee performance of closure:

A. to D. [Unchanged.]

E. Under the terms of the bond, the surety becomes liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a ~~final~~ determination by the director that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure in accordance with the closure plan and other permit requirements or will deposit the amount of the penal sum into the standby

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trust fund.

F. to H. [Unchanged.]

I. The owner or operator may cancel the bond if the director has given prior written consent. The director shall provide such written consent if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 10.

J. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 5. **Closure letter of credit.** The following apply to closure letters of credit:

A. to I. [Unchanged.]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 6. **Closure insurance.** The following apply to closure insurance:

A. to D. [Unchanged.]

E. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in

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amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the director may withhold reimbursement of amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to I. [Unchanged.]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 7. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

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C. The owner or operator shall have:

(1) a current rating for the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to J. [Unchanged.]

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 10.

L. [Unchanged.]

Subp. 8. and 9. [Unchanged.]

Subp. 10. **Release of owner or operator from requirements**

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of this part. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for closure of the particular facility, unless the director has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

7045.0506 COST ESTIMATE FOR POST-CLOSURE CARE.

Subpart 1. **Cost estimate requirements.** The owner or operator of a facility subject to post-closure monitoring or maintenance requirements shall have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in parts 7045.0490 to 7045.0496; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; and 7045.0538, subpart 7. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under part 7045.0492. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is neither a parent nor a subsidiary of the owner or operator.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within 60 days before each anniversary of the date on which the financial instruments used to comply with part 7045.0508 were established. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be

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adjusted for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the director as specified in part 7045.0506, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. Adjustments are made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the post-closure cost estimate within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall furnish the following to the director upon request, including request by mail: the latest post-closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted post-closure cost estimate.

7045.0508 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

Subpart 1. **In general.** The owner or operator of a hazardous waste management unit subject to post-closure monitoring or maintenance requirements shall establish financial assurance for post-closure care of the facility 60 days before the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall choose from the options specified in subparts 2 to 7.

Subp. 2. **Post-closure trust fund.** The following apply to post-closure trust funds:

A. to K. [Unchanged.]

L. An owner or operator or any other person

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authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure activities are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director does not instruct the trustee to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

M. [Unchanged.]

Subp. 3. **Surety bond guaranteeing payment into post-closure trust fund.** The following apply to surety bonds that guarantee payment into post-closure trust funds:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Post-closure insurance.** The following apply to post-closure insurance:

A. to D. [Unchanged.]

E. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, the

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director shall instruct the insurer to make reimbursement in amounts as the director specifies in writing. If the director does not instruct the insurer to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to K. [Unchanged.]

Subp. 7. **Financial test and corporate guarantee for post-closure care.** The financial test and corporate guarantee for post-closure care is as follows:

A. [Unchanged.]

B. The owner or operator must have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of the owner's or operator's total assets

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or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimates" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to M. [Unchanged.]

Subp. 8. and 9. [Unchanged.]

Subp. 10. **Release of owner or operator from requirements of this part.** Within 60 days after receiving certification from the owner or operator and an independent registered professional engineer that all post-closure care requirements have been completed for a hazardous waste disposal unit in accordance with the post-closure plan, the agency will, at the request of the owner or operator, notify the owner or operator in writing that the owner or operator is no longer required by this part to maintain financial assurance for post-closure care of that unit, unless the agency has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The agency shall provide the owner or operator with a detailed written statement of any reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

7045.0518 LIABILITY REQUIREMENTS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as

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required by this part until certifications of closure of the facility, as specified in part 7045.0488, are received by the director. Within 60 days after receiving the certifications from the owner or operator and an independent registered professional engineer, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the director has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 6. [Unchanged.]

7045.0524 WORDING OF INSTRUMENTS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Letter from chief financial officer for corrective action, closure, and/or post-closure care.** A letter from the chief financial officer as specified in part 7045.0504, subpart 7; 7045.0508, subpart 7; 7045.0514, subpart 7; 7045.0612, subpart 6; or 7045.0616, subpart 6 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER FOR CORRECTIVE ACTION, CLOSURE, AND/OR POST-CLOSURE CARE

[Agency Director]
Minnesota Pollution Control Agency

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, and/or post-closure cost estimates. Identify

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each cost estimate as to whether it is for corrective action, closure, or post-closure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for corrective action, closure, or post-closure care is demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624. The current corrective action, closure, and/or post-closure cost estimates covered by the text are shown for each facility: _____.

2. This firm guarantees, through the corporate guarantee specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624, the corrective action, closure, or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility: _____.

3. In states other than Minnesota, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the corrective action, closure, or post-closure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial test specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for corrective action, if required, closure, or if a disposal facility, post-closure care, is not demonstrated either to the United States Environmental Protection Agency or a state through the financial test or any other financial assurance mechanism specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or equivalent or substantially equivalent state mechanisms. The current corrective action,

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closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator of the following underground injection control (UIC) facilities for which financial assurance for plugging and abandonment is required under Code of Federal Regulations, title 40, part 144. The current closure cost estimates as required by Code of Federal Regulations, title 40, section 144.62 are shown for each facility.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; 7045.0612, subpart 6, item B; 7045.0616, subpart 6, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C; 7045.0514, subpart 7, item C; or 7045.0612, subpart 6, item C; or 7045.0616, subpart 6, item C are used.]

ALTERNATIVE I

1.	Sum of current corrective action, closure, and post-closure cost estimate [total of all cost estimates shown in the five paragraphs above]	$_____
*2.	Total liabilities [if any portion of the corrective action, closure, or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4].	$_____
*3.	Tangible net worth	$_____
*4.	Net worth	$_____
*5.	Current assets	$_____
*6.	Current liabilities	$_____
7.	Net working capital [line 5 minus line 6]	$_____
*8.	The sum of net income plus depreciation, depletion, and amortization	$_____
*9.	Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.)	$_____
		YES NO
10.	Is line 3 at least $10,000,000?	___ ___

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11.	Is line 3 at least 6 times line 1?	___	___
12.	Is line 7 at least 6 times line 1?	___	___
*13.	Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14	___	___
14.	Is line 9 at least 6 times line 1?	___	___
15.	Is line 2 divided by line 4 less than 2.0?	___	___
16.	Is line 8 divided by line 2 greater than 0.1?	___	___
17.	Is line 5 divided by line 6 greater than 1.5?	___	___

ALTERNATIVE II

1.	Sum of current corrective action, closure, and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above	$_____
2.	Current bond rating of most recent issuance of this firm and name of rating service	_____
3.	Date of issuance of bond	_____
4.	Date of maturity of bond	_____
*5.	Tangible net worth [if any portion of the corrective action, closure, and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]	$_____
*6.	Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.)	$_____

		YES	NO
7.	Is line 5 at least $10,000,000?	___	___
8.	Is line 5 at least 6 times line 1?	___	___
*9.	Are at least 90 percent of firm's assets located in U.S.? If not, complete line 10	___	___
10.	Is line 6 at least 6 times line 1?	___	___

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7045.0524, subpart 6, as such rules were constituted on the date shown immediately below.

[SIGNATURE]

[NAME]

[TITLE]

[DATE]

Subp. 7. **Letter from chief financial officer for liability coverage.** A letter from the chief financial officer as specified in part 7045.0518, subpart 6 or 7045.0620, subpart 5 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

FOR LIABILITY COVERAGE OR LIABILITY COVERAGE,

CORRECTIVE ACTION, CLOSURE, AND/OR POST-CLOSURE CARE

[Agency Director]

Minnesota Pollution Control Agency

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the

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financial test to demonstrate financial responsibility for liability coverage [insert "and corrective action, closure, and/or post-closure care" if applicable] as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

[Fill out the following paragraph regarding facilities and liability coverage. For each facility, include its identification number, name, and address.]

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624:

_____ .

[If you are using the financial test to demonstrate coverage of both liability and corrective action, closure, and post-closure care, fill in the following five paragraphs regarding facilities and associated corrective action, closure, and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for corrective action, closure, or post-closure care.]

1. The owner or operator identified above owns or operates the following facilities for which financial assurance for corrective action, closure, or post-closure care is demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624. The current corrective action, closure, and/or post-closure cost estimates covered by the test are shown for each facility:

_____.

2. The owner or operator identified above guarantees, through the corporate guarantee specified in Minnesota Rules, part 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624, the

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corrective action, closure, and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility: _____.

3. In states other than Minnesota, this owner or operator is demonstrating financial assurance for the corrective action, closure, or post-closure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial test specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The owner or operator identified above owns or operates the following hazardous waste management facilities for which financial assurance for corrective action, if required, closure, or, if a disposal facility, post-closure care, is not demonstrated either to the United States Environmental Protection Agency, or a state through the financial test or any other financial assurance mechanism specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or equivalent or substantially equivalent state mechanisms. The current corrective action, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. The owner or operator identified above owns or operates the following underground injection control (UIC) facilities for which financial assurance for plugging and abandonment is required under Code of Federal Regulations, title 40, part 144. The current closure cost estimates as required by Code of Federal Regulations, title 40, section 144.62 are shown for each facility:

_____.

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This owner or operator [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences.

[Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0518, subpart 6, item B or 7045.0620, subpart 5, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7045.0518, subpart 6, item C or 7045.0620, subpart 5, item C are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
*2.	Current assets	$_____
*3.	Current liabilities	$_____
4.	Net working capital (line 2 minus line 3)	$_____
*5.	Tangible net worth	$_____
*6.	If less than 90 percent of assets are located in the U.S., give total U.S. assets	$_____
		YES NO
7.	Is line 5 at least $10,000,000?	___ ___
8.	Is line 4 at least 6 times line 1?	___ ___
9.	Is line 5 at least 6 times line 1?	___ ___
*10.	Are at least 90 percent of assets located in the U.S.? If not, complete line 11	___ ___
11.	Is line 6 at least 6 times line 1?	___ ___

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
2.	Current bond rating of most recent issuance and name of rating service	_____
3.	Date of issuance of bond	_____
4.	Date of maturity of bond	_____
*5.	Tangible net worth	$_____
*6.	Total assets in U.S. (required only if less than 90 percent of assets located in the U.S.)	$_____
		YES NO
7.	Is line 5 at least $10,000,000?	___ ___
8.	Is line 5 at least 6 times line 1?	___ ___
*9.	Are at least 90 percent of assets located in the U.S.? If not, complete line 10	___ ___
10.	Is line 6 at least 6 times line 1?	___ ___

Part B. Corrective Action, Closure, or Post-Closure Care and Liability Coverage.

[Fill in Alternative I if the criteria of Minnesota Rules,

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parts 7045.0504, subpart 7, item B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; and 7045.0518, subpart 6, item B are used or if the criteria of Minnesota Rules, parts 7045.0612, subpart 6, item B or 7045.0616, subpart 6, item B; and 7045.0620, subpart 5, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, parts 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C; 7045.0514, subpart 7, item C; and 7045.0518, subpart 6, item C are used or if the criteria of Minnesota Rules, parts 7045.0612, subpart 6, item C; 7045.0616, subpart 6, item C; and 7045.0620, subpart 5, item C are used.]

ALTERNATIVE I

1.	Sum of current corrective action, closure, and post-closure cost estimates (total of all cost estimates listed above)	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____
3.	Sum of lines 1 and 2	$_____
*4.	Total liabilities (if any portion of your current corrective action, closure, or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)	$_____
*5.	Tangible net worth	$_____
*6.	Net worth	$_____
*7.	Current assets	$_____
*8.	Current liabilities	$_____
9.	Net working capital (line 7 minus line 8)	$_____
*10.	The sum of net income plus depreciation, depletion, and amortization	$_____
*11.	Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____
		YES NO
12.	Is line 5 at least $10,000,000?	___ ___
13.	Is line 5 at least 6 times line 3?	___ ___
14.	Is line 9 at least 6 times line 3?	___ ___
*15.	Are at least 90 percent of assets located in the U.S.? If not, complete line 16	___ ___
16.	Is line 11 at least 6 times line 3?	___ ___
17.	Is line 4 divided by line 6 less than 2.0?	___ ___
18.	Is line 10 divided by line 4 greater than 0.1?	___ ___
19.	Is line 7 divided by line 8 greater than 1.5?	___ ___

ALTERNATIVE II

1.	Sum of current corrective action, closure, and post-closure cost estimates (total of all cost estimates listed above)	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____
3.	Sum of lines 1 and 2	$_____
4.	Current bond rating of most recent issuance and name of rating service	_____
5.	Date of issuance of bond	_____
6.	Date of maturity of bond	_____
*7.	Tangible net worth (if any portion of the current corrective action, closure, or post-closure cost estimates is included in "total liabilities" on	

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your financial statements you may add that portion to this line) $_____

*8. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) $_____

	YES	NO
9. Is line 7 at least $10,000,000?	___	___
10. Is line 7 at least 6 times line 3?	___	___
*11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12	___	___
12. Is line 8 at least 6 times line 3?	___	___

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7045.0524, subpart 7, as the rules were constituted on the date shown immediately below.

[SIGNATURE]

[NAME]

[TITLE]

[DATE]

Subp. 8. to 10. [Unchanged.]

7045.0594 CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure performance standard.** The owner or operator shall close the facility in a manner minimizing the need for further maintenance. Closure procedures must result in controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, in accordance with all closure requirements including the requirements of parts 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; ~~7045.0634~~ 7045.0640, subpart 5; and 7045.0642, subpart 5.

Subp. 3. **Submittal of closure plan.** The closure plans must be submitted as follows:

A. A copy of the written closure plan and all revisions to the plan must be furnished to the director upon request, including request by mail until final closure is completed and certified. For facilities without approved

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closure plans, the plan must also be provided to the director as requested, during site inspections on the day of the inspection. The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include:

(1) A description of how each hazardous waste management unit will be closed, if applicable, and how the facility will be finally closed, in accordance with subpart 2. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of subpart 2, part 7045.0596, and the applicable closure requirements of parts 7045.0626, subpart 8; 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; 7045.0642, subpart 5; and 7045.0655, subpart 6, will be met;

(2) An estimate of the maximum inventory of wastes in storage and in treatment at any time during the active life of the facility and a detailed description of the methods to be used during partial and final closure, including methods for removing, transporting, treating, storing, or disposing of all hazardous waste, and identification of off-site hazardous waste management units to be used, if applicable;

(3) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, facility equipment, structures and soils during partial or final closure. The description must include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard;

(4) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including ground water monitoring,

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leachate collection, and run-on and run-off control;

(5) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under parts 7045.0612, subpart 2, and 7045.0616, subpart 2, and whose remaining operating life is less than 20 years, and for facilities without approved closure plans; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial or final closure.

B. The owner or operator may amend the closure plan at any time before notification of partial or final closure of the facility. An owner or operator with an approved closure plan must submit a written request to the director to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the director. The owner or operator shall amend the plan whenever:

(1) changes in operating plans or facility design affect the closure plan; or

(2) there is a change in the expected year of closure , if applicable; or

(3) unexpected events occur during partial or final closure activities which require a modification to the closure plan; or

(4) the director requests modifications to the plan under the conditions described in subitems (1) to (3). An owner or operator with an approved closure plan must submit the modified plan to the director within 60 days after the director's request, or within 30 days if an unexpected event occurs during partial or final closure. A modification to the plan will be approved in accordance with the procedures in item F unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and

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7001.0730, subpart 4.

The owner or operator must amend the plan at least 60 days before the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. An owner or operator with an approved closure plan must submit the amended closure plan in accordance with the deadlines specified above. A modification to the plan will be approved in accordance with the procedures in item F unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure in accordance with parts 7045.0630, subpart 6; and 7045.0632, subpart 7, but are required to close as landfills under part 7045.0638, subpart 4.

C. The owner or operator of a hazardous waste facility having interim status shall submit a closure plan to the director at least 180 days before the date he or she expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final facility closure if it involves such a unit, whichever is earlier. The owner or operator shall submit a closure plan to the director at least 45 days before the date he or she expects to begin final closure of a facility with only tanks, container storage, or incinerator units. The owner or operator shall submit the closure plan no later than 15 days after:

(1) termination of interim status, except when a permit is issued simultaneously with termination of interim status; or

(2) issuance of a judicial decree or agency order to cease receiving wastes or close.

D. Owners or operators with approved closure plans must notify the director in writing at least:

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(1) 60 days before the date he or she expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

(2) 45 days before the date he or she expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

E. The date on which the owner or operator "expects to begin closure" is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date on which the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional hazardous waste" if the owner or operator in fact receives additional hazardous wastes within one year after the last volume was received. If the owner or operator can demonstrate to the director that the unit or facility has the capacity to receive additional hazardous wastes and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the director may approve an extension to this one-year limit.

F. The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments, to request modifications, or to request a public information meeting on the closure plan within 30 days

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of the date of the notice. In response to a request or at the director's discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the closure plan. The director shall approve, modify, or disapprove closure plans for facilities having interim status within 90 days of receipt of the plan. If the director does not approve the plan, the director shall provide the owner or operator with a detailed written statement of reasons for the refusal. The owner or operator shall submit a modified or new plan for approval within 30 days. The director shall approve or modify this plan. If the director modifies the plan, this modified plan becomes the approved closure plan. A copy of the modified plan shall be mailed to the owner or operator.

Subp. 4. **Removal of wastes and decontamination or dismantling of equipment.** Nothing in this part shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

7045.0596 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the unit or facility, or dispose on-site all hazardous waste in accordance with the approved closure plan. The director may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90-day period, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, and:

A. the activities required to comply with the approved closure plan will, of necessity, take longer than 90

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days to complete; or

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

If the owner or operator of a facility required to maintain financial assurance for closure, post-closure care, or corrective action fails to make any required payment or to substitute alternative financial assurance when required to do so, the director shall order the owner or operator to begin closure activities.

Subp. 2. **Time extension for closure activities.** The owner or operator shall complete partial or final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous waste at the hazardous waste management unit or facility, or 180 days after approval of the closure plan if that is later. The director may approve a longer closure period if the owner or operator demonstrates at least 30 days before expiration of the 180-day period that he or she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including all applicable interim status requirements, and:

A. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

If operation of the site is recommended, the director may

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defer completion of partial or final closure activities until the new operation is terminated.

Subp. 3. **Disposal or decontamination of equipment, structures, and soils.** During the partial and final closure periods, all contaminated facility equipment, structures, and soils must be properly disposed of or decontaminated, unless otherwise specified in part 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; or 7045.0638, subpart 4. By removing any hazardous wastes or hazardous constituents during partial or final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of parts 7045.0205 to 7045.0304.

Subp. 4. **Certification of closure.** Within 60 days after closure is completed for each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit and within 60 days after final closure is completed, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until he or she releases the owner or operator from the financial assurance requirements for closure under part 7045.0612, subpart 9.

7045.0600 POST-CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Submittal of post-closure plan.** The post-closure plan must be submitted as follows:

A. The owner or operator of a disposal facility shall have a written post-closure plan. A copy of the most current plan must be furnished to the director upon request, including request by mail, until the post-closure care period begins. For

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facilities without approved post-closure plans, it must also be provided to the director as requested, during site inspections, on the day of inspection. For each hazardous waste management unit subject to post-closure care requirements, the plan must identify the activities which will be carried on after closure of the unit and the frequency of these activities, and it must include:

(1) a description of the planned ground water monitoring activities and frequencies at which they will be performed;

(2) a description of the planned monitoring activities, and frequencies at which they will be performed to comply with parts 7045.0630, 7045.0632, 7045.0634, and 7045.0638 during the post-closure care period;

(3) a description of the planned maintenance activities and frequencies at which they will be performed to ensure the integrity of the cap and final cover or other containment structures, where applicable, and the function of the facility monitoring equipment; and

(4) the name, address, and telephone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure period. After final closure has been certified, this person or office must keep an updated post-closure plan during the post-closure period.

B. The owner or operator may amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure period. An owner or operator with an approved post-closure plan must submit a written request to the director to authorize a change in the approved plan. The owner or operator shall amend the plan whenever the following conditions affect the post-closure plan:

(1) changes in operating plans or facility design; or

(2) unexpected events occur during the active life of the facility, including partial and final closure, or during the post-closure period; or

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(3) there is a change in the expected year of closure, if applicable.

A request for modification of the post-closure plan must be made to the director at least 60 days before the proposed changes in operating plans or facility design, or no later than 60 days after the events which affect the post-closure plan occur. This request must include the revised post-closure plan and indicate the reasons for modifying the plan. The request must be made in accordance with subpart 3 and the director shall take actions required in subpart 3. A modification to the plan will be approved in accordance with item D unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4. The director may request modifications to the post-closure plan under the conditions described in subitems (1) to (3). An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days after the director's request. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with part 7045.0630, subpart 6; or 7045.0632, subpart 7, is required to close as a landfill in accordance with part 7045.0638, subpart 4. The owner or operator must submit a post-closure plan within 90 days after the owner or operator or director determines that the unit must be closed as a landfill.

C. The owner or operator of a facility with hazardous waste management units subject to post-closure requirements shall submit the post-closure plan to the director at least 180 days before the date he or she expects to begin closure of the first hazardous waste disposal unit. The date on which the owner or operator "expects to begin closure" is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to

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begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional volumes of hazardous waste" if the owner or operator in fact receives additional hazardous wastes within one year after the last volume was received.

The owner or operator also shall submit the plan to the director no later than 15 days after: termination of interim status, except when a permit is issued to the facility simultaneously with termination of interim status; or issuance of a judicial decree or agency order to cease receiving waste or close.

D. The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments, to request modification, or to request a public information meeting on the post-closure plan or substantive amendments to the post-closure plan within 30 days of the date of the notice. In response to a request or at his or her own discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. The director shall approve, modify, or disapprove post-closure plans for facilities having interim status within 90 days of the receipt of the plan. If the director does not approve the plan, he or she shall provide the owner or operator with a detailed written statement of reasons for the refusal, and the owner or operator shall submit a modified or new plan for approval within 30 days after receiving this written statement. The director shall approve or modify this plan in writing within 60 days. If the director modifies the plan, this modified plan becomes the

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approved post-closure plan. A copy of the modified plan and a detailed statement of reasons for the modifications shall be mailed to the owner or operator. The director shall ensure that the approved post-closure plan is consistent with part 7045.0602.

Subp. 3. **Modification of post-closure period.** The post-closure period may be modified during the post-closure care period as described in items A and B:

A. The owner or operator or any member of the public may petition the director to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility or alter the requirements of the post-closure care period based on cause.

(1) The petition must include evidence demonstrating that the secure nature of the hazardous waste management unit or facility makes the post-closure care requirements unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan, or that the requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment. Areas which must be considered in demonstrating the secure nature of the facility include leachate or ground water monitoring results, characteristics of the waste, application of advanced technology; or alternative disposal, treatment, or reuse techniques that indicate the facility is secure.

(2) [Unchanged.]

B. The director may decide to modify the post-closure plan if necessary to prevent threats to human health and the environment. Extension or reduction of the post-closure care period or alteration of the requirements of the post-closure care period may be proposed based on cause.

The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments or request a public information meeting within 30 days of the date of the notice. The director shall in

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response to a request or at his or her own discretion hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. After considering the comments, a final determination shall be issued.

The director shall base the final determination upon the criteria outlined in item A, subitem (1). A modification of the post-closure plan may include, when appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the director shall determine whether the requirements should be permanently discontinued or reinstated to prevent threats to human health and the environment.

7045.0602 POST-CLOSURE CARE AND USE OF PROPERTY.

Subpart 1. **Post-closure care requirements.** Post-closure care for each hazardous waste management unit subject to these requirements must continue for 30 years after the date of completing closure of the unit and must consist of at least ground water monitoring and reporting and the maintenance of monitoring and waste containment systems in accordance with parts 7045.0630, 7045.0632, 7045.0634, and 7045.0638, as applicable.

The director may reduce the post-closure care period to less than 30 years for the hazardous waste management unit or facility, if all disposal units have been closed, if it is found that the reduced period is sufficient to protect human health and the environment. This determination must be based on leachate or ground water monitoring results, waste characteristics, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicating the hazardous waste management unit or facility is secure.

Before the time that the post-closure care period is due to expire, the director may extend the post-closure care period applicable to the hazardous waste management unit or facility, if it is found that the extended period is necessary to protect human health and the environment. This determination must be

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based on leachate or groundwater monitoring results which indicate a potential for migration of wastes at levels which may be harmful to the environment.

All post-closure care activities must be in accordance with the provisions of the approved post-closure plan.

Subp. 2. **Continuation of security requirements.** The director may require, at partial or final closure, continuation of any of the security requirements during part of or all of the post-closure period after the date of completing closure when wastes may remain exposed after completion of closure or when access by the public or domestic livestock may pose a hazard to human health.

Subp. 3. [Unchanged.]

Subp. 4. **Certification of completion of post-closure care.** Within 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the director, by registered mail, certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for post-closure care under part 7045.0616, subpart 9.

7045.0604 NOTICE TO LOCAL LAND AUTHORITY.

Subpart 1. **Submission of survey plat.** No later than the certification of closure of each hazardous waste disposal unit is submitted to the director, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This

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plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified.

Subp. 2. **Post-closure notices.** Within 60 days after closure is certified for each hazardous waste disposal unit, in addition, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility. For hazardous waste disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the waste to the best of his or her knowledge and in accordance with any records kept. Any changes in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occur after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

7045.0606 NOTICE IN DEED TO PROPERTY.

Subpart 1. **Deed notation.** Within 60 days after closure of the first hazardous waste disposal unit is certified and within 60 days after closure of the last hazardous waste disposal unit is certified, the owner or operator of the property on which a disposal unit is located shall:

A. record, in accordance with state law, a notation on the deed to the facility property, or on another instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(1) the land has been used to manage hazardous waste;

(2) the land use is restricted; and

(3) the survey plat and record of the type,

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location, and quantity of hazardous waste disposed of within each cell or other hazardous waste disposal unit of the facility required in part 7045.0604 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

B. submit a certification signed by the owner or operator that he or she has recorded the notation specified in this subpart, including a copy of the document in which the notation has been placed, to the director.

Subp. 2. **Changes to deed.** If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located intends to remove the hazardous waste and hazardous waste residues, the liner, if any, and all contaminated underlying and surrounding soil, the owner or operator must request a modification to the approved post-closure plan in accordance with part 7045.0600, subpart 2, item B. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of part 7045.0602, subpart 3. If the owner or operator is granted approval to conduct removal activities, he or she may request that the director approve either:

A. removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

B. addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

By removing hazardous waste and hazardous waste residue; the liner, if any; and the contaminated soil, the owner or operator, unless he or she can demonstrate that any waste removed is not a hazardous waste, becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter.

7045.0608 FINANCIAL REQUIREMENTS.

Subpart 1. [Unchanged.]

Subp. 2. **Definitions.** Definitions are as follows:

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A. When used in parts 7045.0608 to 7045.0624, the following terms have the meanings given.

(1) "Closure plan" means the plan for closure prepared in accordance with part 7045.0594.

(2) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0610, subparts 1, 2, and 3.

(3) "Current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities" means the most recent of the estimates prepared in accordance with Code of Federal Regulations, title 40, section 144.62(a), (b), and (c).

(4) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0614, subparts 1, 2, and 3.

(5) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(6) "Post-closure plan" means the plan for post-closure care prepared in accordance with parts 7045.0600 to 7045.0606.

B. and C. [Unchanged.]

7045.0610 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall prepare a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan in part 7045.0594 and applicable closure requirements in parts 7045.0626, subpart 8; 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; and 7045.0642, subpart 5. The closure cost estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure

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the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

A. The closure cost estimate may be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if it can be demonstrated that on-site disposal capacity will exist at all times through the life of the facility.

B. The closure cost estimate may not incorporate any salvage value that may be realized with the scale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days before each anniversary of the date on which the financial instruments used to comply with part 7045.0612 were established. Owners and operators using the financial test or corporate guarantee shall adjust the closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in part 7045.0504, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

Adjustments must be made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the closure cost estimate within 30 days after a

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change in the closure plan increases the cost of closure, or within 30 days after the director has approved the request to modify the plan, for facilities with approved closure plans. The revised closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall supply the following to the director upon request, including request by mail until closure is completed: the latest closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted closure cost estimate.

7045.0612 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure trust fund.** Requirements for closure trust funds are as follows:

A. to K. [Unchanged.]

L. After beginning partial or final closure, an owner or operator or any other person authorized to perform partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the director shall determine whether the partial or final closure expenditures comply with the closure plan or are otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, under subpart 9, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the

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director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

M. The director shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** Requirements for surety bonds that guarantee payment into a closure trust fund are as follows:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. **Closure letter of credit.** Requirements for closure letters of credit are as follows:

A. to I. [Unchanged.]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 5. **Closure insurance.** Requirements for closure insurance are as follows:

A. to D. [Unchanged.]

E. After beginning partial or final closure, an owner

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or operator, or other person authorized to perform closure, may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in the amounts the director specifies in writing. If the director has reason to believe that the maximum cost of closure will be significantly greater than the face amount of the policy, the director may withhold reimbursement of the amounts deemed prudent until it is determined in accordance with subpart 9 that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to I. [Unchanged.]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 6. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection

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control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer, as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to J. [Unchanged.]

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K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the director releases the owner or operator from the requirements of this part in accordance with subpart 9.

L. [Unchanged.]

Subp. 7. and 8. [Unchanged.]

Subp. 9. **Release of the owner or operator from requirements of this part.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for final closure of the particular facility, unless the agency has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

7045.0614 COST ESTIMATE FOR POST-CLOSURE CARE.

Subpart 1. **Cost estimate requirements.** The owner or operator of a disposal facility shall prepare a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in parts 7045.0600 to 7045.0606; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; and 7045.0638, subpart 4. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under part 7045.0602. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is neither a parent

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nor a subsidiary of the owner or operator.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within 60 days before each anniversary of the date on which the financial instruments used to comply with part 7045.0616 were established. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be adjusted for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the director as specified in part 7045.0616, subpart 6, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the "Survey of Current Business" issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator of the previous year. Adjustments must be made as follows:

A. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

B. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the post-closure cost estimate during the active life of the facility within 30 days after a change in the post-closure plan increases the cost of post-closure care, or within 30 days after the director has an approved request to modify the plan, for facilities with approved post-closure plan. The revised post-closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall furnish the following to the director upon request, including request by mail: the latest post-closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has

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been adjusted in accordance with subpart 2, the latest adjusted post-closure cost estimate.

7045.0616 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

Subpart 1. **In general.** An owner or operator of a disposal facility shall establish financial assurance for post-closure care of the facility 60 days before the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall choose from the options specified in subparts 2 to 6.

Subp. 2. **Post-closure trust fund.** Requirements of a post-closure trust fund are as follows:

A. to L. [Unchanged.]

M. An owner or operator or other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in the amounts the director specifies in writing. If the director does not instruct the trustee to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

N. [Unchanged.]

Subp. 3. **Surety bond guaranteeing payment into a post-closure trust fund.** The following are requirements for surety bonds that guarantee payment into a post-closure trust fund:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin

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final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. [Unchanged.]

Subp. 5. **Post-closure insurance.** The following requirements apply to post-closure insurance:

A. to D. [Unchanged.]

E. An owner or operator or other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, he or she shall instruct the insurer to make reimbursement in the amounts the director specifies in writing. If the director does not instruct the insurer to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to K. [Unchanged.]

Subp. 6. **Financial test and corporate guarantee for post-closure care.** The following is the financial test and corporate guarantee for post-closure care:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost

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estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets located in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C, refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer, as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimates" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to M. [Unchanged.]

Subp. 7. and 8. [Unchanged.]

Subp. 9. **Release of the owner or operator from the requirements of this part.** Within 60 days after receiving certification from the owner or operator and an independent registered professional engineer that the post-closure care requirements have been completed for a hazardous waste disposal unit in accordance with the post-closure plan, the agency shall,

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at the request of the owner or operator, notify him or her in writing that he or she is no longer required by this part to maintain financial assurance for post-closure care of that unit, unless the agency has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The agency shall provide the owner or operator with a detailed written statement of any reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

7045.0620 LIABILITY REQUIREMENTS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this part, until certifications of closure of the facility, as specified in part 7045.0596, are received by the director. Within 60 days after receiving such certifications from the owner or operator and an independent registered professional engineer, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the director has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 5. [Unchanged.]

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 22 1987

Joan Anderson Growe
Secretary of State

11:10AM

APPROVED AS TO FORM AND LEGALITY

6/16 1987

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF MINNESOTA POLLUTION CONTROL AGENCY'S AUTHORIZING RESOLUTION

I, Thomas J. Kalitowski, do hereby certify that I am the Executive Director 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 27th day of January, 1987, 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.

BE IT RESOLVED, that the Executive Director of the Minnesota Pollution Control Agency (MPCA) is hereby granted the authority and directed to give notice of the MPCA's intent to adopt without a public hearing the attached amendments to the MPCA's hazardous waste rules governing closure, post-closure and financial assurance requirements for hazardous waste treatment, storage, and disposal facilities, Minn. Rules pts. 7045.0020, 7045.0486, 7045.0488, 7045.0490, 7045.0492, 7045.0494, 7045.0496, 7045.0498, 7045.0502, 7045.0504, 7045.0506, 7045.0508, 7045.0518, 7045.0524, 7045.0594, 7045.0596, 7045.0600, 7045.0602, 7045.0604, 7045.0606, 7045.0608, 7045.0610, 7045.0612, 7045.0614, 7045.0620, 7001.0190, 7001.0560, 7001.0650, and 7001.0730 to all persons who have registered their names with the MPCA for that purpose and publish the notice and the rule amendments in the State Register, and to perform any and all acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the MPCA to make in order to obtain the revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1986).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Director is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order and Notice for Hearing, as well as acting as the MPCA's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 29th day of January, 1987.

for Barbara Lindsay Sims
Thomas J. Kalitowski
Executive Director

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste; Closure, Post-closure, and Financial Assurance

Rules as Proposed

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the agency shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the agency finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or B, the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. If the permit is a permit described in part 7001.0020, item B, the following additional requirements apply:

A. The new owner or operator shall submit a revised permit application to the director no later than 90 days before the scheduled change in ownership or control.

B. The previous owner or operator shall comply with the financial requirements of parts 7045.0498 to 7045.0524 until the new owner or operator has demonstrated compliance with the

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requirements to the director. The new owner or operator must demonstrate compliance within 180 days after the date of the change in ownership or control of the facility. Upon demonstration of compliance to the director, the director shall notify the previous owner or operator in writing that the owner or operator is no longer required to comply with parts 7045.0498 to 7045.0524.

Subp. 3. [Unchanged.]

Subp. 4. **Revocation without reissuance.** The director shall give notice to the permittee of a proposal to revoke a permit without reissuance. This notice must state that within 30 days of the receipt of the notice the permittee may request a contested case hearing be held on the proposed action. If the permittee requests a contested case hearing, the agency shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, parts 1400.5100 to ~~1400.8500~~ 1400.8402.

7001.0560 GENERAL INFORMATION REQUIREMENTS FOR PART B OF APPLICATION.

Part B of the application must contain the following information:

A. [Unchanged.]

B. Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses must contain all information that is necessary ~~in order~~ to treat, store, or dispose of the wastes properly in accordance with parts 7045.0450 to 7045.0544.

C. to K. [Unchanged.]

L. A copy of the closure plan and, where applicable, the post-closure plan required by parts 7045.0486 and 7045.0490, including, if applicable, the specific information ~~set forth~~ in parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8.

M. For ~~existing~~ disposal ~~facilities~~ units that have been closed, documentation that a notice has been placed in the

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deed or appropriate alternative instruments as required by part 7045.0496.

N. The most recent closure cost estimate for the facility prepared in accordance with part 7045.0502 and a copy of the documentation required to demonstrate financial assurance ~~mechanism adopted in compliance with~~ under part 7045.0504. For a new facility, a copy of the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

O. If applicable, the most recent post-closure cost estimate for the facility prepared in accordance with part 7045.0506 and a copy of the documentation required to demonstrate financial assurance ~~mechanism adopted in compliance with~~ under part 7045.0508. For a new facility, a copy of the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

P. to U. [Unchanged.]

7001.0650 INTERIM STATUS.

Subpart 1. **Qualifying for interim status.** Except as provided in subpart 2, during the period after the submission of Part A of a hazardous waste facility permit application to the Environmental Protection Agency or to the director and ~~prior to~~ before a final determination by the agency on the permit application, the owner or operator of an existing hazardous waste facility shall be considered to be in compliance with the requirement to obtain a permit if the director finds that the Environmental Protection Agency has granted the owner or operator interim status or if the director finds:

A. and B. [Unchanged.]

Subp. 2. **Failure to obtain interim status from EPA.** Notwithstanding the provisions of subpart 1, an owner or operator of a hazardous waste facility who, ~~prior to~~ before April 23, 1984, was required to apply for and obtain interim status from the Environmental Protection Agency but who failed

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to obtain this interim status is not eligible to obtain interim status from the agency for that facility.

Subp. 3. and 4. [Unchanged.]

Subp. 5. **Changes during interim status.** An owner or operator who has interim status may conduct the following activities as prescribed:

A. The owner or operator may treat, store, or dispose of hazardous wastes not previously specified in Part A of the application if the owner or operator submits a revised Part A of the permit application ~~prior to the~~ before commencement of the treatment, storage, or disposal.

B. The owner or operator may increase the design capacity of the facility if, ~~prior to the~~ before implementation of the increase, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the change, and if the director approves the increase in writing. The director shall approve the change if the director finds that there is a lack of available treatment, storage, or disposal capacity at other permitted hazardous waste facilities.

C. The owner or operator may add new processes or change the processes for the treatment, storage, or disposal of hazardous waste if, ~~prior to the~~ before implementation of the addition or change, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the addition, and if the director approves the addition or change in writing. The director shall approve the addition or change if the director finds that:

(1) [Unchanged.]

(2) the addition or change is necessary for the owner or operator to comply with federal, Minnesota, or local requirements, including the interim status standards ~~set forth~~ in parts 7045.0552 to 7045.0642.

D. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A of the permit application not later than 90 days ~~prior to~~ before the scheduled change. When a transfer of

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ownership or operational control of a facility occurs, the former owner or operator shall comply with the requirements of parts 7045.0608 to 7045.0624 that relate to financial requirements, until the new owner or operator has provided to the director a demonstration of compliance with parts 7045.0608 to 7045.0624. The new owner or operator must demonstrate compliance within six months. All other interim status duties must be transferred immediately upon the change of ownership or operational control of the facility. If the director finds that the new owner or operator has complied with parts 7045.0608 to 7045.0624, the director shall notify the former owner or operator in writing that the required demonstration by the new owner or operator has been made and the former owner or operator no longer needs to comply with parts 7045.0608 to 7045.0624 as of the date of the demonstration.

Subp. 6. **Compliance with interim status standards.** During the interim status period the owner or operator shall comply with the interim status standards ~~set forth~~ in parts 7045.0552 to 7045.0642.

Subp. 7. [Unchanged.]

7001.0730 MODIFICATION OF PERMITS; REVOCATION AND REISSUANCE OF PERMITS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Minor modifications of permits.** In addition to the corrections or allowances listed in part 7001.0190, subparts 2 and 3, if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in parts 7001.0100 to 7001.0130:

A. to C. [Unchanged.]

D. to change the expected year of closure under part 7045.0486, subpart 3, item ~~B~~ F;

E. to change schedules for final closure under part 7045.0486, subpart 3, item ~~B~~ E;

F. to K. [Unchanged.]

Subp. 5. [Unchanged.]

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7045.0020 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 2a. **Active life.** "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the director receives certification of final closure.

Subp. 3. to 24. [Unchanged.]

Subp. 24a. **Final closure.** "Final closure" means the closure of all hazardous waste management units at the facility in accordance with the approved facility closure plan and all applicable closure requirements.

Subp. 25. to 36. [Unchanged.]

Subp. 36a. **Hazardous waste management unit.** "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

Subp. 37. to 64. [Unchanged.]

Subp. 65. **Partial closure.** "Partial closure" means the closure of a ~~discrete part of a facility~~ hazardous waste management unit in accordance with the applicable closure requirements of parts 7045.0450 to 7045.0544 or 7045.0552 to 7045.0642 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a ~~trench, a unit operation~~ tank, including its associated piping and containment systems, a landfill cell, ~~or a pit~~ surface impoundment, waste pile, or other hazardous waste management unit, while other ~~parts~~ units of the same facility continue ~~in operation or will be placed in~~

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~~operation-in-the-future~~ to operate.

Subp. 66. to 108. [Unchanged.]

7045.0486 CLOSURE.

Subpart 1. **Scope.** Except as part 7045.0450 provides otherwise, the provisions of subparts 2 to ~~5~~ 6 and part 7045.0488 apply to the owner or operator of a hazardous waste facility.

Subp. 2. **Closure performance standard.** The owner or operator shall close the facility in a manner minimizing the need for further maintenance. Closure procedures must result in controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous ~~waste~~ constituents, leachate, contaminated ~~rainfall~~ run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, in accordance with the closure requirements including, the requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; 7045.0542, subpart 8.

Subp. 3. **Submittal and contents of closure plan.** The owner or operator of a hazardous waste facility shall submit a closure plan with the permit application, and the closure plan must be approved by the agency as part of the permit issuance procedure. The approved closure plan shall become a condition of any permit. The agency's approval must ensure that the approved closure plan is consistent with subparts 2, 4, and 5, and part 7045.0488, and the applicable closure requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8.

A copy of the approved closure plan and all revisions to the plan must be ~~kept at the facility~~ furnished to the director upon request, including request by mail, until final closure is completed and certified. The plan must identify steps necessary to completely or partially close the facility at any point

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during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must at least include all of the following:

A. A description of how ~~and when~~ each hazardous waste management unit will be closed, and how the facility will be ~~partially closed, if applicable, and~~ finally closed. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of subparts 2, 5, part 7045.0488, and the applicable closure requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8 will be met.

B. An estimate of the maximum inventory of hazardous wastes ~~in storage and in treatment at any time during~~ ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type of off-site hazardous waste management units to be used, if applicable.

C. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, facility equipment, structures, and soils during partial and final closure, including, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard.

D. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, ground water monitoring, leachate collection, and run-on and run-off control.

E. ~~An estimate of the expected year of closure and~~ A

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schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include the total time required to close ~~the facility~~ each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure.

F. An estimate of the expected year of closure for facilities that use trust funds to establish financial assurance under part 7045.0504 or 7045.0508 and that are expected to close before the expiration of the permit.

Subp. 4. **Amendment of plan.** The owner or operator must submit a written request to the director for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the agency's permitting procedures in chapter 7001. The written request must include a copy of the closure plan amendments for approval. The owner or operator may request a permit modification to amend the closure plan at any time ~~during the active life~~ before notification of partial or final closure of the facility. ~~The active life of the facility is that period during which wastes are periodically received.~~ The owner or operator shall request a permit modification to amend the plan whenever:

A. changes in operating plans or facility design affect the closure plan ~~and whenever~~; or

B. there is a change in the expected year of closure ~~. When the owner or operator requests a permit modification to authorize a change in operating plans or facility design, he or she shall request a modification of the closure plan at the same time. If a permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within 60 days after the change~~ for those facilities that use trust funds to establish financial assurance as provided in subpart 3; or

C. in conducting partial or final closure activities, unexpected events require a modification of the approved closure

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plan.

The director may request modifications to the plan under the conditions described in items A to C. The owner or operator must submit the modified plan within 60 days of the director's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the director will be approved in accordance with the agency's permitting procedures in chapter 7001. The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days before the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event.

Subp. 5. **Notification of partial and final closure.**

A. The owner or operator shall notify the director in writing at least ~~180~~:

(1) 60 days ~~prior to~~ before the date ~~he or she~~ the owner or operator expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

(2) 45 days before the date the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units remaining to be closed.

B. The date ~~when he or she~~ on which the owner or operator "expects to begin closure" ~~must be within 30 days after the date on which he or she expects to receive the final volume of waste~~ is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

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(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional volumes of hazardous waste" if the owner or operator in fact receives hazardous wastes within one year after the last volume was received. The director may approve an extension to this one-year limit if the owner or operator of a hazardous waste management unit can demonstrate to the director that the unit or facility has the capacity to receive additional hazardous wastes and he or she has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

If the facility's permit or interim status is terminated, or if the facility is otherwise ordered by judicial decree or compliance order to cease receiving hazardous waste or to close, then ~~this~~ the requirement in this item does not apply. However, the owner or operator shall close the facility in accordance with established deadlines.

Subp. 6. **Removal of wastes and decontamination or dismantling of equipment.** Nothing in this part precludes the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved closure plan at any time before or after notification of partial or final closure.

7045.0488 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the ~~site~~ unit or facility, or dispose of on-site all hazardous waste in

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accordance with the approved closure plan. The director may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90-day period, that ~~he~~ the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all permit requirements and:

A. the activities required to comply with the approved closure plan will, of necessity, take longer than 90 days to complete; or

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, there is a reasonable likelihood that ~~a person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

C. the owner or operator complies with all applicable requirements for requesting a modification to the permit.

If the owner or operator of a facility required to maintain financial assurance for closure, post-closure care, or corrective action fails to make a required payment or to substitute alternative financial assurance when required to do so, the director shall order the owner or operator to begin closure activities.

Subp. 2. **Time extension for closure activities.** The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous waste at the hazardous waste management unit or facility. The director may approve a longer closure period if the owner or operator demonstrates ~~he~~ at least 30 days before expiration of the 180-day period that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements and:

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A. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, there is a reasonable likelihood ~~that a person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

C. the owner or operator complies with all applicable requirements for requesting a modification to the permit.

If operation of the site is recommended, the director may defer completion of closure activities until the new operation is terminated.

Subp. 3. **Disposal or decontamination of equipment, structures, and soils.** ~~When~~ During the partial and final closure ~~is completed~~ periods, all contaminated facility equipment ~~and~~, structures, and soils must ~~have been~~ be properly disposed of or decontaminated ~~by removing all hazardous wastes and residues~~ unless otherwise specified in parts 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8, and 7045.0538, subpart 7. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of parts 7045.0205 to 7045.0304.

Subp. 4. **Certification of closure.** ~~When closure is completed~~ Within 60 days after each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit is closed, and within 60 days after final closure is completed, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan.

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Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for closure under part 7045.0504, subpart 10.

7045.0490 POST-CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Submittal of post-closure plan.** The owner or operator of a facility shall submit a post-closure plan with the permit application, and the plan must be approved by the agency as part of the permit issuance procedure. The approved post-closure plan will become a condition of any permit issued.

Owners or operators of surface impoundments and waste piles which are not otherwise required by part 7045.0532, subpart 7 or 7045.0534, subpart 7 to prepare a post-closure plan, must submit a post-closure plan to the director within 90 days after the owner or operator or the director determines that the unit must be closed as a landfill and is subject to the post-closure care requirements of parts 7045.0490 to 7045.0496.

Subp. 3. **Post-closure plan; amendment of plan.** A copy of the approved plan and all revisions to the plan must be ~~kept at the facility~~ furnished to the director upon request, including request by mail until ~~the post-closure care period begins~~ final closure of the facility. ~~This~~ After final closure has been certified, the person or office in item C must keep the approved post-closure plan during the remainder of the post-closure period. For each hazardous waste management unit subject to post-closure care requirements the plan must identify the activities which will be carried on after closure and the frequency of these activities, and it must include at least:

A. [Unchanged.]

B. a description of the planned maintenance activities and frequencies at which they will be performed to ensure the integrity of the cap and final cover or other containment systems according to ~~the requirements of~~ parts

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7045.0532 to 7045.0538, and the function of the facility monitoring equipment according to ~~the requirements of~~ parts 7045.0484 and 7045.0532 to 7045.0538; and

C. the name, address, and telephone number of the person or office to contact about the disposal facility during the post-closure period. This person or office must keep an updated post-closure plan during the post-closure period.

The owner or operator may submit a written request for a permit modification to amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure period in accordance with the agency's permitting procedures in chapter 7001. The owner or operator shall request a permit modification to amend the plan whenever changes in operating plans, or facility design, or events which occur during the active life of the facility including partial and final closures, or during the post-closure period affect the post-closure plan. He or she shall also amend the plan whenever there is a change in the expected year of final closure, if applicable. In addition, the director may request modifications to the post-closure plan under these conditions.

When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time. ~~In all other cases, the request for modification of the post-closure plan must be made within~~ The owner or operator must submit a written request for a permit modification at least 60 days ~~after~~ before the proposed changes in operating plans or facility design, or no later than 60 days after the unexpected events which affect the post-closure plan occur. If the director requests modification of the post-closure plan, the owner or operator must submit the modified plan no later than 60 days after the director's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the director will be approved, disapproved, or modified in

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accordance with the agency's permitting procedures in chapter 7001.

7045.0492 POST-CLOSURE CARE AND USE OF PROPERTY.

Subpart 1. **Post-closure care requirements.** Post-closure care requirements are as follows:

A. Post-closure care of each hazardous waste management unit subject to parts 7045.0490 to 7045.0496 must continue for 30 years after the date of completing closure of the unit and must consist of at least monitoring and reporting according to ~~the requirements of~~ parts 7045.0484 and 7045.0532 to 7045.0538, and the maintenance of monitoring and waste containment systems, according to ~~the requirements of~~ parts 7045.0484 and 7045.0532 to 7045.0538.

B. ~~During the 180 day period~~ Any time preceding closure of a hazardous waste management unit subject to the post-closure care requirements or final closure, or at any time ~~thereafter~~ during the post-closure period for a particular unit, the director may reduce the post-closure care period ~~to less than 30 years~~ in accordance with the agency's permit modification procedures in chapter 7001 for the hazardous waste management unit or facility, if all disposal units have been closed if it is found that the reduced period is sufficient to protect human health and the environment. This determination must be based on leachate or ground water monitoring results, waste characteristics, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicating the hazardous waste management unit or facility is secure.

C. ~~Prior to~~ Before the time that the post-closure care period is due to expire, the director may extend the post-closure care period in accordance with the agency's permit modification procedures in chapter 7001 for the hazardous waste management unit or facility if it is found that the extended period is necessary to protect human health and the environment. This determination must be based on factors such as leachate or ground water monitoring results that indicate a

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potential for migration of hazardous waste at levels which may be harmful to human health and the environment.

D. All post-closure care activities must be in accordance with ~~the provisions of~~ the approved post-closure plan.

Subp. 2. **Continuation of security requirements.** The director may require, at partial and final closure, continuation of any of the security requirements during part of or all of the post-closure period after the date of completing closure when hazardous wastes may remain exposed after completion of partial or final closure or when access by the public or domestic livestock may pose a hazard to human health.

Subp. 3. **Post-closure use of property.** Post-closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed by the owner or operator to disturb the integrity of the final cover, liners, or any other components of any containment system or the function of the facility's monitoring ~~system~~ systems, unless the owner or operator can demonstrate to the director either in the post-closure plan or by petition that the disturbance:

A. and B. [Unchanged.]

Subp. 4. **Certification of completion of post-closure care.** Within 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the approved post-closure plan. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for post-closure care under part 7045.0508, subpart 10.

7045.0494 NOTICE TO LOCAL LAND AUTHORITY.

Subpart 1. **Submission of survey plat.** ~~Within 90 days~~

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~~after~~ No later than submission of the certification of closure ~~is completed~~ of each hazardous waste disposal unit, the owner or operator ~~of a disposal facility~~ shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified.

Subp. 2. **Post-closure notices.** ~~In addition~~ Within 60 after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or ~~area~~ other disposal unit of the facility. For ~~waste~~ hazardous wastes disposed of before January 12, 1981, the owner or operator shall comply with all requirements of Code of Federal Regulations, title 40, section 264.119 (1983). The owner or operator shall identify the type, location, and quantity of the waste to the best of his or her knowledge and in accordance with any records he or she has kept. A change in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occurs after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

7045.0496 NOTICE IN DEED TO PROPERTY.

Subpart 1. **Deed notation.** Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit the owner ~~of the property on which a disposal~~

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~~facility-is-located~~ or operator shall:

A. record, in accordance with state law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

~~A.~~ (1) the land has been used to manage hazardous waste;

~~B.~~ (2) the land use is restricted; and

~~C.~~ (3) the survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or ~~area~~ other hazardous waste disposal unit of the facility required in part 7045.0494 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

B. submit a certification signed by the owner or operater that he or she has recorded the notation specified in this subpart, including a copy of the document in which the notation has been placed, to the director.

Subp. 2. **Changes to the deed.** If at any time the owner or operator or a subsequent owner or operator of the land upon which a hazardous waste ~~facility was~~ disposal unit is located ~~removes~~ wishes to remove the ~~waste~~ hazardous wastes and hazardous waste residues, the liner, if any, ~~and all~~ or contaminated underlying and surrounding soil, he or she ~~may remove~~ must request a permit modification to amend the post-closure plan in accordance with the agency's permitting procedures in chapter 7001. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of part 7045.0492, subpart 3. If the owner or operator is granted approval to conduct removal activities, he or she may request that the director approve either:

A. removal of the notation on the deed to the facility property or other instrument normally examined during title search~~,~~; or ~~he may add~~

B. addition of a notation to the deed or instrument

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indicating the removal of the hazardous waste.

~~Upon~~ By removing ~~the~~ hazardous waste and hazardous waste residue, the liner, if any, and the contaminated soil, the owner or operator~~, unless he or she can demonstrate that any waste removed is not a hazardous waste~~, becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter.

7045.0498 FINANCIAL REQUIREMENTS.

Subpart 1. [Unchanged.]

Subp. 2. **Definitions.** The following definitions apply:

A. When used in parts 7045.0498 to 7045.0524, the following terms have the meanings given.

(1) "Closure plan" means the plan for closure prepared in accordance with ~~the requirements of~~ part 7045.0486.

(2) "Corrective action plan" means the plan for corrective action prepared in accordance with part 7045.0484, ~~subpart~~ subparts 2, item D, and ~~subpart~~ 14.

(3) and (4) [Unchanged.]

(5) "Current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities" means the most recent of the estimates prepared in accordance with Code of Federal Regulations, title 40, section 144.62 (a), (b), and (c).

~~(5)~~ (6) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0506, subparts 1, 2, and 3.

~~(6)~~ (7) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the later corporation is deemed a "subsidiary" of the parent corporation.

~~(7)~~ (8) "Post-closure plan" means the plan for post-closure care prepared according to parts 7045.0490 to 7045.0496.

B. The following terms are used in the specifications

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for the financial tests for corrective action, closure, post-closure care, and liability coverage. The following definitions are intended to assist in the understanding of ~~these rules~~ parts 7045.0498 to 7045.0524 and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(1) to (8) [Unchanged.]

C. In the liability insurance requirements the terms "bodily injury" and "property damage" have the meanings given these terms by applicable state law. However, these terms do not include liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The following definitions of several of the terms are intended to assist in the understanding of ~~these rules~~ parts 7045.0498 to 7045.0524 and are not intended to limit their meanings in a way that conflicts with general insurance industry usage:

(1) to (4) [Unchanged.]

7045.0502 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with ~~the requirements in~~ parts 7045.0486 and 7045.0488 and applicable closure requirements in parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8. The closure cost estimate must equal the cost of final closure at the point in the facility's ~~operating~~ active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

A. The closure cost estimate must be based on the

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costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if the operator can demonstrate that on-site disposal capacity will exist at all times through the life of the facility.

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first closure cost estimate was prepared~~ financial instruments used to comply with part 7045.0504 were established. Owners and operators using the financial test or corporate guarantee must adjust the closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in part 7045.0504, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. Adjustments must be made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** During the active life of the facility, the owner or operator shall revise the closure cost estimate ~~whenever a~~ within 30 days after the director approves the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised

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closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ supply the following ~~at the facility during the operating life of the facility~~ to the director upon request, including request by mail until final closure is completed: the latest closure cost estimate prepared in accordance with subparts 2 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted closure cost estimate.

7045.0504 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure trust fund.** The following apply to closure trust funds:

A. to J. [Unchanged.]

K. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial closure expenditures only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the director shall determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining operating life of the facility will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director withholds reimbursement, the director shall provide the

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owner or operator with a detailed written statement of reasons.

L. The director shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** The following apply to surety bonds that guarantee payment into a closure trust fund:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. **Surety bond guaranteeing performance of closure.** The following apply to surety bonds that guarantee performance of closure:

A. to D. [Unchanged.]

E. Under the terms of the bond, the surety becomes liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination by the director that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure in accordance with the closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

F. to H. [Unchanged.]

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I. The owner or operator may cancel the bond if the director has given prior written consent. The ~~agency~~ director shall provide such written consent if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

J. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 5. **Closure letter of credit.** The following apply to closure letters of credit:

A. to I. [Unchanged.]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 6. **Closure insurance.** The following apply to closure insurance:

A. to D. [Unchanged.]

E. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in

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amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the director may withhold reimbursement of amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to I. [Unchanged.]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 7. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection

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control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for ~~his~~ the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to J. [Unchanged.]

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

L. [Unchanged.]

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Subp. 8. and 9. [Unchanged.]

Subp. 10. **Release of owner or operator from requirements of this part.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the ~~agency~~ director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for closure of the particular facility, unless the ~~agency~~ director has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

7045.0506 COST ESTIMATE FOR POST-CLOSURE CARE.

Subpart 1. **Cost estimate requirements.** The owner or operator of a facility subject to post-closure monitoring or maintenance requirements shall have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in parts 7045.0490 to 7045.0496; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; and 7045.0538, subpart 7. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under part 7045.0492. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is neither a parent nor a subsidiary of the owner or operator.

Subp. 2. **Yearly update of cost estimate.** During the ~~operating~~ active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first post-closure cost estimate was prepared~~ financial

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instruments used to comply with part 7045.0508 were established. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be adjusted for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the director as specified in part 7045.0506, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. Adjustments are made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the post-closure cost estimate ~~during the operating life of the facility whenever a~~ within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ furnish the following ~~at the facility during the operating life of the facility:~~ to the director upon request, including request by mail: the latest post-closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted post-closure cost estimate.

7045.0508 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

Subpart 1. **In general.** The owner or operator of a ~~facility~~ hazardous waste management unit subject to post-closure monitoring or maintenance requirements shall establish financial assurance for post-closure care of the facility 60 days before the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. ~~He or she~~ The owner or

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operator shall choose from the options specified in subparts 2 to 7.

Subp. 2. **Post-closure trust fund.** The following apply to post-closure trust funds:

A. to K. [Unchanged.]

L. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure activities are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director does not instruct the trustee to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

M. [Unchanged.]

Subp. 3. **Surety bond guaranteeing payment into post-closure trust fund.** The following apply to surety bonds that guarantee payment into post-closure trust funds:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Post-closure insurance.** The following apply to post-closure insurance:

A. to D. [Unchanged.]

E. An owner or operator or any other person

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authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in amounts as the director specifies in writing. If the director does not instruct the insurer to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to K. [Unchanged.]

Subp. 7. **Financial test and corporate guarantee for post-closure care.** The financial test and corporate guarantee for post-closure care is as follows:

A. [Unchanged.]

B. The owner or operator must have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for ~~his~~ the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the

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current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimates" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to M. [Unchanged.]

Subp. 8. and 9. [Unchanged.]

Subp. 10. **Release of owner or operator from requirements of this part.** ~~When an~~ Within 60 days after receiving certification from the owner or operator ~~has completed, to the satisfaction of the agency,~~ and an independent registered professional engineer that all post-closure care requirements have been completed for a hazardous waste disposal unit in accordance with the post-closure plan, the agency will, at the request of the owner or operator, notify ~~him~~ the owner or operator in writing that ~~he~~ the owner or operator is no longer required by this part to maintain financial assurance for post-closure care of ~~the particular facility~~ that unit, unless the agency has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The agency shall provide the owner or operator with a detailed

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written statement of any reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

7045.0518 LIABILITY REQUIREMENTS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this part until certifications of closure of the facility, as specified in part 7045.0488, are received by the director. Within 60 days after receiving the certifications from the owner or operator and an independent registered professional engineer, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the director has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 6. [Unchanged.]

7045.0524 WORDING OF INSTRUMENTS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Letter from chief financial officer for corrective action, closure, and/or post-closure care.** A letter from the chief financial officer as specified in part 7045.0504, subpart 7; 7045.0508, subpart 7; 7045.0514, subpart 7; 7045.0612, subpart 6; or 7045.0616, subpart 6 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER FOR CORRECTIVE ACTION, CLOSURE, AND/OR POST-CLOSURE CARE

[Agency Director]
Minnesota Pollution Control Agency

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608

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to 7045.0624.

[Fill out the following ~~four~~ five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for corrective action, closure, or post-closure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for corrective action, closure, or post-closure care is demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624. The current corrective action, closure, and/or post-closure cost estimates covered by the text are shown for each facility: _____.

2. This firm guarantees, through the corporate guarantee specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624, the corrective action, closure, or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility: _____.

3. In states other than Minnesota, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the corrective action, closure, or post-closure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial test specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial

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assurance for corrective action, if required, closure, or if a disposal facility, post-closure care, is not demonstrated either to the United States Environmental Protection Agency or a state through the financial test or any other financial assurance mechanism specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or equivalent or substantially equivalent state mechanisms. The current corrective action, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator of the following underground injection control (UIC) facilities for which financial assurance for plugging and abandonment is required under Code of Federal Regulations, title 40, part 144. The current closure cost estimates as required by Code of Federal Regulations, title 40, section 144.62 are shown for each facility.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; 7045.0612, subpart 6, item B; 7045.0616, subpart 6, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C; 7045.0514, subpart 7, item C; or 7045.0612, subpart 6, item C; or 7045.0616, subpart 6, item C are used.]

ALTERNATIVE I

1. Sum of current corrective action, closure, and post-closure cost estimate [total of all cost estimates shown in the ~~four~~ five paragraphs above]$_____

*2. Total liabilities [if any portion of the corrective action, closure, or post-closure

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cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]. $_____

*3. Tangible net worth $_____

*4. Net worth $_____

*5. Current assets $_____

*6. Current liabilities $_____

7. Net working capital [line 5 minus line 6] $_____

*8. The sum of net income plus depreciation, depletion, and amortization $_____

*9. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.) $_____

	YES	NO
10. Is line 3 at least $10,000,000?	___	___
11. Is line 3 at least 6 times line 1?	___	___
12. Is line 7 at least 6 times line 1?	___	___
*13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14	___	___
14. Is line 9 at least 6 times line 1?	___	___
15. Is line 2 divided by line 4 less than 2.0?	___	___
16. Is line 8 divided by line 2 greater than 0.1?	___	___
17. Is line 5 divided by line 6 greater than 1.5?	___	___

ALTERNATIVE II

1. Sum of current corrective action, closure, and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above $_____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the corrective action, closure, and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $_____

*6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.) $_____

	YES	NO
7. Is line 5 at least $10,000,000?	___	___
8. Is line 5 at least 6 times line 1?	___	___
*9. Are at least 90 percent of firm's assets located in U.S.? If not, complete line 10	___	___
10. Is line 6 at least 6 times line 1?	___	___

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7045.0524, subpart 6, as such rules were constituted on the date shown immediately below.

[SIGNATURE]

[NAME]

[TITLE]

[DATE]

Subp. 7. **Letter from chief financial officer for liability coverage.** A letter from the chief financial officer as specified in part 7045.0518, subpart 6 or 7045.0620, subpart 5 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

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LETTER FROM CHIEF FINANCIAL OFFICER
FOR LIABILITY COVERAGE OR LIABILITY COVERAGE,
CORRECTIVE ACTION, CLOSURE, AND/OR POST-CLOSURE CARE

[Agency Director]
Minnesota Pollution Control Agency

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and corrective action, closure, and/or post-closure care" if applicable] as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

[Fill out the following paragraph regarding facilities and liability coverage. For each facility, include its identification number, name, and address.]

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624:

_____ .

[If you are using the financial test to demonstrate coverage of both liability and corrective action, closure, and post-closure care, fill in the following ~~four~~ five paragraphs regarding facilities and associated corrective action, closure, and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for corrective action, closure, or post-closure care.]

1. The owner or operator identified above owns or operates the following facilities for which financial assurance for corrective action, closure, or post-closure care is demonstrated through the financial test specified in Minnesota Rules, parts

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7045.0498 to 7045.0524 and 7045.0608 to 7045.0624. The current corrective action, closure, and/or post-closure cost estimates covered by the test are shown for each facility:

_____.

2. The owner or operator identified above guarantees, through the corporate guarantee specified in Minnesota Rules, part 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624, the corrective action, closure, and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility:

_____.

3. In states other than Minnesota, this owner or operator is demonstrating financial assurance for the corrective action, closure, or post-closure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial test specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, and/or post-closure cost estimates covered by such a test are shown for each facility:

_____.

4. The owner or operator identified above owns or operates the following hazardous waste management facilities for which financial assurance for corrective action, if required, closure, or, if a disposal facility, post-closure care, is not demonstrated either to the United States Environmental Protection Agency, or a state through the financial test or any other financial assurance mechanism specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or equivalent or substantially equivalent state mechanisms. The current corrective action, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. The owner or operator identified above owns or operates

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the following underground injection control (UIC) facilities for which financial assurance for plugging and abandonment is required under Code of Federal Regulations, title 40, part 144. The current closure cost estimates as required by Code of Federal Regulations, title 40, section 144.62 are shown for each facility:

_____.

This owner or operator [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences.

[Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0518, subpart 6, item B or 7045.0620, subpart 5, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7045.0518, subpart 6, item C or 7045.0620, subpart 5, item C are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____	
*2.	Current assets	$_____	
*3.	Current liabilities	$_____	
4.	Net working capital (line 2 minus line 3)	$_____	
*5.	Tangible net worth	$_____	
*6.	If less than 90 percent of assets are located in the U.S., give total U.S. assets	$_____	
		YES	NO
7.	Is line 5 at least $10,000,000?	___	___
8.	Is line 4 at least 6 times line 1?	___	___
9.	Is line 5 at least 6 times line 1?	___	___
*10.	Are at least 90 percent of assets located in the U.S.? If not, complete line 11	___	___
11.	Is line 6 at least 6 times line 1?	___	___

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
2.	Current bond rating of most recent issuance and name of rating service	_____
3.	Date of issuance of bond	_____
4.	Date of maturity of bond	_____

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*5.	Tangible net worth	$_____	
*6.	Total assets in U.S. (required only if less than 90 percent of assets located in the U.S.)	$_____	
		YES	NO
7.	Is line 5 at least $10,000,000?	___	___
8.	Is line 5 at least 6 times line 1?	___	___
*9.	Are at least 90 percent of assets located in the U.S.? If not, complete line 10	___	___
10.	Is line 6 at least 6 times line 1?	___	___

Part B. Corrective Action, Closure, or Post-Closure Care and Liability Coverage.

[Fill in Alternative I if the criteria of Minnesota Rules, parts 7045.0504, subpart 7, item B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; and 7045.0518, subpart 6, item B are used or if the criteria of Minnesota Rules, parts 7045.0612, subpart 6, item B or 7045.0616, subpart 6, item B; and 7045.0620, subpart 5, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, parts 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C; 7045.0514, subpart 7, item C; and 7045.0518, subpart 6, item C are used or if the criteria of Minnesota Rules, parts 7045.0612, subpart 6, item C; 7045.0616, subpart 6, item C; and 7045.0620, subpart 5, item C are used.]

ALTERNATIVE I

1.	Sum of current corrective action, closure, and post-closure cost estimates (total of all cost estimates listed above)	$_____	
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____	
3.	Sum of lines 1 and 2	$_____	
*4.	Total liabilities (if any portion of your current corrective action, closure, or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)	$_____	
*5.	Tangible net worth	$_____	
*6.	Net worth	$_____	
*7.	Current assets	$_____	
*8.	Current liabilities	$_____	
9.	Net working capital (line 7 minus line 8)	$_____	
*10.	The sum of net income plus depreciation, depletion, and amortization	$_____	
*11.	Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____	
		YES	NO
12.	Is line 5 at least $10,000,000?	___	___
13.	Is line 5 at least 6 times line 3?	___	___
14.	Is line 9 at least 6 times line 3?	___	___
*15.	Are at least 90 percent of assets located in the U.S.? If not, complete line 16	___	___
16.	Is line 11 at least 6 times line 3?	___	___
17.	Is line 4 divided by line 6 less than 2.0?	___	___
18.	Is line 10 divided by line 4 greater than 0.1?	___	___
19.	Is line 7 divided by line 8 greater than 1.5?	___	___

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ALTERNATIVE II

1.	Sum of current corrective action, closure, and post-closure cost estimates (total of all cost estimates listed above)	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____
3.	Sum of lines 1 and 2	$_____
4.	Current bond rating of most recent issuance and name of rating service	_____
5.	Date of issuance of bond	_____
6.	Date of maturity of bond	_____
*7.	Tangible net worth (if any portion of the current corrective action, closure, or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)	$_____
*8.	Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____

		YES	NO
9.	Is line 7 at least $10,000,000?	___	___
10.	Is line 7 at least 6 times line 3?	___	___
*11.	Are at least 90 percent of assets located in the U.S.? If not, complete line 12	___	___
12.	Is line 8 at least 6 times line 3?	___	___

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7045.0524, subpart 7, as the rules were constituted on the date shown immediately below.

[SIGNATURE]

[NAME]

[TITLE]

[DATE]

Subp. 8. to 10. [Unchanged.]

7045.0594 CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure performance standard.** The owner or operator shall close the facility in a manner minimizing the need for further maintenance. Closure procedures must result in controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous **waste** constituents, leachate, contaminated ~~rainfall~~ run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, in accordance with all closure requirements including the requirements of parts 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638,

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subpart 4; 7045.0634, subpart 5; and 7045.0642, subpart 5.

Subp. 3. **Submittal of closure plan.** The closure plans must be submitted as follows:

A. A copy of the written closure plan and all revisions to the plan must be ~~kept at the facility~~ furnished to the director upon request, including request by mail until final closure is completed and certified. For facilities without approved closure plans, the plan must also be provided to the director as requested, during site inspections on the day of the inspection. The plan must identify steps necessary to ~~completely or partially close~~ perform partial and/or final closure of the facility at any point during its ~~intended operating~~ active life ~~and to completely close the facility at the end of its intended operating life~~. The closure plan must include:

(1) A description of how ~~and when the facility~~ each hazardous waste management unit will be ~~partially~~ closed, if applicable, and how the facility will be finally closed, in accordance with subpart 2. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of subpart 2, part 7045.0596, and the applicable closure requirements of parts 7045.0626, subpart 8; 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; 7045.0642, subpart 5; and 7045.0655, subpart 6, will be met;

(2) An estimate of the maximum inventory of wastes in storage and in treatment at any time during the active life of the facility and a detailed description of the methods to be used during partial and final closure, including methods for removing, transporting, treating, storing, or disposing of all hazardous waste, and identification of off-site hazardous waste management units to be used, if applicable;

(3) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, facility equipment,

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structures and soils during partial or final closure. The description must include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; ~~and~~

(4) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including ground water monitoring, leachate collection, and run-on and run-off control;

(5) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under parts 7045.0612, subpart 2, and 7045.0616, subpart 2, and whose remaining operating life is less than 20 years, and for facilities without approved closure plans; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include the total time required to close ~~the facility~~ each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial or final closure.

B. The owner or operator may amend the closure plan at any time ~~during the active life~~ before notification of partial or final closure of the facility. ~~The active life of the facility is that period during which wastes are periodically received~~ An owner or operator with an approved closure plan must submit a written request to the director to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the director. The owner or operator shall amend the plan whenever:

(1) changes in operating plans or facility design affect the closure plan ~~and whenever~~; or

(2) there is a change in the expected year of closure. ~~The plan must be amended within 60 days of the~~

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changes, if applicable; or

(3) unexpected events occur during partial or final closure activities which require a modification to the closure plan; or

(4) the director requests modifications to the plan under the conditions described in subitems (1) to (3). An owner or operator with an approved closure plan must submit the modified plan to the director within 60 days after the director's request, or within 30 days if an unexpected event occurs during partial or final closure. A modification to the plan will be approved in accordance with the procedures in item F unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4.

The owner or operator must amend the plan at least 60 days before the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. An owner or operator with an approved closure plan must submit the amended closure plan in accordance with the deadlines specified above. A modification to the plan will be approved in accordance with the procedures in item F unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure in accordance with parts 7045.0630, subpart 6; and 7045.0632, subpart 7, but are required to close as landfills under part 7045.0638, subpart 4.

C. The owner or operator of a hazardous waste facility having interim status shall submit a closure plan to the director at least 180 days before the date he or she expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final facility closure if

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it involves such a unit, whichever is earlier. The owner or operator shall submit a closure plan to the director at least 45 days before the date he or she expects to begin final closure of a facility with only tanks, container storage, or incinerator units. The owner or operator shall submit the closure plan no later than 15 days after:

(1) termination of interim status, except when a permit is issued simultaneously with termination of interim status; or

(2) issuance of a judicial decree or agency order to cease receiving wastes or close.

D. Owners or operators with approved closure plans must notify the director in writing at least:

(1) 60 days before the date he or she expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

(2) 45 days before the date he or she expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

E. The date on which the owner or operator "expects to begin closure" is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date on which the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional hazardous waste" if the owner or

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operator in fact receives additional hazardous wastes within one year after the last volume was received. If the owner or operator can demonstrate to the director that the unit or facility has the capacity to receive additional hazardous wastes and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the director may approve an extension to this one-year limit.

F. The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments, to request modifications, or to request a public information meeting on the closure plan within 30 days of the date of the notice. In response to a request or at ~~his or her own~~ the director's discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the closure plan. The director shall approve, modify, or disapprove closure plans for facilities having interim status within 90 days of receipt of the plan. If the director does not approve the plan, the director shall provide the owner or operator with a detailed written statement of reasons for the refusal. The owner or operator shall submit a modified or new plan for approval within 30 days. The director shall approve or modify this plan. If the director modifies the plan, this modified plan becomes the approved closure plan. A copy of the modified plan shall be mailed to the owner or operator.

Subp. 4. **Removal of wastes and decontamination or dismantling of equipment.** Nothing in this part shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

7045.0596 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.**

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Within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the ~~site~~ unit or facility, or dispose on-site all hazardous waste in accordance with the approved closure plan. The director may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90-day period, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, and:

A. the activities required to comply with the approved closure plan will, of necessity, take longer than 90 days to complete; or

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, there is a reasonable likelihood that ~~a person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ hazardous waste management unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

If the owner or operator of a facility required to maintain financial assurance for closure, post-closure care, or corrective action fails to make any required payment or to substitute alternative financial assurance when required to do so, the director shall order the owner or operator to begin closure activities.

Subp. 2. **Time extension for closure activities.** The owner or operator shall complete partial or final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous waste at the hazardous waste management unit or facility, or 180 days after approval of the closure plan if that is later. The director may approve a longer closure period if the owner or operator demonstrates at least 30 days before expiration of the 180-day period that he or she has taken and will continue to take all

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steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including all applicable interim status requirements, and:

A. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, there is a reasonable likelihood that ~~a person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

If operation of the site is recommended, the director may defer completion of partial or final closure activities until the new operation is terminated.

Subp. 3. **Disposal or decontamination of equipment, structures, and soils.** ~~When~~ During the partial and final closure ~~is completed~~ periods, all contaminated facility equipment ~~and~~, structures, and soils must ~~have been~~ be properly disposed of or decontaminated ~~by removing all hazardous wastes and residues~~, unless otherwise specified in part 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; or 7045.0638, subpart 4. By removing any hazardous wastes or hazardous constituents during partial or final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of parts 7045.0205 to 7045.0304.

Subp. 4. **Certification of closure.** ~~When~~ Within 60 days after closure is completed for each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit and within 60 days after final closure is completed, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, has been closed in

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accordance with the specifications in the approved closure plan. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until he or she releases the owner or operator from the financial assurance requirements for closure under part 7045.0612, subpart 9.

7045.0600 POST-CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Submittal of post-closure plan.** The post-closure plan must be submitted as follows:

A. The owner or operator of a disposal facility shall have a written post-closure plan. A copy of the most current plan ~~and all revisions to the plan~~ must be ~~kept at the facility~~ furnished to the director upon request, including request by mail, until the post-closure care period begins. ~~This~~ For facilities without approved post-closure plans, it must also be provided to the director as requested, during site inspections, on the day of inspection. For each hazardous waste management unit subject to post-closure care requirements, the plan must identify the activities which will be carried on after closure of the unit and the frequency of these activities, and it must include:

(1) a description of the planned ground water monitoring activities and frequencies at which they will be performed;

(2) a description of the planned monitoring activities, and frequencies at which they will be performed to comply with parts 7045.0630, 7045.0632, 7045.0634, and 7045.0638 during the post-closure care period;

(3) a description of the planned maintenance activities and frequencies at which they will be performed to ensure the integrity of the cap and final cover or other containment structures, where applicable, and the function of the facility monitoring equipment; and

~~(3)~~ (4) the name, address, and telephone number

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of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure period. After final closure has been certified, this person or office must keep an updated post-closure plan during the post-closure period.

B. The owner or operator may amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure period. An owner or operator with an approved post-closure plan must submit a written request to the director to authorize a change in the approved plan. The owner or operator shall amend the plan whenever the following conditions affect the post-closure plan:

(1) changes in operating plans or facility design~~,~~; or

(2) unexpected events ~~which~~ occur during the active life of the facility, including partial and final closure, or during the post-closure period ~~affect the post-closure plan. He or she shall also amend the plan whenever~~; or

(3) there is a change in the expected year of closure, if applicable.

A request for modification of the post-closure plan must be made to the director ~~within~~ at least 60 days ~~after~~ before the proposed changes in operating plans or facility design, or no later than 60 days after the events which affect the post-closure plan occur. This request must include the revised post-closure plan and indicate the reasons for modifying the plan. The request must be made in accordance with ~~the procedures of~~ subpart 3 and the director shall take actions ~~in accordance with the procedures~~ required in subpart 3. A modification to the plan will be approved in accordance with item D unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4. The director may request modifications to the post-closure plan under the conditions described in subitems (1) to (3). An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days after

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the director's request. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with part 7045.0630, subpart 6; or 7045.0632, subpart 7, is required to close as a landfill in accordance with part 7045.0638, subpart 4. The owner or operator must submit a post-closure plan within 90 days after the owner or operator or director determines that the unit must be closed as a landfill.

C. The owner or operator of a facility with hazardous waste management units subject to post-closure requirements shall submit the post-closure plan to the director at least 180 days before the date he or she expects to begin closure of the first hazardous waste disposal unit. The date ~~he or she~~ on which the owner or operator "expects to begin closure" ~~must begin immediately after the date on which he or she expects to receive the final volume of wastes~~ is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional volumes of hazardous waste" if the owner or operator in fact receives additional hazardous wastes within one year after the last volume was received.

The owner or operator also shall submit the plan to the director no later than 15 days after:

~~(1)~~ termination of interim status, except when a permit is issued to the facility simultaneously with termination

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of interim status; or

~~(2)~~ issuance of a judicial decree or agency order to cease receiving waste or close.

D. The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments, to request modification, or to request a public information meeting on the post-closure plan or substantive amendments to the post-closure plan within 30 days of the date of the notice. In response to a request or at his or her own discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. The director shall approve, modify, or disapprove post-closure plans for facilities having interim status within 90 days of the receipt of the plan. If the director does not approve the plan, he or she shall provide the owner or operator with a detailed written statement of reasons for the refusal, and the owner or operator shall submit a modified or new plan for approval within 30 days after receiving this written statement. The director shall approve or modify this plan in writing within 60 days. If the director modifies the plan, this modified plan becomes the approved post-closure plan. A copy of the modified plan and a detailed statement of reasons for the modifications shall be mailed to the owner or operator. The director shall ensure that the approved post-closure plan is consistent with part 7045.0602.

Subp. 3. **Modification of post-closure period.** The post-closure period may be modified during the post-closure care period as described in items A and B:

A. The owner or operator or any member of the public may petition the director to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility or alter the requirements of the post-closure care period based on cause.

(1) The petition must include evidence demonstrating that the secure nature of the hazardous waste management unit or facility makes the post-closure care

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requirements unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan, or that the requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment. Areas which must be considered in demonstrating the secure nature of the facility include leachate or ground water monitoring results, characteristics of the waste, application of advanced technology; or alternative disposal, treatment, or reuse techniques that indicate the facility is secure.

(2) [Unchanged.]

B. The director may decide to modify the post-closure plan if necessary to prevent threats to human health and the environment. Extension or reduction of the post-closure care period or alteration of the requirements of the post-closure care period may be proposed based on cause.

The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments or request a public information meeting within 30 days of the date of the notice. The director shall in response to a request or at his or her own discretion hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. After considering the comments, a final determination shall be issued.

The director shall base the final determination upon the criteria outlined in item A, subitem (1). A modification of the post-closure plan may include, when appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the director shall determine whether the requirements should be permanently discontinued or reinstated to prevent threats to human health and the environment.

7045.0602 POST-CLOSURE CARE AND USE OF PROPERTY.

Subpart 1. **Post-closure care requirements.** Post-closure

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care for each hazardous waste management unit subject to these requirements must continue for 30 years after the date of completing closure of the unit and must consist of at least ground water monitoring and reporting and the maintenance of monitoring and waste containment systems in accordance with parts 7045.0630, 7045.0632, 7045.0634, and 7045.0638, as applicable.

The director may reduce the post-closure care period to less than 30 years for the hazardous waste management unit or facility, if all disposal units have been closed, if it is found that the reduced period is sufficient to protect human health and the environment. This determination must be based on leachate or ground water monitoring results, waste characteristics, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicating the hazardous waste management unit or facility is secure.

~~Prior to~~ Before the time that the post-closure care period is due to expire, the director may extend the post-closure care period applicable to the hazardous waste management unit or facility, if it is found that the extended period is necessary to protect human health and the environment. This determination must be based on leachate or groundwater monitoring results which indicate a potential for migration of wastes at levels which may be harmful to the environment.

All post-closure care activities must be in accordance with the provisions of the approved post-closure plan.

Subp. 2. **Continuation of security requirements.** The director may require, at partial or final closure, continuation of any of the security requirements during part of or all of the post-closure period after the date of completing closure when wastes may remain exposed after completion of closure or when access by the public or domestic livestock may pose a hazard to human health.

Subp. 3. [Unchanged.]

Subp. 4. **Certification of completion of post-closure care.** Within 60 days after completion of the established

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post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the director, by registered mail, certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for post-closure care under part 7045.0616, subpart 9.

7045.0604 NOTICE TO LOCAL LAND AUTHORITY.

Subpart 1. **Submission of survey plat.** ~~**Within 90 days after**~~ No later than the certification of closure ~~**is completed**~~ of each hazardous waste disposal unit is submitted to the director, the owner or operator ~~**of a disposal facility**~~ shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified.

Subp. 2. **Post-closure notices.** Within 60 days after closure is certified for each hazardous waste disposal unit, in addition, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility. For hazardous waste disposed of before January 12, 1981, the owner or operator shall identify the type, location,

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and quantity of the waste to the best of his or her knowledge and in accordance with any records ~~he has~~ kept. Any changes in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occur after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

7045.0606 NOTICE IN DEED TO PROPERTY.

Subpart 1. **Deed notation.** Within 60 days after closure of the first hazardous waste disposal unit is certified and within 60 days after closure of the last hazardous waste disposal unit is certified, the owner or operator of the property on which a disposal ~~facility~~ unit is located shall:

A. record, in accordance with state law, a notation on the deed to the facility property, or on another instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

~~A.~~ (1) the land has been used to manage hazardous waste;

~~B.~~ (2) the land use is restricted; and

~~C.~~ (3) the survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or ~~area~~ other hazardous waste disposal unit of the facility required in part 7045.0604 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

B. submit a certification signed by the owner or operator that he or she has recorded the notation specified in this subpart, including a copy of the document in which the notation has been placed, to the director.

Subp. 2. **Changes to deed.** If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located ~~removes~~ intends to remove the hazardous waste and hazardous waste residues, the liner, if any, and all contaminated underlying and surrounding soil, ~~he or~~

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~~she may remove~~ the owner or operator must request a modification to the approved post-closure plan in accordance with part 7045.0600, subpart 2, item B. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of part 7045.0602, subpart 3. If the owner or operator is granted approval to conduct removal activities, he or she may request that the director approve either:

A. removal of the notation on the deed to the facility property or other instrument normally examined during title search~~,~~; or ~~he or she may add~~

B. addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

~~Upon~~ By removing ~~the~~ hazardous waste and hazardous waste residue; the liner, if any; and the contaminated soil, the owner or operator, unless he or she can demonstrate that any waste removed is not a hazardous waste, becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter.

7045.0608 FINANCIAL REQUIREMENTS.

Subpart 1. [Unchanged.]

Subp. 2. **Definitions.** Definitions are as follows:

A. When used in parts 7045.0608 to 7045.0624, the following terms have the meanings given.

(1) "Closure plan" means the plan for closure prepared in accordance with ~~the requirements of~~ part 7045.0594.

(2) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0610, subparts 1, 2, and 3.

(3) "Current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities" means the most recent of the estimates prepared in accordance with Code of Federal Regulations, title 40, section 144.62(a), (b), and (c).

(4) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with

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part 7045.0614, subparts 1, 2, and 3.

~~(4)~~ (5) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

~~(5)~~ (6) "Post-closure plan" means the plan for post-closure care prepared in accordance with ~~the requirements of~~ parts 7045.0600 to 7045.0606.

B. and C. [Unchanged.]

7045.0610 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall prepare a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan in part 7045.0594 and applicable closure requirements in parts 7045.0626, subpart 8; 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; and 7045.0642, subpart 5. The closure cost estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

A. The closure cost estimate may be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if it can be demonstrated that on-site disposal capacity will exist at all times through the life of the facility.

B. The closure cost estimate may not incorporate any salvage value that may be realized with the scale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

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C. The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first closure cost estimate was prepared~~ financial instruments used to comply with part 7045.0612 were established. Owners and operators using the financial test or corporate guarantee shall adjust the closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in part 7045.0504, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

Adjustments must be made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the closure cost estimate ~~whenever~~ within 30 days after a change in the closure plan increases the cost of closure, or within 30 days after the director has approved the request to modify the plan, for facilities with approved closure plans. The revised closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ supply the following ~~at the facility during the operating life of the facility~~ to the director upon request, including request by mail until closure is completed: the latest closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted closure cost estimate.

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7045.0612 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure trust fund.** Requirements for closure trust funds are as follows:

A. to K. [Unchanged.]

L. After beginning partial or final closure, an owner or operator or any other person authorized to perform partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the director shall determine whether the partial or final closure expenditures comply with the closure plan or are otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, under subpart 9, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

M. The director shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** Requirements for surety bonds that guarantee payment into a closure trust fund are as follows:

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A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. **Closure letter of credit.** Requirements for closure letters of credit are as follows:

A. to I. [Unchanged.]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 5. **Closure insurance.** Requirements for closure insurance are as follows:

A. to D. [Unchanged.]

E. After beginning partial or final closure, an owner or operator, or other person authorized to perform closure, may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in the

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amounts the director specifies in writing. If the director has reason to believe that the maximum cost of closure will be significantly greater than the face amount of the policy, the director may withhold reimbursement of the amounts deemed prudent until it is determined in accordance with subpart 9 that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to I. [Unchanged.]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 6. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

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C. The owner or operator shall have:

(1) a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer, as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to J. [Unchanged.]

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

L. [Unchanged.]

Subp. 7. and 8. [Unchanged.]

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Subp. 9. **Release of the owner or operator from ~~the~~ requirements of this part.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the ~~agency~~ director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for final closure of the particular facility, unless the agency has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

7045.0614 COST ESTIMATE FOR POST-CLOSURE CARE.

Subpart 1. **Cost estimate requirements.** The owner or operator of a disposal facility shall prepare a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in parts 7045.0600 to 7045.0606; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; and 7045.0638, subpart 4. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under part 7045.0602. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is neither a parent nor a subsidiary of the owner or operator.

Subp. 2. **Yearly update of cost estimate.** During the ~~operating~~ active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first post-closure cost estimate was prepared~~ financial instruments used to comply with part 7045.0616 were established. For owners or operators using the financial test

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or corporate guarantee, the post-closure cost estimate must be adjusted for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the director as specified in part 7045.0616, subpart 6, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the "Survey of Current Business" issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator of the previous year. Adjustments must be made as follows:

A. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

B. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the post-closure cost estimate during the ~~operating~~ active life of the facility ~~whenever~~ within 30 days after a change in the post-closure plan increases the cost of post-closure care, or within 30 days after the director has an approved request to modify the plan, for facilities with approved post-closure plan. The revised post-closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ furnish the following ~~at the facility during the operating life of the facility~~ to the director upon request, including request by mail: the latest post-closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted post-closure cost estimate.

7045.0616 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

Subpart 1. **In general.** An owner or operator of a disposal

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facility shall establish financial assurance for post-closure care of the facility ~~by choosing~~ 60 days before the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall choose from the options specified in subparts 2 to 6.

Subp. 2. **Post-closure trust fund.** Requirements of a post-closure trust fund are as follows:

A. to L. [Unchanged.]

M. An owner or operator or other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in the amounts the director specifies in writing. If the director does not instruct the trustee to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

N. [Unchanged.]

Subp. 3. **Surety bond guaranteeing payment into a post-closure trust fund.** The following are requirements for surety bonds that guarantee payment into a post-closure trust fund:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. [Unchanged.]

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Subp. 5. **Post-closure insurance.** The following requirements apply to post-closure insurance:

A. to D. [Unchanged.]

E. An owner or operator or other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, he or she shall instruct the insurer to make reimbursement in the amounts the director specifies in writing. If the director does not instruct the insurer to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to K. [Unchanged.]

Subp. 6. **Financial test and corporate guarantee for post-closure care.** The following is the financial test and corporate guarantee for post-closure care:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for his or her most recent

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bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets located in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C, refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer, as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimates" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to M. [Unchanged.]

Subp. 7. and 8. [Unchanged.]

Subp. 9. **Release of the owner or operator from the requirements of this part.** ~~When an~~ Within 60 days after receiving certification from the owner or operator ~~has completed, to the satisfaction of the agency, all~~ and an independent registered professional engineer that the post-closure care requirements have been completed for a hazardous waste disposal unit in accordance with the post-closure plan, the agency shall, at the request of the owner or operator, notify him or her in writing that he or she is no longer required by this part to maintain financial assurance for post-closure care of ~~the particular facility~~ that unit, unless

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the agency has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The agency shall provide the owner or operator with a detailed written statement of any reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

7045.0620 LIABILITY REQUIREMENTS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this part, until certifications of closure of the facility, as specified in part 7045.0596, are received by the director. Within 60 days after receiving such certifications from the owner or operator and an independent registered professional engineer, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the director has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 5. [Unchanged.]

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Hazardous Waste; Closure, Post-closure, and Financial Assurance

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapters 7001 and 7045

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Adoption of Rules of the
State of Minnesota Regarding
Closure, Post-Closure, and
Financial Assurance for
Hazardous Waste Treatment,
Storage and Disposal Facilities

NOTICE OF INTENT TO
ADOPT A RULE WITHOUT
A PUBLIC HEARING

Notice is hereby given that the State of Minnesota intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28. The statutory authority to adopt the rules is Minn. Stat. § 116.07, subd. 4 (1986).

All persons have 30 days in which to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Interested persons have until 4:30 p.m. on April 8, 1987 to submit comments on the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Minnesota Pollution Control Agency (MPCA) will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Nancy Larson
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
520 Lafayette Road
St. Paul, Minnesota 55155

The proposed rules may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed rules as noticed.

The proposed rules follow this notice. One free copy of the proposed rules is available from the MPCA. Contact Nancy Larson at 612/296-7437 or at the address listed above.

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 to support the proposed rules has been prepared and is available from Nancy Larson upon request at 612/296-7437 or at the address listed above.

You are hereby advised pursuant to Minn. Stat. § 14.115 (1986), "Small business considerations in rulemaking," that the proposed amendments will have a minimal impact on small businesses. Several of the amendments provide clarification to existing requirements or provide some relaxation in certain aspects of the requirements and will not cause additional expenses to be incurred.

The proposed amendments follow directly from amendments to the federal hazardous waste program. Therefore, incorporation of these requirements will not impose additional expenses on small businesses in Minnesota that are not incurred by small businesses elsewhere. According to the analysis performed by

the U.S. Environmental Protection Agency to satisfy requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. § 801 et seq.), the amendments will not require small businesses to incur significant expenses through increased management costs (51 FR 16443).

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rules, must submit the written request to Nancy Larson at the address listed above.

Thomas J. Kalitowski
Executive Director

MINNESOTA DEPARTMENT OF ADMINISTRATION, DOCUMENTS DIVISION

State Register

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DESCRIPTION (FOR SUBMITTING AGENCY'S USE)

Closure, Post-Closure, and Financial Assurance Rules

DESCRIPTION	PRICE

SR-00001-03 (7/86)

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Adoption of Rules of the
State of Minnesota Regarding
Closure, Post-Closure, and
Financial Assurance for
Hazardous Waste Treatment,
Storage and Disposal Facilities

NOTICE OF INTENT TO
ADOPT A RULE WITHOUT
A PUBLIC HEARING

Notice is hereby given that the State of Minnesota intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28. The statutory authority to adopt the rules is Minn. Stat. § 116.07, subd. 4 (1986).

All persons have 30 days in which to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Interested persons have until 4:30 p.m. on April 8, 1987 to submit comments on the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Minnesota Pollution Control Agency (MPCA) will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Nancy Larson
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
520 Lafayette Road
St. Paul, Minnesota 55155

The proposed rules may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed rules as noticed.

The proposed rules incorporate most of the federal amendments to the closure, post-closure, and financial assurance requirements for hazardous waste treatment, storage or disposal facilities. These amendments apply to facilities with Resource Conservation and Recovery Act (RCRA) permits and to those operating under interim status. The rules proposed for adoption include provisions which relate to the following matters.

1. Clarification of the contents and level of detail required in closure plans, post-closure plans, and cost estimates for closure and post-closure care.

2. Incorporation of specific requirements for partial closures.

3. Certification of the completion of post-closure care.

4. Clarification of the time allowed to begin and to complete closure activities.

One free copy of the rules is available on request from the MPCA. Contact Nancy Larson at 612/296-7437, or at the address listed above.

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 to support the proposed rules has been prepared and is available from Nancy Larson upon request at 612/296-7437 or at the address listed above.

You are hereby advised pursuant to Minn. Stat. § 14.115 (1986), "Small business considerations in rulemaking," that the proposed amendments will have a minimal impact on small businesses. Several of the amendments provide clarification to existing requirements or provide some relaxation in certain aspects of the requirements and will not cause additional expenses to be incurred.

The proposed amendments follow directly from amendments to the federal hazardous waste program. Therefore, incorporation of these requirements will not impose additional expenses on small businesses in Minnesota that are not incurred by small businesses elsewhere. According to the analysis performed by the U.S. Environmental Protection Agency to satisfy requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. § 801 et seq.), the amendments will not require small businesses to incur significant expenses through increased management costs (51 FR 16443).

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rules, must submit the written request to Nancy Larson at the address listed above.

Date: March 4, 1987

Thomas J. Kalitowski
Executive Director

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments of Rules Governing
the Management, Storage, Treatment,
and Disposal of Hazardous Waste,
Minn. Rules Pts. 7045.0020,
7045.0486, 7045.0488, 7045.0490,
7045.0492, 7045.0494, 7045.0496,
7045.0498, 7045.0502, 7045.0504,
7045.0506, 7045.0508, 7045.0518,
7045.0524, 7045.0594, 7045.0596,
7045.0600, 7045.0602, 7045.0604,
7045.0606, 7045.0608, 7045.0610,
7045.0612, 7045.0614, 7045.0620,
7001.0190, 7001.0560, 7001.0650,
and 7001.0730

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of the proceeding is the proposed amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing closure, post-closure, and financial responsibility requirements of permitted and interim status hazardous waste treatment, storage and disposal facilities (hereinafter TSDF's). The proposed amendments will incorporate provisions promulgated by the United States Environmental Protection Agency (hereinafter "EPA") to conform to the settlement agreement signed by EPA and petitioners in American Iron and Steel Institute vs. EPA, renamed Atlantic Cement Company Inc. vs. EPA, (hereinafter "ACCI litigation") (D.C. Cir., No. 81-1387 and Consolidated Cases). The ACCI litigation and settlement is discussed in the background document to the final rule (Exhibit 1). The amendments will also incorporate provisions promulgated by the EPA for the purposes of clarifying the closure, post-closure, and financial assurance regulations and addressing issues that have arisen during the course of their implementation. The federal amendments to the

closure, post-closure, and financial assurance requirements for TSDF's were proposed in the March 19, 1985 Federal Register (50 FR 11068-11097) (Exhibit 2) and published as final regulations in the May 2, 1986 Federal Register (51 FR 16422-16459) (Exhibit 3). Although the federal amendments were not promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA"), Public Law 98-616 (Exhibit 4), some of the amendments conform to HSWA and to the requirements of the July 15, 1985 regulatory amendments which codified portions of HSWA (hereinafter "codification rule").

These rules are proposed for amendment pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (1986).

This Statement of Need and Reasonableness is divided into several parts. Part II contains the Agency's explanation of the need for the proposed amendments. Part III contains an explanation of the reasonableness of the proposed amendments. Pursuant to the requirements of Minn. Stat. § 14.115 (1986), Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses. Part V contains a list of the exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's offices at 520 Lafayette Road, St. Paul, Minnesota 55155.

II. NEED FOR THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

Minn. Stat. ch. 14 (1986) requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms this means that an agency must set

forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate.

Need is a broad test that does not easily lend itself to evaluation of each proposed revision. In the broad sense, the need for amendments to the Agency's rules governing closure, post-closure, and financial responsibility requirements for permitted and interim status hazardous waste TSDF's has two bases: the need for consistency with the federal hazardous waste regulations and the need for rules which provide an acceptable level of protection for human health and the environment without unduly restricting normal commerce.

A. Need for Consistency with Federal Regulations.

In 1976, Congress adopted the Resource Conservation and Recovery Act (hereinafter "RCRA") to regulate the management of hazardous waste. 42 U.S.C. §§ 6901 et seq. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and set up the mechanism for the EPA to grant authority to states to operate the program. In states that receive authorization, the state environmental agency administers the state program in lieu of the federal program. To receive and maintain authorization, the state program must be "equivalent" to the federal program and consistent with federal or state programs applicable in other states. EPA has defined equivalent to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, EPA's goal is to achieve an integrated

national program which requires that final state programs do not conflict with each other or with the federal program.

Minnesota received final authorization for its hazardous waste program pursuant to the 1976 and 1980 RCRA amendments from EPA effective February 11, 1985. See 50 FR 3756 (January 28, 1985). A state with final authorization administers its hazardous waste program in lieu of the EPA program for those regulations which were promulgated pursuant to RCRA as adopted in 1976 and as amended in 1980. Federal regulations promulgated under RCRA are not in effect in Minnesota until the State rules are amended to incorporate the federal changes.

The authorization did not extend to those requirements promulgated pursuant to HSWA. A state must obtain authorization specifically under HSWA. Federal regulations promulgated under HSWA go into effect in all states on the federal effective date regardless of the state's authorization status or the fact that the existing state rules have not been amended to reflect the federal program.

Although most of the amendments to the hazardous waste program since 1984 have incorporated provisions of HSWA into the regulations, the federal amendments to the requirements for closure, post-closure care and financial assurance of TSDF's were not promulgated pursuant to HSWA. The federal TSDF closure, post-closure, and financial assurance regulations were amended to clarify the previous requirements and to incorporate changes necessary to conform to the settlement agreement between EPA and petitioners in the ACCI litigation. Some of the amendments are more stringent than the requirements in Minnesota's current hazardous waste rules and must be incorporated into the

State program in order to maintain authorization. Some of the amendments result in less stringent requirements for TSDF's than those in previous federal regulations and those requirements in Minnesota's current hazardous waste rules.

Although a state program may be more stringent than the federal requirements and states are not required to adopt less stringent federal standards, the Agency believes it is important to maintain as much consistency as possible between Minnesota's rules and the federal program. Much of the hazardous waste generated in Minnesota must be sent to other states for treatment or disposal because Minnesota has no commercial disposal facilities and very limited commercial treatment facilities. This means that many generators must be knowledgeable about requirements of both the State and federal hazardous waste programs. In addition, permitting of hazardous waste TSDF's in authorized states is a joint effort undertaken by the state environmental regulatory agency and EPA. The need to comply with both federal and State requirements makes compliance difficult for owners and operators of TSDF's when substantial differences exist between federal regulations and State rules. Therefore, to the extent it can be accomplished without posing a threat to human health and the environment, amendment of Minnesota's hazardous waste rules to incorporate EPA's amendments is desirable.

B. Need for Managing Hazardous Waste Consistent with the Protection of Human Health and the Environment.

The federal amendments address areas in the federal closure, post-closure, and financial assurance regulations that were shown by implementation experience to be deficient. The proposed amendments to the Minnesota hazardous waste rules

include these provisions which protect human health and the environment. The amendments provide protection by adding specific requirements for partial closures of hazardous waste TSDF's and requiring certification of completion of post-closure care. This certification will help ensure that post-closure care activities are adequate to protect human health and the environment. This is important because of the potential threat posed by land disposal of hazardous wastes. Specific requirements for partial closure will help ensure that partial closures are undertaken in a manner that protects human health and the environment. In addition, provisions are included which make explicit the level of detail required in closure and post-closure plans. The rule provisions also require that adequate funds must be available for facility closure and post-closure care by specifying which factors may be considered in the cost estimate for closure and post-closure care. Closure and post-closure plans need to contain enough detail so that accurate cost estimates are prepared, and so that a third party is able to conduct closure or post-closure care, if the owner or operator fails to do so.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

The Agency is required by Minn. Stat. ch. 14 (1986) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is a rational basis for the Agency's action. The Agency proposes to incorporate most of the federal amendments promulgated by EPA on May 2, 1986 into the State rules. A complete discussion of the reasonableness

of the federal amendments is presented in Exhibits 1 to 3 listed in Part VI of this document, which are hereby incorporated by reference. The reasonableness of each of the proposed amendments is discussed below. The following discussion is organized so that the proposed amendments which make parallel requirements for permitted and interim status facilities are addressed simultaneously.

A. Minn. Rules Pt. 7045.0020 (Definitions).

The agency is proposing to amend Minn. Rules pt. 7045.0020 to modify one definition and add three definitions. These definitions add terms which are used in the federal TSDF closure, post-closure, and financial assurance regulations (Exhibit 3). It is reasonable to define these terms in the rules in order to maintain consistency with the federal program. Because the terms are used elsewhere in the amendments, it is reasonable to define them so that the regulated community can understand the requirements of the amendments. The new terms are "active life" in Minn. Rules pt. 7045.0020, subp. 2a; "final closure" in Minn. Rules pt. 7045.0020, subp. 24a; and "hazardous waste management unit" in Minn. Rules pt. 7045.0020, subp. 36a.

The definition of "partial closure" in Minn. Rules pt. 7045.0020, subp. 65 is amended to provide consistency with the federal definition in 40 CFR § 260.10.

The definition of active life is equivalent to the federal definition in 40 CFR § 260.10. The federal definition of active life was amended to include the closure period. This change is reasonable to ensure that all monitoring activities continue until closure is completed. It is also reasonable to define the term in the State rules to make it clear that the definition includes the

period during which closure activities are underway.

The definition of final closure is equivalent to the federal definition in 40 CFR § 260.10. The federal amendments define "final closure" as the closure of all hazardous waste management units at the facility. It is reasonable to define the term to clarify the distinction between partial closure and final closure.

The definition of hazardous waste management unit is equivalent to the federal definition in 40 CFR § 260.10. Examples of hazardous waste management units include tanks and their associated piping, container storage areas, landfill cells, and incinerators. It is reasonable to define the term to clarify the distinction between a facility and units at a facility. It is also reasonable to define the term because it is necessary for an accurate definition of partial closure.

The definition of partial closure is amended to be equivalent to the federal definition in 40 CFR § 260.10. The amended definition refers to the closure of hazardous waste management units rather than a discrete part of the facility. This amendment is reasonable because it provides a more precise definition of partial closure. This change is also reasonable because it clarifies the distinction between partial closure and final closure. This distinction is necessary to ensure appropriate closure standards are met when conducting closure activities.

B. Minn. Rules Pt. 7045.0486 and Minn. Rules Pt. 7045.0594 (Closure).

1. Minn. Rules pts. 7045.0486, subp. 2 and 7045.0594, subp. 2 (Closure Performance Standards).

The Agency is proposing to amend Minn. Rules pts. 7045.0486, subp. 2 and 7045.0594, subp. 2 to incorporate references to the specific technical closure requirements in other parts of the rules into the closure performance standards for permitted and interim status facilities. It is reasonable to incorporate these references to ensure that owners or operators of permitted and interim status TSDF's comply with both the general performance standards and the applicable process-specific standards.

The Agency proposes to incorporate the federal amendment which provides substitutes for three existing terms in the closure performance standard for permitted and interim status TSDF's. The amended closure performance standard will require that closure procedures control, minimize, or eliminate post-closure escape of hazardous constituents rather than hazardous waste constituents; contaminated run-off, rather than contaminated rainfall; and hazardous waste decomposition products, rather than waste decomposition products. It is reasonable to specify hazardous constituents (40 CFR Part 261, Appendix VIII and Minn. Rules pt. 7045.0141) in the closure performance standard to ensure that all contamination is addressed at closure, not just contamination which is directly traceable to particular hazardous wastes. This amendment is consistent with provisions of HSWA which address contamination remaining at closure. It is reasonable to replace the term contaminated rainfall with contaminated run-off, since it more accurately describes the source of

contamination important to a TSDF closure performance standard. In addition, it is reasonable for the closure performance standard for hazardous waste TSDF's to specify hazardous waste decomposition products because nonhazardous wastes are not covered in the closure performance standard.

2. Minn. Rules Pts. 7045.0486, Subp. 3 and 7045.0594, Subp. 3 (Submittal and Contents of Closure Plan).

The Agency proposes to amend Minn. Rules pts. 7045.0486, subp. 3 and 7045.0594, subp. 3 to be consistent with the requirements of 40 CFR § 264.112 (a) and (b) and 40 CFR § 265.112 (a) and (b).

The proposed amendments will remove the requirement that an updated copy of the closure plan must be kept at the facility. The federal requirement to keep a copy of the closure plan at the facility was changed in response to the argument made by petitioners in the ACCI litigation that many facilities are not equipped to maintain records on-site. The proposed amendments will require that the closure plan be provided to the director upon request, including request by mail, rather than requiring that the plan be kept at the facility. This change is reasonable because it recognizes that the facility site may not be an appropriate location for maintenance of records in all cases, but also provides for the accessibility of closure plans during inspections. For permitted facilities, it is reasonable to change the requirement in Minn. Rules pt. 7045.0486, subp. 3 that closure plans be kept at the facility for the additional reason that the approved plan is already on file with the Agency. For interim status facilities without approved closure plans, the proposed amendment to Minn. Rules pt. 7045.0594, subp. 3 is reasonable because

accessibility to the closure plan during inspections will not be curtailed since the amendment requires that a copy of the plan must be provided on the day of inspection. If the plan is not kept at the facility, it is reasonable to require the owner or operator to provide the plan on short notice for purposes of inspection.

The proposed amendments to Minn. Rules pts. 7045.0496, subp. 3, item A and 7045.0594, subp. 3, item A, subitem 1 will replace the requirement that closure plans contain a description of how and when the facility will be partially closed, with how, but not when, each hazardous waste management unit will be closed. This change is consistent with the proposed amendments to Minn. Rules pts. 7045.0486, subp. 3, item F and 7045.0594, subp. 3, item A, subitem 5, which will no longer require that closure plans contain estimated closure dates. This change is reasonable because it improves the precision of the requirement and maintains equivalency with the federal requirements.

It is also reasonable for owners and operators to plan for the closure of each unit, so that each unit will be closed in a manner protecting human health and the environment, even if the facility is still in operation and final closure has not yet occurred.

Minn. Rules pts. 7045.0486, subp 3, item B and 7045.0594, subp. 3, item A, subitem 2 will be changed by adding a provision which requires a description of methods to be used during partial and final closure. The proposed amendment further specifies that the closure plan identify methods to be used for removing, treating, storing, or disposing of hazardous wastes and identifying the type of off-site hazardous waste management units to be used. It is

reasonable to require owners and operators of TSDF's to include this information in the closure plan to ensure that future hazardous waste management needs at the facility are considered. In addition, EPA believes that this level of detail in the closure plan is necessary to ensure an accurate cost estimate and adequate financial assurance (51 FR 16426). It is reasonable for the rule to specify the level of detail required in the closure plan to clarify the requirement for the regulated community.

Minn. Rules pts. 7045.0486, subp. 3, item C and 7045.0594, subp. 3, item A, subitem 3 currently require that closure plans include a description of steps needed to decontaminate facility equipment at closure. The proposed amendment will expand this provision to require that the closure plan include a description of steps needed to decontaminate or remove contaminated facility structures, containment systems, and soils in a manner that satisfies the closure performance standard. The plan must also include methods for sampling and criteria to be used to determine the extent of contamination at the site. It is reasonable to require that the plan address cleanup of the maximum extent of contamination resulting from the facility's hazardous waste operations in order to adequately protect human health and the environment. It is also reasonable for the closure plan to include information that the owner or operator intends to use to evaluate the extent of contamination that needs to be addressed at partial or final facility closure for the protection of human health and the environment.

The proposed amendments will add a new item D to Minn. Rules pt. 7045.0486, subp. 3 and a new subitem 4 to item A of Minn. Rules pt. 7045.0594 in order to

provide consistency with the requirements of 40 CFR § 264.112 (b)(5) and 40 CFR § 265.112 (b)(5). These additions to the requirements for permitted and interim status TSDF's specify that closure plans must include descriptions of activities not otherwise listed in Minn. Rules pt. 7045.0594, subp. 3. These activities are necessary to ensure that partial and final closure satisfies the closure performance standards. It is reasonable to require that closure plans address ground water monitoring, leachate collection, and run-on and run-off control which are necessary to protect human health and the environment.

A new provision in Minn. Rules pts. 7045.0496, subp. 3, item E and 7045.0594, subp. 3, item A, subitem 6 will require that the closure plan include a schedule for the closure of each hazardous waste management unit as well as for final facility closure. In addition, the schedule must include the time required to close each management unit. It is reasonable to require owners and operators of hazardous waste TSDF's to adequately consider and plan for the amount of time and sequence of activities necessary to meet the closure performance standard for each management unit. It is also reasonable to require this information in the closure plan to allow the Agency to monitor the progress of closure activities to ensure protection of human health and the environment. This requirement is consistent with the federal regulations.

The previous federal regulations and current State rules require owners and operators of all TSDF's to include an estimate of the expected year of closure in the closure plan. The proposed amendments will limit this requirement to certain facilities. Minn. Rules pt. 7045.0486, subp. 3, item F will require an estimate of the expected year of closure for permitted facilities that use trust

funds to establish financial assurance and which are expected to close prior to permit expiration. Minn. Rules pt. 7045.0594, subp. 3, item A, subitem 5 will require an estimate of the expected year of closure for interim status facilities that do not have approved closure plans or that use trust funds and have a remaining operating life of less than 20 years. These changes are consistent with the requirements for permitted and interim status facilities in 40 CFR § 264.112 (b)(7) and 40 CFR § 265.112 (b)(7), respectively.

The federal requirement to estimate the expected year of closure for all permitted facilities was changed in response to arguments made by petitioners in the ACCI litigation that this requirement was unnecessarily burdensome for owners and operators of on-site hazardous waste facilities (Exhibit 1). For TSDF's such as on-site storage and treatment facilities associated with industrial processes, closure of the facility may be determined largely by events affecting the industry, making it difficult to estimate the expected year of closure.

However, because trust fund payments are made annually over the term of the RCRA permit or over the remaining operating life of the facility, it is reasonable to require that owners or operators of permitted facilities who use trust funds estimate the expected year of closure to ensure that adequate payments are made. Similarly, it is reasonable to require a year of closure estimate in the closure plan for owners and operators of interim status facilities with approved closure plans that are expected to close in less than 20 years, and for which trust funds are the instrument of financial assurance. Therefore, it is reasonable to narrow this requirement to facilities for which

an estimate of the expected year of closure is necessary to ensure adequate financial assurance for closure. This change is also reasonable because unnecessary and burdensome requirements are eliminated.

For interim status facilities that do not have approved closure plans prior to closure, it is reasonable to require that the expected year of closure be included in the closure plan so that during inspection, the Agency may verify that facility operations are consistent with the expected closure date. It is also reasonable to have the estimated year of closure available to the Agency so that adequacy of the cost estimates and financial assurance mechanisms can be determined prior to facility closure. If, upon inspection, the Agency learns that the expected date of closure for an interim status facility is imminent, additional inspections then may be scheduled.

3. Minn. Rules Pts. 7045.0486, Subp. 4 and 7045.0594, Subp. 3, Item B (Amendment of Plan).

The Agency proposes to amend the State rules regarding amendment of closure plans for permitted and interim status facilities in order to incorporate the changes to the federal requirements. These proposed amendments are consistent with the requirements of 40 CFR § 264.112 (c) and 40 CFR § 265.112 (c).

Active life is defined in Minn. Rules pts. 7045.0486, subp. 4, and 7045.0594, subp. 3, item B as that period during which wastes are periodically received. Because the current State rules allow an owner or operator to amend the closure plan at any time during the active life of the facility, the amendments will delete the reference to facility active life. The amendments will specify that closure plans may be amended prior to notification of partial

or final closure. It is reasonable to delete this existing reference to active life because the amendments to the closure and post-closure care requirements will define active life as including the closure period. It is also reasonable to prevent changes to the closure plan once closure is underway, unless they are necessary to protect the environment. It is also reasonable to establish a deadline for closure plan amendment to clarify the requirements for the regulated community.

The current State rules require that closure plans be amended under certain conditions, including changes in the expected year of closure. The amendments will change this requirement to be consistent with the amendments to Minn. Rules pts. 7045.0486, subp. 3 and 7045.0594, subp. 3, item A which will no longer require the expected year of closure to be included in the closure plans for all facilities. It is reasonable to require amendment of closure plans when the expected year of closure changes only for those facilities which must include the expected year of closure in the closure plan.

The amendments will add a new condition under which the closure plan must be modified. If unexpected events which affect the closure plan occur during the course of partial or final closure activities, then the closure plan must be amended. This addition is reasonable since it recognizes that closure plans may require alteration during the closure period in response to the occurrence of unexpected events, such as fire, or the existence of more extensive contamination than previously thought.

Minn. Rules pt. 7045.0496, subp. 4 will be amended to explicitly require owners and operators of permitted facilities to submit a written request for a

permit modification to amend the closure plan. It is reasonable to require a permit amendment for closure plan amendment since the plan becomes a condition of the permit.

Minn. Rules pt. 7045.0594, subp. 3, item B will be amended to require owners and operators of interim status facilities with approved closure plans to submit a written request to the director to authorize a change in the closure plan. These amendments provide for Agency review before closure plans are changed. This Agency review is particularly important because of the additional detail required in the closure plan by the proposed amendments. It is reasonable to establish procedures for Agency review before closure plans are changed to ensure that closure of a unit or facility according to the new plan will protect human health and the environment.

In addition to the requirement that owners or operators must amend the closure plan in response to conditions that affect the plan, the rule amendments specify that the director may request modification of the plan in response to the same conditions. This provides for Agency input in determining the need for modifications to closure plans. It is reasonable for the Agency to require a plan modification if necessary so that closure protects human health and the environment. The amendments also establish deadlines for submittal of closure plans which are amended in response to various conditions. The deadlines for permitted and interim status facilities are the same. The establishment of deadlines is reasonable to maintain consistency with the federal requirements and to avoid delay in completion of closure activities in order to protect human health and the environment.

A new provision will be added to the interim status facility requirements in Minn. Rules pt. 7045.0594, subp. 3, item B, which specifies that the approval procedures for closure plan modifications in item F of this subpart will not apply to minor modifications. This new provision applies to interim status facilities with approved plans. Previous federal regulations and current State rules apply the approval procedures in item F, which include requirements for public notice and comment, to all closure plan modifications for interim status facilities. The standards for permitted facilities do not require the public participation procedures in Minn. Rules pts. 7001.0100 to 7001.0130 for closure plan modifications which meet the criteria of minor permit modifications. The federal amendments extend this exemption from public notice and comment requirements for minor modifications to interim status facility closure plans. Although the public notice, comment, and meeting procedures will not apply to minor modifications, Agency review and approval is still required. Therefore, this amendment is reasonable because protection of human health and the environment will not be compromised and a potentially burdensome requirement will be removed.

4. Minn. Rules Pts. 7045.0486, Subp. 5 and 7045.0594, Subp. 3, Items C and D (Notification of Closure).

Minn. Rules Pt. 7045.0486, subp. 5 presently requires owners or operators of permitted facilities to notify the Agency at least 180 days prior to the date of expected facility closure. The proposed amendments change the notification deadline and clarify that the notification requirements pertain to partial closures involving land-based disposal units as well as to final facility

closures.

Minn. Rules pt. 7045.0594, subp. 3, item C sets forth the requirement for owners or operators of interim status facilities to submit closure plans at least 180 days before the date on which he or she expects to begin closure. The proposed amendments will change this provision to require submittal of the closure plan 180 days before the first hazardous waste disposal unit at the facility is expected to be closed, or 180 days before the date on which final closure is expected to commence if disposal units are involved. The proposed amendments will require submission of the plan no later than 45 days before a final closure which involves only hazardous waste management units such as tanks, container storage, or incinerator units.

The 180-day notification deadline for permitted facilities in Minn. Rules pt. 7045.0486, subp. 5 will be amended to require notification 60 days prior to the expected date of closure of land-based disposal units such as surface impoundments, waste piles, land treatment areas, and landfill cells. Notification will be required at least 45 days before the expected date of final closures involving only tanks, container storage, or incinerator units. The new provision in Minn. Rules pt. 7045.0596, subp. 3, item D will establish identical notification requirements for interim status facilities with approved closure plans.

The rationale for the establishment of deadlines for notification of closure or in the case of interim status facilities, submission of closure plans, is to provide sufficient time for Agency review prior to closure. Petitioners in the ACCI litigation argued that the 180-day notification

deadline was overly burdensome. EPA agreed with the petitioners to the extent that the 180-day deadline was longer than necessary to allow for adequate review prior to closure of permitted and some types of interim status facilities (Exhibit 1). However, EPA retained the 180-day deadline for submission of closure plans for interim status facilities when disposal units are to be closed. EPA reasoned that the 180-day period is warranted to provide for proper evaluation of disposal unit closure plans, which are likely to be extensive (51 FR 16429).

EPA's amendments reduced the 180-day notification period applicable to permitted and interim status facilities with approved closure plans, and interim status facilities without disposal units to be closed; but established notification requirements for partial closures involving disposal units. This is reasonable to allow for adequate Agency review in light of the increased risk to human health and the environment posed by disposal units. While it is EPA's intention to encourage partial closures, it is also necessary to ensure that they are subject to the appropriate review and are conducted in accordance with the approved closure plan (51 FR 16428).

The proposed amendments are consistent with 40 CFR § 264.112 (d) and 40 CFR § 265.112 (d). In order to maintain consistency with the federal requirements and for the reasons discussed in this section, it is reasonable to incorporate these changes into the State rules.

Minn. Rules pts. 7045.0486, subp. 5 and 7045.0594, subp. 3, items C and D will also be amended to clarify the meaning of the expected date of closure. The proposed amendments will specify that the date on which the owner or

operator expects to begin closure must be no later than 30 days after the unit receives the known final volume of hazardous waste. Under the proposed changes, owners and operators will be provided additional flexibility in their operations by being allowed one year to begin closure after the unit receives the known final volume of hazardous waste. Owners and operators will be allowed the one-year period only if there is a reasonable possibility that additional hazardous wastes will be received, and the unit or facility has the capacity to receive these wastes. In addition, the owner or operator must demonstrate compliance with all applicable permit or interim status requirements. One additional year may be granted if the owner or operator demonstrates continued compliance with all of the above requirements. EPA believes that hazardous waste management units with the capacity to receive additional hazardous waste and which are otherwise in compliance with all applicable requirements to protect human health and the environment, should not necessarily be required to close if hazardous wastes are not received within a year (Exhibit 3 at 16429). It is reasonable to accommodate flexibility in facility operations provided that protection of human health and the environment is not compromised. Therefore it is reasonable to incorporate this change into the State rules.

The proposed amendments will also clarify that the waste referred to in these provisions is hazardous waste. This clarification is reasonable because it is not EPA's intention for these requirements to preclude owners and operators of TSDF's from receiving or handling solid wastes which are not hazardous (Exhibit 1).

5. Minn. Rules Pts. 7045.0486, Subp. 6 and 7045.0594, Subp. 4 (Equipment Removal and Decontamination).

The proposed amendments will add a new provision to the requirements for permitted and interim status facilities. The new provision clarifies that the owner or operator is not precluded by Minn. Rules pts 7045.0486 or 7045.0594 from removing hazardous wastes or decontaminating equipment in accordance with the approved closure plan prior to closure. This clarification is reasonable because it addresses a point of possible confusion in the requirements for owners and operators of TSDF's. Arguments raised in the ACCI litigation demonstrated that many owners and operators of TSDF's believed that a 180-day notice was required before hazardous waste could be removed or facility equipment could be dismantled. Although the previous regulations did not preclude such activities prior to notification of closure, EPA agreed to clarify the requirement (Exhibit 1 at 77). This proposed amendment is consistent with the federal requirements in 40 CFR § 264.112 (e) and 40 CFR § 265.112 (e) and is consistent with EPA's desire not to delay partial or final closure activities, provided that all necessary steps are taken to protect human health and the environment. It is reasonable to allow removal of hazardous waste or dismantling of equipment before closure, because these activities may reduce threats to human health and the environment. In addition, dismantling of equipment such as in tanks and container storage units may be a routine part of facility operation (Exhibit 1 at 77).

C. Minn. Rules Pt. 7045.0488 and Minn. Rules Pt. 7045.0596 (Closure Activities).

1. Minn. Rules Pts. 7045.0488, Subp. 1 and 7045.0596, Subp. 1 (Time Allowance to Begin Closure Activities).

The proposed amendments will change the provisions in Minn Rules pts. 7045.0488, subp. 1 and 7045.0596, subp. 1, to address partial closures in the rules governing the time allowed for closure activities to begin. The proposed amendments will allow owners and operators of permitted and interim status facilities 90 days after receiving the last volume of hazardous waste at the unit or facility to begin partial or final closures. This change is consistent with the requirements of 40 CFR § 264.113 (a) and 40 CFR § 265.113 (a). It is reasonable to extend this requirement to hazardous waste management units to prevent delays in their closure, which reduces threats to human health and the environment. It is also reasonable for this provision to address partial closures in order to clarify the requirements for partial closure for the regulated community and to provide consistency with the federal program.

The proposed amendments will also clarify that the 90-day period begins after the final shipment of only hazardous waste and does not apply to nonhazardous waste. It is reasonable to include this clarification to avoid possible ambiguities in the rules. This change is also reasonable for the reasons presented in section B4.

According to the current State rules, the director may approve an extension to the 90-day period if the owner or operator demonstrates that certain conditions are met, including the prevention of threats to human health and the

environment. The proposed amendments will require this demonstration to be made at least 30 days before the 90-day period expires. This is reasonable to allow a period for Agency review of the demonstration without causing delays to closure that would pose threats to human health and the environment. The proposed amendments will also add the following conditions for the extension: compliance with all permit or interim status requirements; and for permitted facilities, compliance with all applicable requirements for requesting a permit modification.

The proposed amendments will add language to address partial closures in all of the conditions necessary before the Agency will grant an extension of the 90-day period before beginning partial closure activities. The same conditions apply to final closures.

According to the previous federal and current State requirement, a facility is required to close if hazardous wastes have not been received for 90 days unless a new owner or operator assumes control or the closure activities will of necessity take longer than 90 days to complete. Petitioners in the ACCI litigation argued that this provision was overly restrictive because it did not allow the original owner or operator to temporarily suspend operations in response to factors such as changes in market conditions (Exhibit 1). EPA agreed with the arguments made by the petitioners and amended the regulations to allow owners or operators to delay closure activities for up to one year if applicable demonstrations are made. The Agency proposes to incorporate this amendment into the State rules. The amendments will not diminish the level of protection afforded by the requirements because any owner or operator must

demonstrate prevention of threats to human health and the environment before receiving an extension to the 90-day period. It is reasonable to replace a burdensome requirement with one that is less burdensome and no less protective of human health and the environment. It is also reasonable to maintain consistency with the federal program. The changes to this provision in Minn. Rules pts. 7045.0488, subp. 1, item B and 7045.0596, subp. 1, item B are consistent with 40 CFR § 264.113 (a)(1)(B) and 40 CFR § 265.113 (a)(1)(B).

2. Minn. Rules Pts. 7045.0488, Subp. 2 and 7045.0596, Subp. 2 (Time Extension for Closure Activities).

Minn. Rules pts. 7045.0488, subp. 2 and 7045.0596, subp. 2 specify that closure activities must be completed within 180 days after the final volume of waste is received at the facility unless certain conditions are met. The proposed amendments will make changes in these provisions similar to the changes in subpart 1 discussed in section C1. The proposed amendments will address partial closures, clarify that the 180-day period applies only to shipments of hazardous waste, and establish a deadline for making required demonstrations for an extension for closure completion. The amendments will also allow the owner or operator a one-year extension to the 180-day period to complete closure activities, provided all other applicable conditions are met. These conditions include prevention of threats to human health and the environment from the unclosed but not operating units. These changes are consistent with provisions of 40 CFR § 264.113 (b) and 40 CFR § 265.113 (b).

These amendments are reasonable for the reasons presented in section C1.

3. Minn. Rules Pts. 7045.0488, Subp. 3 and 7045.0596, Subp. 3 (Disposal or

Decontamination of Equipment, Structures and Soils).

Provisions regarding closure activities for permitted and interim status facilities in current State rules require disposal or decontamination of equipment, but do not explicitly address contaminated soil. The proposed amendments will expand these provisions to require owners or operators to dispose of or decontaminate all contaminated soils during partial and final closures. There are exceptions to this requirement for contaminated soils, equipment, or structures that are to remain in place at closed disposal units. In addition, the proposed amendments will clarify that by removing hazardous wastes or constituents during closure, the owner or operator may become a generator of hazardous waste and must comply with all applicable generator requirements.

These proposed amendments are consistent with the requirements of 40 CFR § 264.114 and 40 CFR § 265.115. Because the potential for soil contamination exists with all TSDF's, it is reasonable to incorporate a specific reference to contaminated soil during closure activities (Exhibit 1).

It is reasonable to require that hazardous wastes, hazardous constituents, or contaminated soil removed at closure must be managed in accordance with generator requirements, because they may pose no less hazard than other hazardous waste. Therefore, they should be subject to generator requirements such as manifesting. It is also reasonable to clarify that in performing closure activities, owners and operators of TSDF's may become generators of hazardous waste and must comply with all applicable requirements in order to clarify all potential requirements for the regulated community.

4. Minn. Rules Pts. 7045.0488, Subp. 4, and 7045.0596, Subp. 4 (Certification of Closure).

The current State rules require that when closure is completed, an owner or operator and an independent professional engineer must certify that the facility has been closed in accordance with the specifications in the approved closure plan. The proposed amendments will make the requirements in Minn. Rules pts. 7045.0488, subp. 4 and 7045.0596, subp. 4 consistent with those in 40 CFR § 264.115 and 40 CFR § 265.115.

The proposed amendments will address partial closure by requiring certification of closure for land disposal units. Because hazardous wastes may remain in land disposal units after closure, certification of disposal unit closure is reasonable. More potential hazard to human health and the environment is involved with closure of disposal units than with management units such as tanks or container storage, where hazardous wastes are not left in place at closure. Certification will verify that remaining hazardous wastes have been managed and contained so that threats to human health and the environment from the closed unit will be prevented. Such verifications are more difficult to perform once disposal units are closed. Therefore it is reasonable to require certification of partial closures involving land-disposal units as they are performed, rather than waiting for final facility closure. Because of the importance of closure in ensuring long-term protection from releases of hazardous waste, it is reasonable to require certification that land disposal units have been closed in accordance with the approved closure plan (Exhibit 1).

The proposed amendments will impose a deadline of 60 days after closure is

completed for submission of certification of partial and final closures. The changes will also specify that the certifications must be submitted by registered mail. It is reasonable to require submission of certification within 60 days after closure is completed in order to expedite Agency review. It is reasonable to require submission by registered mail so as to verify the date of submission.

A new provision will be added to the rules to require that documentation supporting the closure certification submitted by the independent professional engineer must be available until the owner or operator is released from financial assurance requirements for facility closure. This provision is reasonable because it allows for Agency access to information used by the engineer to certify that closure was performed in accordance with specifications in the approved plan. It is reasonable for the Agency to have the ability to examine this supporting documentation because the certification of closure is the mechanism that triggers the release of the owner or operator from financial assurance requirements for closure. It is reasonable to ensure that the owner or operator has taken all steps necessary to protect human health and the environment before he or she is released from financial assurance requirements for closure.

D. Minn. Rules Pt. 7045.0490 and Minn. Rules Pt.7045.0600 (Post-Closure).

1. Minn. Rules Pts. 7045.0490, Subp. 2 and 7045.0600, Subp. 2 (Submittal of Post-Closure Plan).

The federal amendments to 40 CFR § 264.118 and 40 CFR § 265.118 require that owners and operators of surface impoundments and waste piles who intend to remove all hazardous wastes at closure must submit post-closure plans within 90 days after a determination that the unit must be closed as a landfill. EPA added this requirement to ensure that owners and operators would prepare for post-closure care activities if it was not possible to remove all contamination upon closure of such units, regardless of whether or not the unit met liner design requirements (Exhibit 1). The Agency proposes to amend Minn. Rules pts. 7045.0490, subp. 2 and 7045.0600, subp. 2 to be consistent with the requirements in 40 CFR § 264.118 and 40 CFR § 265.118. Because it is not absolutely certain that liners will prevent contamination, these provisions are reasonable to ensure protection of human health and the environment when such units are closed.

2. Minn. Rules Pts. 7045.0490, Subp. 3 and 7045.0600, Subp. 2, Items A and B (Post-Closure Plan; Amendment of Plan).

The Agency proposes to amend Minn. Rules pts. 7045.0490, subp. 3 and 7045.0600, subp. 2, items A and B to be consistent with 40 CFR § 264.118 and 40 CFR § 265.118 (b)(c).

The proposed amendments will change the requirement to keep post-closure plans at the facility to the requirement that they be furnished upon request, including request by mail. For interim status facilities without approved

closure plans, the amendments specify that plans must be provided as requested on the day of site inspection. This amendment is reasonable for the reasons presented in section B2.

The proposed amendments will specify that the person designated in this subpart to contact concerning the disposal unit or facility must keep a copy of the approved post-closure plan once final closure is certified, throughout the post-closure care period. It is reasonable to provide for retention of the post-closure plan throughout the period of post-closure care so that persons responsible for post-closure care are kept aware of the activities and monitoring which must be performed during the post-closure care period.

The proposed amendments also specify that the plan must identify post-closure care activities that will be carried out for each unit subject to post-closure care requirements. This change is reasonable because it adds adequate detail to the post-closure plan for sufficient protection of human health and the environment from threats posed by closure of each disposal unit. In addition, the interim status requirements in Minn. Rules pt. 7045.0600, subp. 2, item A will be amended to provide a cross-reference to the facility-specific post-closure care requirements. This amendment is reasonable to ensure that post-closure plans contain descriptions of activities necessary for post-closure care of specific types of disposal facilities.

The proposed amendments will further specify that a permit modification must be requested to modify the post-closure plan for permitted facilities. The amendments will also establish submission deadlines for requests to modify the post-closure plan in response to various conditions which require changes to the

plan. These deadlines apply to permitted and interim status facilities. This provision is reasonable for the reasons presented in section B3 regarding amendments to closure plans.

The proposed amendments will also specify that minor post-closure plan amendments for interim status facilities will not be subject to public notice and comment procedures for approval. This change is consistent with the provision discussed in section B3 concerning closure plan amendments for interim status facilities. This change is reasonable for reasons presented in section B3.

3. Minn. Rules Pt. 7045.0600, Subp. 2, Item C (Submittal of Post-Closure Plan).

Minn. Rules pt. 7045.0600, subp. 2, item C will be amended to require owners and operators of interim status facilities to submit the post-closure plan at least 180 days before he or she expects to begin closure of the first hazardous waste disposal unit. This requirement is reasonable for the reasons presented in section B4 concerning submission of the closure plan for interim status facilities. Item C will also amend the expected date of closure to conform to the requirements in Minn. Rules pt. 7045.0594, subp. 3, items C through E, as amended, as discussed in section B4. These changes are reasonable for the reasons presented in section B4.

E. Minn. Rules Pt. 7045.0492 and Minn. Rules Pt. 7045.0602 (Post-Closure Care and Use of Property).

1. Minn. Rules pts. 7045.0492, subp. 1 and 7045.0602, subp. 1 (Post-Closure Care Period).

The federal regulations concerning post-closure care of permitted and interim status facilities were amended to specify that the 30-year post-closure care period begins when a single unit is closed rather than with final facility closure. The proposed amendments to Minn. Rules pts. 7045.0492, subp. 1 and 7045.0602, subp. 1 will specify that the 30-year post-closure care period applies to each hazardous waste management unit subject to post-closure care requirements, rather than to the entire facility. This is a reasonable provision because it is important that post-closure monitoring and maintenance activities begin as soon as the unit is closed so that any contamination is discovered quickly (51 FR 16434). The proposed amendments will also specify that the post-closure care period applicable to a unit may be extended or reduced by the director at any time prior to closure or during the post-closure care period. This provision is reasonable because it requires continued post-closure care for a unit if needed, while it relieves the owner or operator from the requirement if post-closure care is not necessary for the protection of human health and the environment.

2. Minn. Rules Pts. 7045.0492, Subps. 2, and 3, and 7045.0602, Subp. 2 (Continuation of Security).

The proposed amendments will clarify that requirements for continuation of security requirements and post-closure use of property apply to partial closures. This change makes the requirements for post-closure care consistent in how they apply to partial and final closure. This is reasonable because the same post-closure precautions may be required for individual closed units as for facility closure to ensure protection of human health and the environment.

3. Minn. Rules Pts. 7045.0492, Subp. 4 and 7045.0602, Subp. 4 (Certification of Post-Closure Care).

The proposed amendments will set forth the new requirements for certification of completion of post-closure care. The amendment requires the certification to be submitted within 60 days after completion of the post-closure care period for each hazardous waste disposal unit. This additional requirement is consistent with 40 CFR § 264.120 and 40 CFR § 265.120. It is a reasonable requirement because of the importance of ensuring that post-closure care has been conducted properly before the owner or operator is released from the requirement to provide financial assurance for post-closure care.

The proposed amendments further specify that the certification must be submitted by the owner or operator and an independent registered professional engineer. Documentation supporting the engineer's certification must be available upon request. These requirements for certification of post-closure care completion are parallel to the requirements for certification of closure completion and are reasonable for the reasons presented in section C4.

F. Minn. Rules Pt. 7045.0494 and Minn. Rules Pt. 7045.0604 (Notice to Local Land Authority).

1. Minn. Rules Pts. 7045.0494, Subp. 1 and 7045.0604, Subp. 1 (Submittal of Survey Plat).

The proposed amendments will require that the survey plat be submitted no later than submission of certification of closure for each hazardous waste disposal unit. It is reasonable to extend this requirement to partial closures

to ensure that the local land authority and director has a survey plat of any closed units, including units that are closed prior to facility closure. It is reasonable for the local land authority and the Agency to have knowledge of all closed hazardous waste disposal units, including those units located at facilities still in operation.

2. Minn. Rules Pts. 7045.0494, Subp. 2 and 7045.0604, Subp. 2 (Submittal of Waste Record).

The proposed amendments will require a record of hazardous wastes disposed of in each unit to be submitted within 60 days after closure is certified for each disposal unit. It is reasonable for the local land use authority and the Agency to have a record of hazardous wastes disposed of within disposal units as soon as possible after their closure. This will enable local land authorities to be informed of the presence of closed units without delay. The requirement for owners or operators to submit that information within 60 days after closure is certified is reasonable since all records of waste placement and handling should be readily available in the owner's or operator's operating record (51 FR 16435).

G. Minn. Rules Pts. 7045.0496 and 7045.0606 (Notice in Deed to Property).

1. Minn. Rules Pts. 7045.0496, Subp. 1 and 7045.0606, Subp. 1 (Recording of Deed Notation).

The requirement to record a notation on the deed to the facility property will be amended by requiring a notation to be recorded within 60 days after closure is certified for the first and the last hazardous waste disposal units closed at the facility. This requirement is reasonable because the deed

notation is an important means of informing prospective and all subsequent owners of the presence of hazardous wastes, the restrictions on land use, and the availability of the survey plat and waste record from the local land use authority. EPA considered the problems surrounding recording deed notations after each disposal unit is closed (51 FR 16435). EPA established the requirement that deed notations must be recorded within 60 days after certification of closure for the first hazardous waste disposal unit closed and again after the last unit at the facility is certified as closed. This requirement is reasonable because as soon as the first unit is closed, the deed contains a notice to potential owners concerning the land's past use. The notice to the deed can then be amended as necessary when the last unit is closed. Because the information concerning the land's use for hazardous waste disposal is displayed on the deed after the first unit is closed, subsequent notices are not needed until the last unit is closed (51 FR 16435).

In addition, the proposed amendments will require that a certification must be submitted to the director stating that the deed notation has been recorded. This requirement is reasonable to ensure that the required deed notation has been recorded. The proposed amendments are consistent with the requirements of 40 CFR § 264.119 and 40 CFR 265.119.

2. Minn. Rules Pts. 7045.0496, Subp. 2 and 7045.0606, Subp. 2 (Changes in Deed Notation).

The previous federal regulations and current State rules allow owners or operators of property upon which a hazardous waste facility was located to remove or change the notation on the deed if the waste, waste residue, and

contaminated soil are removed. This provision was changed by the federal amendments to require that owners and operators, either request a permit modification or a modification to the approved closure plan for interim status facilities, before undertaking any removal activities. In addition, the owner or operator must demonstrate that the removal of hazardous wastes is necessary to the proposed use of the property, and will not increase the potential hazard to human health and the environment or is necessary to reduce threats to human health or the environment. If approval is granted for hazardous waste removal, the owner or operator may then request approval to delete the deed notation or place a new notation in the deed indicating the removal of hazardous waste.

The Agency proposes to incorporate the federal amendments into the State rules to provide consistency with 40 CFR § 264.119 and 40 CFR § 265.119. These new provisions are reasonable because they allow the Agency to ensure that all hazardous wastes and contaminated soils have been adequately removed before the notice to the deed can be removed or changed (51 FR 16436). These amendments are also reasonable because they require the owner or operator to demonstrate that removal of hazardous wastes will not increase hazards to human health and the environment or that removal is necessary for the protection of human health and the environment.

The proposed amendments will further clarify that these requirements apply to only hazardous waste rather than to unspecified wastes. This change is reasonable because these provisions are not intended to address solid wastes that are not hazardous.

The proposed amendments will also clarify that by removing hazardous

wastes, the owner or operator may become a hazardous waste generator and must comply with all applicable generator requirements. Hazardous wastes removed from a facility pose no less hazard to human health and the environment than other hazardous wastes. Therefore, it is reasonable to impose all applicable management requirements, including manifesting and accumulation deadlines, on hazardous waste removed from facilities. It is also reasonable to clarify requirements for the regulated community.

H. Minn. Rules Pts. 7045.0498 and 7045.0608 (Financial Requirements).

A new definition is added to Minn. Rules pts. 7045.0498, subp. 2 and 7045.0608, subp. 2 in order to define the reference to cost estimates for the plugging and abandonment of underground injection control facilities. It is reasonable to provide this definition because the proposed amendments will refer to this term throughout the rules governing financial assurance for TSDF's. It is also reasonable to add this definition because it provides the reference in the Code of Federal Regulations where the preparation of this particular cost estimate is explained.

I. Minn. Rules Pts. 7045.0502 and 7045.0610 (Cost Estimate for Facility Closure).

1. Minn. Rules pts. 7045.0502, subp. 1 and 7045.0610, subp. 1 (Cost Estimate Requirements).

The proposed amendments will specify an increased level of detail and will clarify which factors may be considered in the cost estimate for facility closure. The amendments will clarify that the cost estimate must be based on the costs of hiring a third party to close the facility. In addition, the cost

of on-site disposal can be used in the estimate only if the owner or operator can demonstrate that on-site disposal capacity will always exist throughout the life of the facility. The proposed amendments will stipulate that the cost estimate may not incorporate any salvage value that may be realized from the sale of hazardous wastes, facility equipment, or structures, or land at the time of partial or final closure. In addition, the cost estimate must include a cost for handling the hazardous wastes at closure. It must not be assumed that the owner or operator will be able to dispose of the hazardous wastes at no cost, even if the hazardous wastes may have economic value to another party.

The proposed amendments will make the requirements for the closure cost estimate consistent with 40 CFR § 264.142 (a) and 40 CFR § 265.142 (a). In the previous federal regulations and current State rules, the level of detail required in the closure plans was not specified. It was also not specified whether cost estimates should be based on the cost of an owner or operator performing closure with his or her own equipment and labor or the cost of renting equipment and hiring contractor labor. In addition, it was not specified whether salvage values could be credited toward the cost estimate.

It is reasonable to provide detailed specifications of what may be included in the cost estimate to dispel confusion among the regulated community. Also, because cost estimates serve as the basis for financial assurance it is reasonable to require that they contain sufficient detail for the Agency to determine whether they are adequate. It is reasonable to require the cost estimate to be based on third-party costs to ensure that adequate financial assurance is available for a third party to conduct closure activities should the

owner or operator fail to do so (51 FR 16437). It is also reasonable to disallow salvage value as a credit when calculating the cost estimate because if a third party conducts closure, a third party cannot be assured of recovering salvage value. This requirement is reasonable to ensure that adequate funds are available if the owner or operator fails to cover the costs of closure. In addition, it is reasonable to assume that it is unlikely that a third party will take possession of hazardous wastes at no charge.

2. Minn. Rules pts. 7045.0502, subp. 2 and 7045.0610, subp. 2 (Yearly Update of Cost Estimate).

The proposed amendments will require that the closure cost estimates be adjusted for inflation 60 days prior to each anniversary date of the financial instruments used to establish financial assurance for closure. If the financial test or corporate guarantee is used, the annual adjustment for inflation must be made within 30 days after the close of the firm's fiscal year and before submission of information necessary for calculation of the financial test and corporate guarantee.

The proposed amendments are consistent with 40 CFR § 264.142 (b) and 40 CFR § 265.42 (b). The changes to the deadlines for updating the cost estimate are reasonable. The changes ensure that the financial instrument update is always based on an updated cost estimate. Since the cost estimate update will now be required 60 days prior to the instrument's anniversary date, it will be current (Exhibit 1). It is reasonable to ensure that the financial instrument is updated so that sufficient funds are always available for closure.

3. Minn. Rules pts. 7045.0502, subp. 3 and 7045.0610, subp. 3 (Cost Estimate Revisions).

The proposed amendments will require the cost estimate for closure to be revised within 30 days after a request to modify the closure plan has been approved, if the change increases the cost of closure. For interim status facilities without approved closure plans, the revision must be made within 30 days after the change in the plan, if the change increases the cost of closure. The current State rules do not specify a deadline for the cost estimate revision. The proposed amendments are reasonable to prevent any delay in cost estimate revision if the closure plan will be changed. This will ensure that adequate funds are available for closure. The proposed amendments are consistent with requirements in 40 CFR § 264.142 (c) and 40 CFR § 265.142 (c).

4. Minn. Rules pts. 7045.0502, subp. 4 and 7045.0610, subp. 4 (Record Retention).

The proposed amendments will make changes to the record retention requirements that are consistent with the changes discussed in section B2. These changes are reasonable for the reasons presented in section B2.

J. Minn. Rules Pts. 7045.0504 and 7045.0612 (Financial Assurance for Facility Closure).

1. Minn. Rules pts. 7045.0504, subp. 2 and 7045.0612, subp. 2 (Closure Trust Fund).

The proposed amendments will introduce provisions covering reimbursement for partial closure expenditures from the closure trust fund. The proposed amendments will specify that the owner or operator may request reimbursement for

partial closure only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. This provision is reasonable to ensure that adequate funds are available to conduct final closure of the facility.

The proposed amendments will also require the director to supply the owner or operator a detailed written statement of reasons if reimbursements from the trust fund are withheld. EPA promulgated this amendment in response to the issue raised by petitioners in the ACCI litigation that a decision to withhold reimbursements should be supported by a detailed written statement of reasons. It is reasonable for owners or operators to be informed of the basis for a decision to withhold reimbursement, and to have a written record of these reasons for review.

The proposed amendments are consistent with the requirements of 40 CFR § 264.143 (a)(10) and 40 CFR § 265.143 (a)(10).

2. Minn. Rule pts. 7045.0504, subp. 3, item D and 7045.0612, subp. 3, item D (Surety Bond Guaranteeing Payment Into a Closure Trust Fund).

The proposed amendments will make a clarification to the requirement governing funding of the standby trust fund. The change clarifies that issuance of an order to begin <u>final</u> closure triggers the requirement to fund the standby trust fund. This clarification is reasonable to distinguish between requirements for partial and final closure.

3. Minn. Rules pts. 7045.0504, subp. 6 and 7045.0612, subp. 5 (Closure Insurance).

The proposed amendments will change the provisions pertaining to

reimbursement from the closure insurance policy in a manner identical to the changes discussed in section J1 regarding reimbursement from trust funds. The proposed amendments will be consistent with 40 CFR § 264.143 (e)(5) and 40 CFR § 265.143 (d)(5).

The changes are reasonable for the reasons presented in section J1.

4. Minn. Rules pts. 7045.0504, subp. 7, and 7045.0612, subp. 6 (Financial Test and Corporate Guarantee for Closure).

EPA amended the federal regulations to require owners and operators who seek to use the financial test to demonstrate financial assurance to also include the most current cost estimate for the plugging and abandonment of Class I underground injection control (UIC) facilities, if applicable, when calculating the sum of closure cost estimates for the financial test. 40 CFR Part 144 contains financial assurance requirements for Class I UIC facilities that parallel the financial assurance requirements for RCRA-permitted and interim status facilities. The UIC financial test and the RCRA financial test use the same set of criteria for passing the test. Because neither the UIC nor the RCRA financial test required inclusion of the cost estimate for the other program, EPA was concerned that a firm able to pass the UIC and RCRA financial tests separately might not be able to provide the finances necessary if UIC facility plugging and abandonment and facility closure or post-closure care under RCRA were required simultaneously (51 FR 16439).

Incorporation of this federal amendment into the State rules will provide consistency with 40 CFR § 264.143 and 40 CFR § 265.143. Even though no Class I UIC facilities exist in Minnesota, it is reasonable to amend the State rules to

ensure that any firm that passes the financial test for closure or post-closure care of a facility in Minnesota, has the financial strength to meet all of its responsibilities including the plugging and abandonment of UIC facilities located outside of Minnesota which are owned or operated by the firm.

5. Minn. Rules pts. 7045.0504, subp. 10 and 7045.0610, subp. 9 (Release of Owner or Operator from Requirements of this Part).

The proposed amendments will clarify that certification of final closure is required before the owner or operator can be released from financial assurance requirements. In addition, the proposed amendments will specify that the owner or operator will be provided a detailed written statement of reasons if the Agency believes that closure has not been in accordance with the approved closure plan. These changes are consistent with 40 CFR § 264.143 (i) and 40 CFR § 265.143 (h).

These provisions are reasonable for reasons presented in section J1.

K. Minn. Rules Pts. 7045.0506 and 7045.0614 Cost Estimates for Post-Closure Care.

1. Minn. Rules pts. 7045.0506, subp. 1 and 7045.0614, subp. 1 (Cost Estimate Requirements).

The proposed amendments will clarify that the post-closure cost estimate must be based on third-party costs. This change is consistent with 40 CFR § 264.144 (a) and 40 CFR § 265.144 (a). This change is reasonable for the reasons presented in Section I1.

2. Minn. Rules Pts. 7045.0506, Subps. 2, 3 and 4, and 7045.0614, Subps. 2, 3, and 4.

The proposed amendments to the requirements regarding post-closure cost estimate yearly updates, revisions, and record retention, are identical to the proposed amendments to closure cost estimate requirements discussed in sections I2, I3, I4, and are reasonable for the reasons presented in sections I2, I3, and I4.

L. Minn. Rules Pts. 7045.0508 and 7045.0616 (Financial Assurance for Post-Closure Care.

1. Minn. Rules pts. 7045.0508, subp. 1 and 7045.0616, subp. 1 (Establishment of Financial Assurance for Post-Closure Care).

The proposed amendments establish deadlines by which owners or operators must establish financial assurance for post-closure care. Financial assurance for post-closure care must be established 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. It is reasonable to require that financial assurance for post-closure care be established before the unit or facility begins handling hazardous waste, or when the regulation becomes effective. These changes are consistent with the requirements in 40 CFR § 264.145 and 40 CFR § 265.145.

2. Minn. Rules pts. 7045.0508, subps. 2, 3, 6, and 7, and 7045.0616, subps 2, 3, 5, and 6 (Financial Assurance Mechanisms for Post-Closure Care).

The proposed amendments to the financial assurance requirements for post-closure care established with trust funds, surety bonds, insurance, and the financial test and corporate guarantee will make changes which are parallel to

the amendments to the financial assurance requirements for closure discussed in sections J1, J2, J3, and J4. These changes are reasonable for the reasons presented in the above listed sections.

3. Minn. Rules pts. 7045.0508, subp. 10 and 7045.0616, subp. 9 (Release of Owner or Operator from Requirements of this Part).

The rules governing release of owner or operator from post-closure care financial assurance requirements will be amended in the same manner as the requirements for release from financial assurance for closure, discussed in section J5. These proposed amendments are reasonable for the reasons presented in Section J1.

M. Minn. Rules Pts. 7045.0518 and 7045.0620 (Liability Requirements).

The proposed amendments will make changes to the requirements governing the period of liability coverage, which are the same as the changes made to requirements governing release of owners and operators from financial assurance for closure discussed in Section J5. These amendments are reasonable for the reasons presented in Section J1.

N. Minn. Rules Pt. 7045.0524 (Wording of Instruments).

Minn. Rules pt. 7045.0524 contains requirements for the wording of financial instruments. Subpart 6 of that part requires specific wording for the letter from the chief financial officer that is used in the financial test mechanism to establish financial assurance for closure and post-closure care. The requirements for the financial test in Minn. Rules pts. 7045.0504, subp. 7; 7045.0508, subp. 7; 7045.0612, subp. 6; and 7045.0616, subp. 6 will be amended to include UIC cost estimates. It is therefore reasonable to amend Minn. Rules

pt. 7045.0524, subp. 6 to include the UIC cost estimate.

O. Minn. Rules Pt. 7001.0190 (Procedure for Modification; Revocation and Reissuance; and Revocation Without Reissuance of Permits).

The proposed amendments will change Minn. Rules pt. 7001.0190, subp. 2 concerning permit modification solely as to changes in ownership or control. The proposed amendments will change the amendments to add requirements for owners or operators of hazardous waste facilities. The proposed amendments will require the new owner or operator to submit a revised permit application no later than 90 days before the scheduled date for change in ownership or control. In addition, the proposed amendments will specify that the original owner or operator must comply with the financial assurance requirements for closure and post-closure care until the new owner or operator demonstrates compliance with these requirements. The new owner or operator must demonstrate compliance within 180 days after the change in ownership or control of the facility. Once the new owner or operator demonstrates compliance with the financial assurance requirements, the previous owner or operator will be notified in writing that he or she is no longer required to maintain financial assurance for closure and post-closure care of the facility. If these conditions are not met, a change in ownership or operational control would not qualify for the permit modification procedure that does not include the procedures in Minn. Rules pts. 7001.0100 to 7001.0130. Therefore the change in ownership or control would be open for comment and a contested case hearing.

These proposed amendments are consistent with the requirements in 40 CFR § 270.42 (d). These proposed amendments are reasonable to ensure that hazardous

waste facilities are transferred only to financially viable firms, and that financial assurance does not lapse when changes in ownership or operational control occur (Exhibit 1).

P. Minn. Rules Pt. 7001.0560 (General Requirements for Part B of Application).

Requirements for the contents of Part B of the permit application will be amended to maintain consistency with the federal requirements in 40 CFR § 270.14 (b)

The federal amendments changed the previous requirement that the Part B application must include documentation that the deed notice which is required after closure, has been filed for hazardous waste disposal facilities. The federal requirement was changed so that the Part B application must contain the documentation only for facilities with disposal units closed prior to submission of the application. Incorporation of the federal amendment into the State rules is reasonable because many Part B applications will be filed prior to closure of disposal units, and therefore it will not be possible to include documentation that the notices, which are required after closure, have been filed (51 FR 16441).

In addition, the proposed amendments will require the Part B application to include a copy of the documentation required to demonstrate financial assurance for closure and post-closure care, if applicable. For a new facility, the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than submission of the Part B. These proposed amendments are reasonable because they provide consistency with the

federal requirements in 40 CFR § 270.14 (b). These proposed amendments are also reasonable because owners and operators of new facilities may submit the Part B application well in advance of the initial receipt of hazardous wastes, and requiring the financial assurance documentation at that time would impose unnecessary costs of maintaining a financial mechanism (Exhibit 1).

Q. Minn. Rules Pt. 7001.0650 (Interim Status).

The proposed amendment will add a new requirement to the provisions pertaining to changes in ownership or operational control of a facility during interim status. The new provision will require the new owner or operator to demonstrate compliance with the financial assurance requirements for closure and post-closure care, if applicable.

The proposed amendments will further add a provision stating that the former owner or operator will be informed in writing when he or she is no longer required to provide financial assurance for closure and post-closure care, if applicable, within 180 days after the change in ownership or control.

These changes are reasonable for the reasons presented in section P. It is reasonable to make these changes to provide consistency with the proposed amendments to Minn. Rules Pt. 7001.0560 and to be consistent with the federal requirements in 40 CFR § 270.14 (b).

R. Minn. Rules Pt. 7001.0730 (Modification of Permits; Revocation and Reissuance of Permits).

The proposed amendments will change the numbering of the items cross-referenced in Minn. Rules pt. 7001.0730, subp. 4. Numbering of the items which are cross-referenced in this subpart will be changed by the proposed amendments to other parts of the rules and therefore this change is reasonable.

IV. CONSIDERATION OF SMALL BUSINESS

Minn. Stat. § 14.115 (1986) requires that when Minnesota agencies propose amendments to existing rules which may affect small business, they must consider the impact of the rule on small business. The objective of Minn. Stat. ch. 116 (1986) is to protect the public health, welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Therefore, it is not reasonable to apply less stringent standards, reporting requirements, compliance schedules or deadlines, to the hazardous wastes generated or managed by small businesses since these hazardous wastes can cause the same environmental harm as that of larger businesses.

The amendments will apply to all owners of hazardous waste treatment, storage or disposal facilities and therefore will impose the same requirements on large businesses as small businesses. The amendments will impose additional facility and permitting requirements for hazardous waste facilities based on the potential for adverse effects on human health and the environment. This potential is not directly related to the size of the business managing the wastes. Therefore it is not reasonable to exempt hazardous waste generated or managed by small businesses from these requirements. Some additional expenses will be incurred as a result of the amendments. These costs are difficult for the Agency to quantify in the abstract. Several of the amendments provide clarifications to existing requirements or provide some relaxation in certain aspects of the requirements and will not cause additional expenses to be incurred.

These amendments follow directly from the amendments to the federal

regulations promulgated under RCRA (51 FR 16422-16459). Incorporation of these requirements will not impose additional expenses on small businesses in Minnesota that are not incurred by small businesses elsewhere. According to the analysis performed by EPA to satisfy requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 801 et seq.), the amendments will not require small businesses to incur significant expenses through increased management costs (51 FR 16443).

V. CONCLUSIONS

The Agency has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's hazardous waste rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to the hazardous waste rules.

VI. LISTS OF EXHIBITS

The Agency is relying on the following documents to support these amendments.

Agency Ex. No.	Title
1	U.S. Environmental Protection Agency, April 1986, Background Document - Final Rule, Closure/Post-Closure and Financial Responsibility Requirements, Hazardous Waste Treatment, Storage, and Disposal Facilities.
2	Federal Register, Vol. 50, No. 53, pages 11068-11097, March 19, 1985.
3	Federal Register, Vol. 51, No. 85, pages 16422-16459, May 2, 1986.
4	Resource Conservation and Recovery Act of 1976, as amended, Hazardous and Solid Waste Amendments of 1984. 42 U.S.C.6901.

Date: January 15, 1987

for Barbara Lindsay Sims
Thomas J. Kalitowski
Executive Director

APPENDIX TO STATEMENT OF NEED AND REASONABLENESS

Financial Assurance for Facility Closure (Minn. Rules Pt. 7045.0504 and Minn. Rules Pt. 7045.0612)

The Agency proposes to amend the provisions concerning release of owners and operators from financial assurance requirements for facility closure in Minn. Rules pts. 7045.0504, subp. 10 and 7045.0612, subp. 9. The current State rules governing permitted and interim status facilities require the Agency to notify owners and operators of their release from the financial assurance requirements for closure within 60 days after the Agency receives the required certifications of closure, unless the Agency has reason to believe that closure has not been performed in accordance with the approved closure plan. The proposed amendments will change these provisions to specify that this notification will be provided by the director rather than by the Agency.

The Agency also proposes to change the reference from Agency to director in those provisions in Minn. Rules pts. 7045.0504 and 7045.0612 which concern termination of specific financial assurance mechanisms, and make reference to the release of owners and operators from financial assurance requirements in Minn. Rules pts. 7045.0504, subp. 10 and 7045.0612, subp. 9. These changes are consistent with the proposed amendments to Minn. Rules pts. 7045.0504, subp. 10 and 7045.0612, subp. 9. The changes to Minn. Rules pts. 7045.0504, subp. 2, item L; 7045.0504, subp. 4, items I and J; 7045.0504, subp. 5, item J; 7045.0504, subp. 6, item J; 7045.0504, subp. 7, item K; 7045.0612, subp. 2, item M; 7045.0612, subp. 4, item J; 7045.0612, subp. 5, item J; and 7045.0612,

subp. 6, item K will specify that the director shall agree to termination of the financial assurance mechanisms upon release of the owner or operator from financial assurance requirements by the director rather than by the Agency.

The proposed amendments to Minn. Rules pts. 7045.0504 and 7045.0612 which replace "agency" with "director" in provisions governing the release of owners and operators from financial assurance requirements for closure result from concerns raised by staff based on experience with implementation of these requirements. The current rules allow the director to draw on all financial assurance mechanisms for closure and to make the determination that proper closure activities have been conducted and facility closure is complete. Therefore, it is reasonable that the director rather than the Agency should notify the owner or operator that he or she is no longer required to maintain financial assurance for closure. Once the director has determined that the facility has been properly closed, it is reasonable for the director to provide this notification so that the owner or operator is informed immediately of his or her release from financial assurance requirements without possible delay in Agency action on this matter. In addition, because the current rules grant the director the authority to call in funds from all financial assurance mechanisms for closure, as necessary, it is reasonable for the director rather than the Agency to inform owners and operators when they are no longer required to maintain financial assurance for closure.

Date: January 27, 1987

for Barbara Lindsay Sims
Thomas J. Kalitowski
Executive Director

CHANGES TO ATTACHMENT 1: PROPOSED RULE AMENDMENTS

The proposed amendments will replace "agency" with "director" in the following rules as shown in the attached pages: Minn. Rules pts. 7045.0504, subp. 2, item L; 7045.0504, subp. 4, items I and J; 7045.0504, subp. 5, item J; 7045.0504, subp. 6, item J; 7045.0504, subp. 7, item K; 7045.0504, subp. 10; 7045.0612, subp. 2, item M; 7045.0612, subp. 4, item J; 7045.0612, subp. 5, item J; 7045.0612, subp. 6, item K; 7045.0612, subp. 9.

or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial closure expenditures only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities the director shall determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining operating life of the facility will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director withholds reimbursement, he or she shall provide the owner or operator with a detailed written statement of reasons.

L. The director shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 3. Surety bond guaranteeing payment into a closure trust fund. The following apply to surety bonds that guarantee payment into a closure trust fund:

A to C. [Unchanged]

D. The bond must guarantee that the owner or operator will:

(1) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or court of competent jurisdiction; or

(3) provide alternate financial assurance as specified in this part and obtain the director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety.

E to I. [Unchanged]

Subp. 4. Surety bond guaranteeing performance of closure. The following apply to surety bonds that guarantee performance of closure:

A to H. [Unchanged]

I. The owner or operator may cancel the bond if the director has given prior written consent. The ~~agency~~ director shall provide such written consent if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

J. The surety will not be liable for deficiencies in the performance of closure by the owner or oerator after the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 5. Closure letter of credit. The following apply to closure letters of credit:

A to I. [Unchanged]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 6. Closure insurance. The following apply to closure insurance.

A to D. [Unchanged]

E. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or

operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum costs of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the director may withhold reimbursement of amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, he or she shall provide the owner or operator with a detailed written statement of reasons.

F to I. [Unchanged]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 7. Financial test and corporate guarantee for closure. The financial test and corporate guarantee for closure are as follows:

A. [Unchanged]

B. The owner or operator shall have:

(1) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates~~.~~ and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

C. The owner or operator shall have:

(1) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate, for class I underground injection control (UIC) facilities, if applicable;

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in the Code of Federal Regulations, title 40, section 144.70 (f).

E to J. [Unchanged]

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

L. [Unchanged]

Subps. 8-9. [Unchanged]

Subp. 10. Release of owner or operator from requirements of this part. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the ~~agency~~ director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for closure of the particular facility, unless the ~~agency~~ director has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

M. The director shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in this subpart; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 3. Surety bond guaranteeing payment into a closure trust fund. Requirements for surety bonds that guarantee payment into a closure trust fund are as follows:

A to C. [Unchanged]

D. The bond must guarantee that the owner or operator will:

(1) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or court of competent jurisdiction; or

(3) provide alternate financial assurance as specified in this part and obtain the director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety.

E to I. [Unchanged]

Subp. 4. Closure letter of credit. Requirements for closure letters of credit are as follows:

A to I. [Unchanged]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) the owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 5. Closure insurance. The following apply to closure insurance.

A to D. [Unchanged]

E. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and

if so, the director shall instruct the insurer to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum costs of closure will be significantly greater than the face amount of the policy, the director may withhold reimbursement of amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, he or she shall provide the owner or operator with a detailed written statement of reasons.

F to I. [Unchanged]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 6. Financial test and corporate guarantee for closure. The financial test and corporate guarantee for closure are as follows:

A. [Unchanged]

B. The owner or operator shall have:

(1) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus

depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

C. The owner or operator shall have:

(1) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate, for class I underground injection control (UIC) facilities if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in the Code of Federal Regulations, title 40, section 144.70 (f).

E to J. [Unchanged]

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

L. [Unchanged]

Subps. 7-8. [Unchanged]

Subp. 9. Release of owner or operator from the requirements of this part. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the ~~agency~~ director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for final closure of the particular facility, unless the ~~agency~~ director has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments of Rules Governing
the Management, Storage, Treatment,
and Disposal of Hazardous Waste,
Minn. Rules Pts. 7045.0020,
7045.0486, 7045.0488, 7045.0490,
7045.0492, 7045.0494, 7045.0496,
7045.0498, 7045.0502, 7045.0504,
7045.0506, 7045.0508, 7045.0518,
7045.0524, 7045.0594, 7045.0596,
7045.0600, 7045.0602, 7045.0604,
7045.0606, 7045.0608, 7045.0610,
7045.0612, 7045.0614, 7045.0620,
7001.0190, 7001.0560, 7001.0650,
and 7001.0730

AFFIDAVIT OF
MAILING

Ron Linn, being duly sworn, deposes and says: That on the 6 day of March, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System or in the United States mail for first class mailing at said City of St. Paul, 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 Minnesota Pollution Control Agency (Agency) for the purpose of receiving notice of the proposed adoption of rules by the Agency.

Ronald Linn

Subscribed and sworn to before me
this 6 day of March, 1987.

Cynthia B. Gillingham
Notary Public

CYNTHIA B. GILLINGHAM
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My commission expires 10-3-91

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments of Rules Governing
the Management, Storage, Treatment,
and Disposal of Hazardous Waste,
Minn. Rules Pts. 7045.0020,
7045.0486, 7045.0488, 7045.0490,
7045.0492, 7045.0494, 7045.0496,
7045.0498, 7045.0502, 7045.0504,
7045.0506, 7045.0508, 7045.0518,
7045.0524, 7045.0594, 7045.0596,
7045.0600, 7045.0602, 7045.0604,
7045.0606, 7045.0608, 7045.0610,
7045.0612, 7045.0614, 7045.0620,
7001.0190, 7001.0560, 7001.0650,
and 7001.0730

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14 (1986), 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 3:00 p.m., this 6th day of March 1987.

Paul W. Hoff

Department of Labor & Industry

Notice of Correction to Prevailing Wage Rates

The highway and heavy prevailing wage rates certified on June 1, 1986 for labor classification 209—Crushing plant operator (gravel and stone) or gravel washing, crushing and screening plant operator in Scott County were certified in error.

The correct rates, effective June 5, 1986 may be obtained by contacting the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155.

Steve Keefe, Commissioner
Department of Labor & Industry

Minnesota Pollution Control Agency Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinions Concerning Amendments to Minn. Rules Ch. 7045 Governing the Management of Hazardous Waste

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information and opinions from sources outside the MPCA regarding possible amendments to the rules governing hazardous waste. Information and comments are being sought to aid in preparation of draft amendments.

In response to recently promulgated amendments to the United States Environmental Protection Agency (EPA) hazardous waste program, the MPCA is considering amendments to rules governing hazardous waste in the following areas:

1. Regulations pertaining to small quantity generators of hazardous waste. The amendments promulgated by EPA on March 24, 1986 (*Federal Register*, Vol. 51, pp. 10146-10176), expand the regulatory requirements for generators of between 100 kilograms and 1,000 kilograms hazardous waste per calendar month.

2. Closure, post-closure and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. Amendments to the federal regulations, promulgated May 2, 1986 (*Federal Register*, Vol. 51, pp. 16422-16459), apply to both interim status and permitted facilities.

3. Listing of various wastes as hazardous, including:

—wastes from the production of ethylene dibromide (EDB) as promulgated in the February 13, 1986 *Federal Register*, Vol. 51, pp. 5327-5331.

—wastes from the production of dinitrotoluene (DNT), toluene diamine (TDA), and toluene diisocyanate (TSI) as promulgated in the October 23, 1985 *Federal Register*, Vol. 50, pp. 42936-42943.

—Spent 1,1,2-trichloroethane, benzene, 2-ethoxyethanol, and 2-nitropropane as promulgated in the February 25, 1986 *Federal Register*, Vol. 51, pp. 6537-6542.

The MPCA requests information and comments concerning the subject matter of the proposed amendments. Written or oral information or comments will be accepted until July 16, 1986. Written statements should be addressed to:

Carol Nankivel
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
1935 West County Road B2
Roseville, Minnesota 55113

Oral statements will be received during regular business hours at 612/296-7260.

Teachers Retirement Association

Meeting Notice of the Board of Trustees

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, June 25, 1986, at 9:00 a.m. in Room 302 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota to consider employment of an Executive Director.

Rules as Proposed

1555.6760 APPLICATION FOR INSPECTION.

Subpart 1. **Eligibility; procedure.** All potatoes planted on a farm ~~shall be eligible and shall~~ must be entered for certification. Application for inspection ~~shall~~ must be made before June 16 each year on forms furnished by the commissioner ~~or a seed potato certification inspector~~. Applications postmarked after June 15 but before July 1 ~~shall~~ must be charged a 50 cents per acre late registration fee. No applications ~~shall~~ may be accepted that are postmarked later than June 30. The commissioner may extend the deadline due to special circumstances, such as natural disasters, which make it impractical or impossible for planting to be completed by the deadline and which affect an area or large number of growers.

Subp. 2. **Shipping point inspection certificates, bulk seed certificates, or certificates of origin.** An application for the inspection of a field planted with purchased certified seed potatoes must include copies of either the shipping point inspection certificates, bulk seed certificates, or certificates of origin for the total amount of purchased certified seed potatoes planted. Use of certificates of origin requires approval of both the seller and the purchaser and is restricted to intrastate shipments between certified seed potato producers. The certificate of origin must contain information considered necessary by the commissioner and must at a minimum identify seed potatoes as to the producer, variety, classification, and lot. The limitation of warranty in part 1555.6740, subpart 7, must be further limited to exclude any representation as to condition of the potatoes at the time of shipment.

Subp. 3. **Separate application.** A separate application must be completed for each field planted.

Subp. 4. **Sufficient acreage.** No application for inspection may be accepted from a grower in a community or county in which there is not sufficient acreage for the total inspection fee charges to cover the cost of wages and expenses of the inspectors providing the inspection service. Determination of sufficient acreage must be made by the commissioner.

REPEALER. Minnesota Rules, parts 1555.6770, 1555.6780, and 1555.6790 are repealed.

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste; Closure, Post-closure, and Financial Assurance

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the State of Minnesota intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28. The statutory authority to adopt the rules is Minn. Stat. § 116.07, subd. 4 (1986).

All persons have 30 days in which to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Interested persons have until 4:30 p.m. on April 8, 1987 to submit comments on the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Minnesota Pollution Control Agency (MPCA) will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Nancy Larson
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
520 Lafayette Road
St. Paul, Minnesota 55155

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.

The proposed rules may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed rules as noticed.

The proposed rules follow this notice. One free copy of the proposed rules is available from the MPCA. Contact Nancy Larson at 612/296-7437 or at the address listed above.

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 to support the proposed rules has been prepared and is available from Nancy Larson upon request at 612/296-7437 or at the address listed above.

You are hereby advised pursuant to Minn. Stat. § 14.115 (1986), "Small business considerations in rulemaking," that the proposed amendments will have a minimal impact on small businesses. Several of the amendments provide clarification to existing requirements or provide some relaxation in certain aspects of the requirements and will not cause additional expenses to be incurred.

The proposed amendments follow directly from amendments to the federal hazardous waste program. Therefore, incorporation of these requirements will not impose additional expenses on small businesses in Minnesota that are not incurred by small businesses elsewhere. According to the analysis performed by the U.S. Environmental Protection Agency to satisfy requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. § 801 et seq.), the amendments will not require small businesses to incur significant expenses through increased management costs (51 *FR* 16443).

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rules, must submit the written request to Nancy Larson at the address listed above.

Thomas J. Kalitowski
Executive Director

Rules as Proposed

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the agency shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the agency finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or B, the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. If the permit is a permit described in part 7001.0020, item B, the following additional requirements apply:

A. The new owner or operator shall submit a revised permit application to the director no later than 90 days before the scheduled change in ownership or control.

B. The previous owner or operator shall comply with the financial requirements of parts 7045.0498 to 7045.0524 until the new owner or operator has demonstrated compliance with the requirements to the director. The new owner or operator must demonstrate compliance within 180 days after the date of the change in ownership or control of the facility. Upon demonstration of compliance to the director, the director shall notify the previous owner or operator in writing that the owner or operator is no longer required to comply with parts 7045.0498 to 7045.0524.

Subp. 3. [Unchanged.]

Subp. 4. **Revocation without reissuance.** The director shall give notice to the permittee of a proposal to revoke a permit without reissuance. This notice must state that within 30 days of the receipt of the notice the permittee may request a contested case hearing be held on the proposed action. If the permittee requests a contested case hearing, the agency shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, parts 1400.5100 to ~~1400.8500~~ 1400.8402.

7001.0560 GENERAL INFORMATION REQUIREMENTS FOR PART B OF APPLICATION.

Part B of the application must contain the following information:

A. [Unchanged.]

B. Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses must contain all information that is necessary ~~in order~~ to treat, store, or dispose of the wastes properly in accordance with parts 7045.0450 to 7045.0544.

C. to K. [Unchanged.]

L. A copy of the closure plan and, where applicable, the post-closure plan required by parts 7045.0486 and 7045.0490, including, if applicable, the specific information ~~set forth~~ in parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8.

M. For ~~existing~~ disposal ~~facilities~~ units that have been closed, documentation that a notice has been placed in the deed or appropriate alternative instruments as required by part 7045.0496.

N. The most recent closure cost estimate for the facility prepared in accordance with part 7045.0502 and a copy of the documentation required to demonstrate financial assurance ~~mechanism adopted in compliance with~~ under part 7045.0504. For a new facility, a copy of the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

O. If applicable, the most recent post-closure cost estimate for the facility prepared in accordance with part 7045.0506 and a copy of the documentation required to demonstrate financial assurance ~~mechanism adopted in compliance with~~ under part 7045.0508. For a new facility, a copy of the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

P. to U. [Unchanged.]

7001.0650 INTERIM STATUS.

Subpart 1. **Qualifying for interim status.** Except as provided in subpart 2, during the period after the submission of Part A of a hazardous waste facility permit application to the Environmental Protection Agency or to the director and ~~prior to~~ before a final determination by the agency on the permit application, the owner or operator of an existing hazardous waste facility shall be considered to be in compliance with the requirement to obtain a permit if the director finds that the Environmental Protection Agency has granted the owner or operator interim status or if the director finds:

A. and B. [Unchanged.]

Subp. 2. **Failure to obtain interim status from EPA.** Notwithstanding the provisions of subpart 1, an owner or operator of a hazardous waste facility who, ~~prior to~~ before April 23, 1984, was required to apply for and obtain interim status from the Environmental Protection Agency but who failed to obtain this interim status is not eligible to obtain interim status from the agency for that facility.

Subp. 3. and 4. [Unchanged.]

Subp. 5. **Changes during interim status.** An owner or operator who has interim status may conduct the following activities as prescribed:

A. The owner or operator may treat, store, or dispose of hazardous wastes not previously specified in Part A of the application if the owner or operator submits a revised Part A of the permit application ~~prior to the~~ before commencement of the treatment, storage, or disposal.

B. The owner or operator may increase the design capacity of the facility if, ~~prior to the~~ before implementation of the increase, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the change, and if the director approves the increase in writing. The director shall approve the change if the director finds that there is a lack of available treatment, storage, or disposal capacity at other permitted hazardous waste facilities.

C. The owner or operator may add new processes or change the processes for the treatment, storage, or disposal of hazardous waste if, ~~prior to the~~ before implementation of the addition or change, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the addition, and if the director approves the addition or change in writing. The director shall approve the addition or change if the director finds that:

(1) [Unchanged.]

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(2) the addition or change is necessary for the owner or operator to comply with federal, Minnesota, or local requirements, including the interim status standards ~~set forth~~ in parts 7045.0552 to 7045.0642.

D. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A of the permit application not later than 90 days ~~prior to~~ before the scheduled change. When a transfer of ownership or operational control of a facility occurs, the former owner or operator shall comply with the requirements of parts 7045.0608 to 7045.0624 that relate to financial requirements, until the new owner or operator has provided to the director a demonstration of compliance with parts 7045.0608 to 7045.0624. The new owner or operator must demonstrate compliance within six months. All other interim status duties must be transferred immediately upon the change of ownership or operational control of the facility. If the director finds that the new owner or operator has complied with parts 7045.0608 to 7045.0624, the director shall notify the former owner or operator in writing that the required demonstration by the new owner or operator has been made and the former owner or operator no longer needs to comply with parts 7045.0608 to 7045.0624 as of the date of the demonstration.

Subp. 6. **Compliance with interim status standards.** During the interim status period the owner or operator shall comply with the interim status standards ~~set forth~~ in parts 7045.0552 to 7045.0642.

Subp. 7. [Unchanged.]

7001.0730 MODIFICATION OF PERMITS; REVOCATION AND REISSUANCE OF PERMITS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Minor modifications of permits.** In addition to the corrections or allowances listed in part 7001.0190, subparts 2 and 3, if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in parts 7001.0100 to 7001.0130:

A. to C. [Unchanged.]

D. to change the expected year of closure under part 7045.0486, subpart 3, item ~~D~~ F;

E. to change schedules for final closure under part 7045.0486, subpart 3, item ~~D~~ E;

F. to K. [Unchanged.]

Subp. 5. [Unchanged.]

7045.0020 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 2a. **Active life.** "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the director receives certification of final closure.

Subp. 3. to 24. [Unchanged.]

Subp. 24a. **Final closure.** "Final closure" means the closure of all hazardous waste management units at the facility in accordance with the approved facility closure plan and all applicable closure requirements.

Subp. 25. to 36. [Unchanged.]

Subp. 36a. **Hazardous waste management unit.** "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

Subp. 37. to 64. [Unchanged.]

Subp. 65. **Partial closure.** "Partial closure" means the closure of a ~~discrete part of a facility~~ hazardous waste management unit in accordance with the applicable closure requirements of parts 7045.0450 to 7045.0544 or 7045.0552 to 7045.0642 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a ~~trench, a unit operation~~ tank, including its associated piping and containment systems, a landfill cell, ~~or a pit~~ surface impoundment, waste pile, or other hazardous waste management unit, while other ~~parts~~ units of the same facility continue ~~in operation or will be placed in operation in the future~~ to operate.

Subp. 66. to 108. [Unchanged.]

7045.0486 CLOSURE.

Subpart 1. **Scope.** Except as part 7045.0450 provides otherwise, the provisions of subparts 2 to ~~5~~ 6 and part 7045.0488 apply to the owner or operator of a hazardous waste facility.

Subp. 2. **Closure performance standard.** The owner or operator shall close the facility in a manner minimizing the need for further maintenance. Closure procedures must result in controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous ~~waste~~ constituents, leachate, contaminated ~~rainfall~~ run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, in accordance with the closure requirements including, the requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; 7045.0542, subpart 8.

Subp. 3. **Submittal and contents of closure plan.** The owner or operator of a hazardous waste facility shall submit a closure plan with the permit application, and the closure plan must be approved by the agency as part of the permit issuance procedure. The approved closure plan shall become a condition of any permit. The agency's approval must ensure that the approved closure plan is consistent with subparts 2, 4, and 5, and part 7045.0488, and the applicable closure requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8.

A copy of the approved closure plan and all revisions to the plan must be ~~kept at the facility~~ furnished to the director upon request, including request by mail, until final closure is completed and certified. The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must at least include all of the following:

A. A description of how ~~and when~~ each hazardous waste management unit will be closed, and how the facility will be ~~partially closed, if applicable, and~~ finally closed. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of subparts 2, 5, part 7045.0488, and the applicable closure requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8 will be met.

B. An estimate of the maximum inventory of hazardous wastes ~~in storage and in treatment at any time during~~ ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type of off-site hazardous waste management units to be used, if applicable.

C. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, facility equipment, structures, and soils during partial and final closure, including, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard.

D. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, ground water monitoring, leachate collection, and run-on and run-off control.

E. ~~An estimate of the expected year of closure and~~ A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include the total time required to close ~~the facility~~ each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure.

F. An estimate of the expected year of closure for facilities that use trust funds to establish financial assurance under part 7045.0504 or 7045.0508 and that are expected to close before the expiration of the permit.

Subp. 4. **Amendment of plan.** The owner or operator must submit a written request to the director for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the agency's permitting procedures in chapter 7001. The written request must include a copy of the closure plan amendments for approval. The owner or operator may request a permit modification to amend the closure plan at any time ~~during the active life~~ before notification of partial or final closure of the facility. ~~The active life of the facility is that period during which wastes are periodically received.~~ The owner or operator shall request a permit modification to amend the plan whenever:

A. changes in operating plans or facility design affect the closure plan ~~and whenever~~; or

B. there is a change in the expected year of closure ~~. When the owner or operator requests a permit modification to authorize a change in operating plans or facility design, he or she shall request a modification of the closure plan at the same time. If a~~

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~~permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within 60 days after the change~~ for those facilities that use trust funds to establish financial assurance as provided in subpart 3; or

C. in conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

The director may request modifications to the plan under the conditions described in items A to C. The owner or operator must submit the modified plan within 60 days of the director's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the director will be approved in accordance with the agency's permitting procedures in chapter 7001. The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days before the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event.

Subp. 5. **Notification of partial and final closure.**

A. The owner or operator shall notify the director in writing at least ~~180~~:

(1) 60 days ~~prior to~~ before the date ~~he or she~~ the owner or operator expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

(2) 45 days before the date the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units remaining to be closed.

B. The date ~~when he or she~~ on which the owner or operator "expects to begin closure" ~~must be within 30 days after the date on which he or she expects to receive the final volume of waste~~ is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional volumes of hazardous waste" if the owner or operator in fact receives hazardous wastes within one year after the last volume was received. The director may approve an extension to this one-year limit if the owner or operator of a hazardous waste management unit can demonstrate to the director that the unit or facility has the capacity to receive additional hazardous wastes and he or she has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

If the facility's permit or interim status is terminated, or if the facility is otherwise ordered by judicial decree or compliance order to cease receiving hazardous waste or to close, then ~~this~~ the requirement in this item does not apply. However, the owner or operator shall close the facility in accordance with established deadlines.

Subp. 6. **Removal of wastes and decontamination or dismantling of equipment.** Nothing in this part precludes the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved closure plan at any time before or after notification of partial or final closure.

7045.0488 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the ~~site~~ unit or facility, or dispose of on-site all hazardous waste in accordance with the approved closure plan. The director may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90-day period, that ~~he~~ the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all permit requirements and:

A. the activities required to comply with the approved closure plan will, of necessity, take longer than 90 days to complete; or

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, there is a reasonable likelihood that ~~a person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

C. the owner or operator complies with all applicable requirements for requesting a modification to the permit.

If the owner or operator of a facility required to maintain financial assurance for closure, post-closure care, or corrective action fails to make a required payment or to substitute alternative financial assurance when required to do so, the director shall order the owner or operator to begin closure activities.

Subp. 2. **Time extension for closure activities.** The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous waste at the hazardous waste management unit or facility. The director may approve a longer closure period if the owner or operator demonstrates ~~he~~ at least 30 days before expiration of the 180-day period that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements and:

A. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, there is a reasonable likelihood ~~that a person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

C. the owner or operator complies with all applicable requirements for requesting a modification to the permit.

If operation of the site is recommended, the director may defer completion of closure activities until the new operation is terminated.

Subp. 3. **Disposal or decontamination of equipment, structures, and soils.** ~~When~~ During the partial and final closure ~~is completed~~ periods, all contaminated facility equipment ~~and~~, structures, and soils must ~~have been~~ be properly disposed of or decontaminated ~~by removing all hazardous wastes and residues~~ unless otherwise specified in parts 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8, and 7045.0538, subpart 7. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of parts 7045.0205 to 7045.0304.

Subp. 4. **Certification of closure.** ~~When closure is completed~~ Within 60 days after each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit is closed, and within 60 days after final closure is completed, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan.

Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for closure under part 7045.0504, subpart 10.

7045.0490 POST-CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Submittal of post-closure plan.** The owner or operator of a facility shall submit a post-closure plan with the permit application, and the plan must be approved by the agency as part of the permit issuance procedure. The approved post-closure plan will become a condition of any permit issued.

Owners or operators of surface impoundments and waste piles which are not otherwise required by part 7045.0532, subpart 7 or 7045.0534, subpart 7 to prepare a post-closure plan, must submit a post-closure plan to the director within 90 days after the owner or operator or the director determines that the unit must be closed as a landfill and is subject to the post-closure care requirements of parts 7045.0490 to 7045.0496.

Subp. 3. **Post-closure plan; amendment of plan.** A copy of the approved plan and all revisions to the plan must be ~~kept at the facility~~ furnished to the director upon request, including request by mail until ~~the post-closure care period begins~~ final closure of the facility. ~~This~~ After final closure has been certified, the person or office in item C must keep the approved post-closure plan during the remainder of the post-closure period. For each hazardous waste management unit subject to post-closure care requirements the plan must identify the activities which will be carried on after closure and the frequency of these activities, and it must include at least:

A. [Unchanged.]

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B. a description of the planned maintenance activities and frequencies at which they will be performed to ensure the integrity of the cap and final cover or other containment systems according to ~~the requirements of~~ parts 7045.0532 to 7045.0538, and the function of the facility monitoring equipment according to ~~the requirements of~~ parts 7045.0484 and 7045.0532 to 7045.0538; and

C. the name, address, and telephone number of the person or office to contact about the disposal facility during the post-closure period. This person or office must keep an updated post-closure plan during the post-closure period.

The owner or operator may submit a written request for a permit modification to amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure period in accordance with the agency's permitting procedures in chapter 7001. The owner or operator shall request a permit modification to amend the plan whenever changes in operating plans, or facility design, or events which occur during the active life of the facility including partial and final closures, or during the post-closure period affect the post-closure plan. He or she shall also amend the plan whenever there is a change in the expected year of final closure, if applicable. In addition, the director may request modifications to the post-closure plan under these conditions.

When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time. ~~In all other cases, the request for modification of the post-closure plan must be made within~~ The owner or operator must submit a written request for a permit modification at least 60 days ~~after~~ before the proposed changes in operating plans or facility design, or no later than 60 days after the unexpected events which affect the post-closure plan occur. If the director requests modification of the post-closure plan, the owner or operator must submit the modified plan no later than 60 days after the director's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the director will be approved, disapproved, or modified in accordance with the agency's permitting procedures in chapter 7001.

7045.0492 POST-CLOSURE CARE AND USE OF PROPERTY.

Subpart 1. **Post-closure care requirements.** Post-closure care requirements are as follows:

A. Post-closure care of each hazardous waste management unit subject to parts 7045.0490 to 7045.0496 must continue for 30 years after the date of completing closure of the unit and must consist of at least monitoring and reporting according to ~~the requirements of~~ parts 7045.0484 and 7045.0532 to 7045.0538, and the maintenance of monitoring and waste containment systems, according to ~~the requirements of~~ parts 7045.0484 and 7045.0532 to 7045.0538.

B. ~~During the 180-day period~~ Any time preceding closure of a hazardous waste management unit subject to the post-closure care requirements or final closure, or at any time ~~thereafter~~ during the post-closure period for a particular unit, the director may reduce the post-closure care period ~~to less than 30 years~~ in accordance with the agency's permit modification procedures in chapter 7001 for the hazardous waste management unit or facility, if all disposal units have been closed if it is found that the reduced period is sufficient to protect human health and the environment. This determination must be based on leachate or ground water monitoring results, waste characteristics, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicating the hazardous waste management unit or facility is secure.

C. ~~Prior to~~ Before the time that the post-closure care period is due to expire, the director may extend the post-closure care period in accordance with the agency's permit modification procedures in chapter 7001 for the hazardous waste management unit or facility if it is found that the extended period is necessary to protect human health and the environment. This determination must be based on factors such as leachate or ground water monitoring results that indicate a potential for migration of hazardous waste at levels which may be harmful to human health and the environment.

D. All post-closure care activities must be in accordance with ~~the provisions of~~ the approved post-closure plan.

Subp. 2. **Continuation of security requirements.** The director may require, at partial and final closure, continuation of any of the security requirements during part of or all of the post-closure period after the date of completing closure when hazardous wastes may remain exposed after completion of partial or final closure or when access by the public or domestic livestock may pose a hazard to human health.

Subp. 3. **Post-closure use of property.** Post-closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed by the owner or operator to disturb the integrity of the final cover, liners, or any other components of any containment system or the function of the facility's monitoring ~~system~~ systems, unless the owner or operator can demonstrate to the director either in the post-closure plan or by petition that the disturbance:

A. and B. [Unchanged.]

Subp. 4. **Certification of completion of post-closure care.** Within 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the approved post-closure plan. Documentation supporting the independent

registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for post-closure care under part 7045.0508, subpart 10.

7045.0494 NOTICE TO LOCAL LAND AUTHORITY.

Subpart 1. **Submission of survey plat.** ~~Within 90 days after~~ No later than submission of the certification of closure ~~is completed~~ of each hazardous waste disposal unit, the owner or operator ~~of a disposal facility~~ shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified.

Subp. 2. **Post-closure notices.** ~~In addition~~ Within 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or ~~area~~ other disposal unit of the facility. For ~~waste~~ hazardous wastes disposed of before January 12, 1981, the owner or operator shall comply with all requirements of Code of Federal Regulations, title 40, section 264.119 (1983). The owner or operator shall identify the type, location, and quantity of the waste to the best of his or her knowledge and in accordance with any records he or she has kept. A change in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occurs after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

7045.0496 NOTICE IN DEED TO PROPERTY.

Subpart 1. **Deed notation.** Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit the owner ~~of the property on which a disposal facility is located~~ or operator shall:

A. record, in accordance with state law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

~~A.~~ (1) the land has been used to manage hazardous waste;

~~B.~~ (2) the land use is restricted; and

~~C.~~ (3) the survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or ~~area~~ other hazardous waste disposal unit of the facility required in part 7045.0494 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

B. submit a certification signed by the owner or operater that he or she has recorded the notation specified in this subpart, including a copy of the document in which the notation has been placed, to the director.

Subp. 2. **Changes to the deed.** If at any time the owner or operator or a subsequent owner or operator of the land upon which a hazardous waste ~~facility was~~ disposal unit is located ~~removes~~ wishes to remove the ~~waste~~ hazardous wastes and hazardous waste residues, the liner, if any, ~~and all~~ or contaminated underlying and surrounding soil, he or she ~~may remove~~ must request a permit modification to amend the post-closure plan in accordance with the agency's permitting procedures in chapter 7001. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of part 7045.0492, subpart 3. If the owner or operator is granted approval to conduct removal activities, he or she may request that the director approve either:

A. removal of the notation on the deed to the facility property or other instrument normally examined during title search~~,~~; or ~~he may add~~

B. addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

~~Upon~~ By removing ~~the~~ hazardous waste and hazardous waste residue, the liner, if any, and the contaminated soil, the owner or operator~~, unless he or she can demonstrate that any waste removed is not a hazardous waste,~~ becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter.

7045.0498 FINANCIAL REQUIREMENTS.

Subpart 1. [Unchanged.]

Subp. 2. **Definitions.** The following definitions apply:

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A. When used in parts 7045.0498 to 7045.0524, the following terms have the meanings given.

(1) "Closure plan" means the plan for closure prepared in accordance with ~~the requirements of~~ part 7045.0486.

(2) "Corrective action plan" means the plan for corrective action prepared in accordance with part 7045.0484, ~~subpart~~ subparts 2, item D, and ~~subpart~~ 14.

(3) and (4) [Unchanged.]

(5) "Current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities" means the most recent of the estimates prepared in accordance with Code of Federal Regulations, title 40, section 144.62 (a), (b), and (c).

~~(5)~~ (6) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0506, subparts 1, 2, and 3.

~~(6)~~ (7) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the later corporation is deemed a "subsidiary" of the parent corporation.

~~(7)~~ (8) "Post-closure plan" means the plan for post-closure care prepared according to parts 7045.0490 to 7045.0496.

B. The following terms are used in the specifications for the financial tests for corrective action, closure, post-closure care, and liability coverage. The following definitions are intended to assist in the understanding of ~~these rules~~ parts 7045.0498 to 7045.0524 and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(1) to (8) [Unchanged.]

C. In the liability insurance requirements the terms "bodily injury" and "property damage" have the meanings given these terms by applicable state law. However, these terms do not include liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The following definitions of several of the terms are intended to assist in the understanding of ~~these rules~~ parts 7045.0498 to 7045.0524 and are not intended to limit their meanings in a way that conflicts with general insurance industry usage:

(1) to (4) [Unchanged.]

7045.0502 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with ~~the requirements in~~ parts 7045.0486 and 7045.0488 and applicable closure requirements in parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8. The closure cost estimate must equal the cost of final closure at the point in the facility's ~~operating~~ active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

A. The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if the operator can demonstrate that on-site disposal capacity will exist at all times through the life of the facility.

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first closure cost estimate was prepared~~ financial instruments used to comply with part 7045.0504 were established. Owners and operators using the financial test or corporate guarantee must adjust the closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in part 7045.0504, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. Adjustments must be made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** During the active life of the facility, the owner or operator shall revise the closure cost estimate ~~whenever a~~ within 30 days after the director approves the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ supply the following ~~at the facility during the operating life of the facility~~ to the director upon request, including request by mail until final closure is completed: the latest closure cost estimate prepared in accordance with subparts 2 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted closure cost estimate.

7045.0504 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure trust fund.** The following apply to closure trust funds:

A. to J. [Unchanged.]

K. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial closure expenditures only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the director shall determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining operating life of the facility will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

L. The director shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** The following apply to surety bonds that guarantee payment into a closure trust fund:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. **Surety bond guaranteeing performance of closure.** The following apply to surety bonds that guarantee performance of closure:

A. to D. [Unchanged.]

E. Under the terms of the bond, the surety becomes liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination by the director that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure in accordance with the closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

F. to H. [Unchanged.]

I. The owner or operator may cancel the bond if the director has given prior written consent. The ~~agency~~ director shall provide such written consent if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

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(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

J. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 5. **Closure letter of credit.** The following apply to closure letters of credit:

A. to I. [Unchanged.]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 6. **Closure insurance.** The following apply to closure insurance:

A. to D. [Unchanged.]

E. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the director may withhold reimbursement of amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to I. [Unchanged.]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 7. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for ~~his~~ the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required

to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to J. [Unchanged.]

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 10.

L. [Unchanged.]

Subp. 8. and 9. [Unchanged.]

Subp. 10. **Release of owner or operator from requirements of this part.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the ~~agency~~ director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for closure of the particular facility, unless the ~~agency~~ director has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

7045.0506 COST ESTIMATE FOR POST-CLOSURE CARE.

Subpart 1. **Cost estimate requirements.** The owner or operator of a facility subject to post-closure monitoring or maintenance requirements shall have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in parts 7045.0490 to 7045.0496; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; and 7045.0538, subpart 7. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under part 7045.0492. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is neither a parent nor a subsidiary of the owner or operator.

Subp. 2. **Yearly update of cost estimate.** During the ~~operating~~ active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first post-closure cost estimate was prepared~~ financial instruments used to comply with part 7045.0508 were established. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be adjusted for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the director as specified in part 7045.0506, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. Adjustments are made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the post-closure cost estimate ~~during the operating life of the facility whenever a~~ within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ furnish the following ~~at the facility during the operating life of the facility:~~ to the director upon request, including request by mail: the latest post-closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted post-closure cost estimate.

7045.0508 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

Subpart 1. **In general.** The owner or operator of a ~~facility~~ hazardous waste management unit subject to post-closure monitoring or maintenance requirements shall establish financial assurance for post-closure care of the facility 60 days before the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. ~~He or she~~ The owner or operator shall choose from the options specified in subparts 2 to 7.

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Subp. 2. **Post-closure trust fund.** The following apply to post-closure trust funds:

A. to K. [Unchanged.]

L. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure activities are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director does not instruct the trustee to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

M. [Unchanged.]

Subp. 3. **Surety bond guaranteeing payment into post-closure trust fund.** The following apply to surety bonds that guarantee payment into post-closure trust funds:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Post-closure insurance.** The following apply to post-closure insurance:

A. to D. [Unchanged.]

E. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in amounts as the director specifies in writing. If the director does not instruct the insurer to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to K. [Unchanged.]

Subp. 7. **Financial test and corporate guarantee for post-closure care.** The financial test and corporate guarantee for post-closure care is as follows:

A. [Unchanged.]

B. The owner or operator must have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for ~~his~~ the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at

least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimates" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to M. [Unchanged.]

Subp. 8. and 9. [Unchanged.]

Subp. 10. **Release of owner or operator from requirements of this part.** ~~When an~~ Within 60 days after receiving certification from the owner or operator ~~has completed, to the satisfaction of the agency,~~ and an independent registered professional engineer that all post-closure care requirements have been completed for a hazardous waste disposal unit in accordance with the post-closure plan, the agency will, at the request of the owner or operator, notify ~~him~~ the owner or operator in writing that ~~he~~ the owner or operator is no longer required by this part to maintain financial assurance for post-closure care of ~~the particular facility~~ that unit, unless the agency has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The agency shall provide the owner or operator with a detailed written statement of any reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

7045.0518 LIABILITY REQUIREMENTS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this part until certifications of closure of the facility, as specified in part 7045.0488, are received by the director. Within 60 days after receiving the certifications from the owner or operator and an independent registered professional engineer, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the director has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 6. [Unchanged.]

7045.0524 WORDING OF INSTRUMENTS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Letter from chief financial officer for corrective action, closure, and/or post-closure care.** A letter from the chief financial officer as specified in part 7045.0504, subpart 7; 7045.0508, subpart 7; 7045.0514, subpart 7; 7045.0612, subpart 6; or 7045.0616, subpart 6 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER FOR CORRECTIVE ACTION, CLOSURE, AND/OR POST-CLOSURE CARE

[Agency Director]

Minnesota Pollution Control Agency

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

[Fill out the following ~~four~~ five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for corrective action, closure, or post-closure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for corrective action, closure, or

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post-closure care is demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624. The current corrective action, closure, and/or post-closure cost estimates covered by the text are shown for each facility: _____.

2. This firm guarantees, through the corporate guarantee specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624, the corrective action, closure, or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility: _____.

3. In states other than Minnesota, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the corrective action, closure, or post-closure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial test specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for corrective action, if required, closure, or if a disposal facility, post-closure care, is not demonstrated either to the United States Environmental Protection Agency or a state through the financial test or any other financial assurance mechanism specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or equivalent or substantially equivalent state mechanisms. The current corrective action, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator of the following underground injection control (UIC) facilities for which financial assurance for plugging and abandonment is required under Code of Federal Regulations, title 40, part 144. The current closure cost estimates as required by Code of Federal Regulations, title 40, section 144.62 are shown for each facility.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; 7045.0612, subpart 6, item B; 7045.0616, subpart 6, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C; 7045.0514, subpart 7, item C; or 7045.0612, subpart 6, item C; or 7045.0616, subpart 6, item C are used.]

ALTERNATIVE I

1.	Sum of current corrective action, closure, and post-closure cost estimate [total of all cost estimates shown in the ~~four~~ five paragraphs above]	$_____
*2.	Total liabilities [if any portion of the corrective action, closure, or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4].	$_____
*3.	Tangible net worth	$_____
*4.	Net worth	$_____
*5.	Current assets	$_____
*6.	Current liabilities	$_____
7.	Net working capital [line 5 minus line 6]	$_____
*8.	The sum of net income plus depreciation, depletion, and amortization	$_____
*9.	Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.)	$_____

		YES	NO
10.	Is line 3 at least $10,000,000?	_____	_____
11.	Is line 3 at least 6 times line 1?	_____	_____
12.	Is line 7 at least 6 times line 1?	_____	_____

*13.	Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14	_____	_____
14.	Is line 9 at least 6 times line 1?	_____	_____
15.	Is line 2 divided by line 4 less than 2.0?	_____	_____
16.	Is line 8 divided by line 2 greater than 0.1?	_____	_____
17.	Is line 5 divided by line 6 greater than 1.5?	_____	_____

ALTERNATIVE II

1.	Sum of current corrective action, closure, and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above	$_____
2.	Current bond rating of most recent issuance of this firm and name of rating service	_____
3.	Date of issuance of bond	_____
4.	Date of maturity of bond	_____
*5.	Tangible net worth [if any portion of the corrective action, closure, and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]	$_____
*6.	Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.)	$_____

		YES	NO
7.	Is line 5 at least $10,000,000?	_____	_____
8.	Is line 5 at least 6 times line 1?	_____	_____
*9.	Are at least 90 percent of firm's assets located in U.S.? If not, complete line 10	_____	_____
10.	Is line 6 at least 6 times line 1?	_____	_____

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7045.0524, subpart 6, as such rules were constituted on the date shown immediately below.

[SIGNATURE]

[NAME]

[TITLE]

[DATE]

Subp. 7. **Letter from chief financial officer for liability coverage.** A letter from the chief financial officer as specified in part 7045.0518, subpart 6 or 7045.0620, subpart 5 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER FOR LIABILITY COVERAGE OR LIABILITY COVERAGE, CORRECTIVE ACTION, CLOSURE, AND/OR POST-CLOSURE CARE

[Agency Director]

Minnesota Pollution Control Agency

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and corrective action, closure, and/or post-closure care" if applicable] as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

[Fill out the following paragraph regarding facilities and liability coverage. For each facility, include its identification number, name, and address.]

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The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624: _____.

[If you are using the financial test to demonstrate coverage of both liability and corrective action, closure, and post-closure care, fill in the following ~~four~~ five paragraphs regarding facilities and associated corrective action, closure, and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for corrective action, closure, or post-closure care.]

1. The owner or operator identified above owns or operates the following facilities for which financial assurance for corrective action, closure, or post-closure care is demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624. The current corrective action, closure, and/or post-closure cost estimates covered by the test are shown for each facility: _____.

2. The owner or operator identified above guarantees, through the corporate guarantee specified in Minnesota Rules, part 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624, the corrective action, closure, and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility: _____.

3. In states other than Minnesota, this owner or operator is demonstrating financial assurance for the corrective action, closure, or post-closure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial test specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The owner or operator identified above owns or operates the following hazardous waste management facilities for which financial assurance for corrective action, if required, closure, or, if a disposal facility, post-closure care, is not demonstrated either to the United States Environmental Protection Agency, or a state through the financial test or any other financial assurance mechanism specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or equivalent or substantially equivalent state mechanisms. The current corrective action, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. The owner or operator identified above owns or operates the following underground injection control (UIC) facilities for which financial assurance for plugging and abandonment is required under Code of Federal Regulations, title 40, part 144. The current closure cost estimates as required by Code of Federal Regulations, title 40, section 144.62 are shown for each facility: _____.

This owner or operator [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences.

[Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0518, subpart 6, item B or 7045.0620, subpart 5, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7045.0518, subpart 6, item C or 7045.0620, subpart 5, item C are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
*2.	Current assets	$_____
*3.	Current liabilities	$_____
4.	Net working capital (line 2 minus line 3)	$_____
*5.	Tangible net worth	$_____
*6.	If less than 90 percent of assets are located in the U.S., give total U.S. assets	$_____
		YES NO
7.	Is line 5 at least $10,000,000?	_____ _____

8.	Is line 4 at least 6 times line 1?	_____	_____
9.	Is line 5 at least 6 times line 1?	_____	_____
*10.	Are at least 90 percent of assets located in the U.S.? If not, complete line 11	_____	_____
11.	Is line 6 at least 6 times line 1?	_____	_____

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated	$_____
2.	Current bond rating of most recent issuance and name of rating service	_____
3.	Date of issuance of bond	_____
4.	Date of maturity of bond	_____
*5.	Tangible net worth	_____
*6.	Total assets in U.S. (required only if less than 90 percent of assets located in the U.S.)	_____

		YES	NO
7.	Is line 5 at least $10,000,000?	_____	_____
8.	Is line 5 at least 6 times line 1?	_____	_____
*9.	Are at least 90 percent of assets located in the U.S.? If not, complete line 10	_____	_____
10.	Is line 6 at least 6 times line 1?	_____	_____

Part B. Corrective Action, Closure, or Post-Closure Care and Liability Coverage.

[Fill in Alternative I if the criteria of Minnesota Rules, parts 7045.0504, subpart 7, item B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; and 7045.0518, subpart 6, item B are used or if the criteria of Minnesota Rules, parts 7045.0612, subpart 6, item B or 7045.0616, subpart 6, item B; and 7045.0620, subpart 5, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, parts 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C; 7045.0514, subpart 7, item C; and 7045.0518, subpart 6, item C are used or if the criteria of Minnesota Rules, parts 7045.0612, subpart 6, item C; 7045.0616, subpart 6, item C; and 7045.0620, subpart 5, item C are used.]

ALTERNATIVE I

1.	Sum of current corrective action, closure, and post-closure cost estimates (total of all cost estimates listed above)	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____
3.	Sum of lines 1 and 2	$_____
*4.	Total liabilities (if any portion of your current corrective action, closure, or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)	$_____
*5.	Tangible net worth	$_____
*6.	Net worth	$_____
*7.	Current assets	$_____
*8.	Current liabilities	$_____
9.	Net working capital (line 7 minus line 8)	$_____
*10.	The sum of net income plus depreciation, depletion, and amortization	$_____
*11.	Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____

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		YES	NO
12.	Is line 5 at least $10,000,000?	_____	_____
13.	Is line 5 at least 6 times line 3?	_____	_____
14.	Is line 9 at least 6 times line 3?	_____	_____
*15.	Are at least 90 percent of assets located in the U.S.? If not, complete line 16	_____	_____
16.	Is line 11 at least 6 times line 3?	_____	_____
17.	Is line 4 divided by line 6 less than 2.0?	_____	_____
18.	Is line 10 divided by line 4 greater than 0.1?	_____	_____
19.	Is line 7 divided by line 8 greater than 1.5?	_____	_____

ALTERNATIVE II

1.	Sum of current corrective action, closure, and post-closure cost estimates (total of all cost estimates listed above)	$_____
2.	Amount of annual aggregate liability coverage to be demonstrated	$_____
3.	Sum of lines 1 and 2	$_____
4.	Current bond rating of most recent issuance and name of rating service	_____
5.	Date of issuance of bond	_____
6.	Date of maturity of bond	_____
*7.	Tangible net worth (if any portion of the current corrective action, closure, or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)	$_____
*8.	Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____

		YES	NO
9.	Is line 7 at least $10,000,000?	_____	_____
10.	Is line 7 at least 6 times line 3?	_____	_____
*11.	Are at least 90 percent of assets located in the U.S.? If not, complete line 12	_____	_____
12.	Is line 8 at least 6 times line 3?	_____	_____

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7045.0524, subpart 7, as the rules were constituted on the date shown immediately below.

[SIGNATURE]

[NAME]

[TITLE]

[DATE]

Subp. 8. to 10. [Unchanged.]

7045.0594 CLOSURE.

Subpart 1. [Unchanged.]

7045.0594 CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure performance standard.** The owner or operator shall close the facility in a manner minimizing the need for further maintenance. Closure procedures must result in controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous ~~waste~~ constituents, leachate, contaminated ~~rainfall~~ run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, in accordance with all closure requirements including the requirements of parts 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0634, subpart 5; and 7045.0642, subpart 5.

Subp. 3. **Submittal of closure plan.** The closure plans must be submitted as follows:

A. A copy of the written closure plan and all revisions to the plan must be ~~kept at the facility~~ furnished to the director upon request, including request by mail until final closure is completed and certified. For facilities without approved closure plans, the plan must also be provided to the director as requested, during site inspections on the day of the inspection. The plan must identify steps necessary to ~~completely or partially close~~ perform partial and/or final closure of the facility at any point during its ~~intended operating~~ active life ~~and to completely close the facility at the end of its intended operating life~~. The closure plan must include:

(1) A description of how ~~and when the facility~~ each hazardous waste management unit will be ~~partially~~ closed, if applicable, and how the facility will be finally closed, in accordance with subpart 2. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of subpart 2, part 7045.0596, and the applicable closure requirements of parts 7045.0626, subpart 8; 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; 7045.0642, subpart 5; and 7045.0655, subpart 6, will be met;

(2) An estimate of the maximum inventory of wastes in storage and in treatment at any time during the active life of the facility and a detailed description of the methods to be used during partial and final closure, including methods for removing, transporting, treating, storing, or disposing of all hazardous waste, and identification of off-site hazardous waste management units to be used, if applicable;

(3) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, facility equipment, structures and soils during partial or final closure. The description must include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; ~~and~~

(4) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including ground water monitoring, leachate collection, and run-on and run-off control;

(5) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under parts 7045.0612, subpart 2, and 7045.0616, subpart 2, and whose remaining operating life is less than 20 years, and for facilities without approved closure plans; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include the total time required to close ~~the facility~~ each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial or final closure.

B. The owner or operator may amend the closure plan at any time ~~during the active life~~ before notification of partial or final closure of the facility. ~~The active life of the facility is that period during which wastes are periodically received~~ An owner or operator with an approved closure plan must submit a written request to the director to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the director. The owner or operator shall amend the plan whenever:

(1) changes in operating plans or facility design affect the closure plan ~~and whenever~~; or

(2) there is a change in the expected year of closure~~. The plan must be amended within 60 days of the changes~~, if applicable; or

(3) unexpected events occur during partial or final closure activities which require a modification to the closure plan; or

(4) the director requests modifications to the plan under the conditions described in subitems (1) to (3). An owner or operator with an approved closure plan must submit the modified plan to the director within 60 days after the director's request, or within 30 days if an unexpected event occurs during partial or final closure. A modification to the plan will be approved in accordance with the procedures in item F unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4.

The owner or operator must amend the plan at least 60 days before the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during

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the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. An owner or operator with an approved closure plan must submit the amended closure plan in accordance with the deadlines specified above. A modification to the plan will be approved in accordance with the procedures in item F unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure in accordance with parts 7045.0630, subpart 6; and 7045.0632, subpart 7, but are required to close as landfills under part 7045.0638, subpart 4.

C. The owner or operator of a hazardous waste facility having interim status shall submit a closure plan to the director at least 180 days before the date he or she expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final facility closure if it involves such a unit, whichever is earlier. The owner or operator shall submit a closure plan to the director at least 45 days before the date he or she expects to begin final closure of a facility with only tanks, container storage, or incinerator units. The owner or operator shall submit the closure plan no later than 15 days after:

(1) termination of interim status, except when a permit is issued simultaneously with termination of interim status; or

(2) issuance of a judicial decree or agency order to cease receiving wastes or close.

D. Owners or operators with approved closure plans must notify the director in writing at least:

(1) 60 days before the date he or she expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

(2) 45 days before the date he or she expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

E. The date on which the owner or operator "expects to begin closure" is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date on which the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional hazardous waste" if the owner or operator in fact receives additional hazardous wastes within one year after the last volume was received. If the owner or operator can demonstrate to the director that the unit or facility has the capacity to receive additional hazardous wastes and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the director may approve an extension to this one-year limit.

F. The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments, to request modifications, or to request a public information meeting on the closure plan within 30 days of the date of the notice. In response to a request or at ~~his or her own~~ the director's discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the closure plan. The director shall approve, modify, or disapprove closure plans for facilities having interim status within 90 days of receipt of the plan. If the director does not approve the plan, the director shall provide the owner or operator with a detailed written statement of reasons for the refusal. The owner or operator shall submit a modified or new plan for approval within 30 days. The director shall approve or modify this plan. If the director modifies the plan, this modified plan becomes the approved closure plan. A copy of the modified plan shall be mailed to the owner or operator.

Subp. 4. **Removal of wastes and decontamination or dismantling of equipment.** Nothing in this part shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

7045.0596 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the ~~site~~ unit or facility, or dispose on-site all hazardous waste in accordance with the approved closure plan. The director may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90-day period, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, and:

A. the activities required to comply with the approved closure plan will, of necessity, take longer than 90 days to complete; or

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, there is a reasonable likelihood that ~~a person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ hazardous waste management unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

If the owner or operator of a facility required to maintain financial assurance for closure, post-closure care, or corrective action fails to make any required payment or to substitute alternative financial assurance when required to do so, the director shall order the owner or operator to begin closure activities.

Subp. 2. **Time extension for closure activities.** The owner or operator shall complete partial or final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous waste at the hazardous waste management unit or facility, or 180 days after approval of the closure plan if that is later. The director may approve a longer closure period if the owner or operator demonstrates at least 30 days before expiration of the 180-day period that he or she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including all applicable interim status requirements, and:

A. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, there is a reasonable likelihood that ~~a person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

If operation of the site is recommended, the director may defer completion of partial or final closure activities until the new operation is terminated.

Subp. 3. **Disposal or decontamination of equipment, structures, and soils.** ~~When~~ During the partial and final closure ~~is completed~~ periods, all contaminated facility equipment ~~and~~, structures, and soils must ~~have been~~ be properly disposed of or decontaminated ~~by removing all hazardous wastes and residues~~, unless otherwise specified in part 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; or 7045.0638, subpart 4. By removing any hazardous wastes or hazardous constituents during partial or final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of parts 7045.0205 to 7045.0304.

Subp. 4. **Certification of closure.** ~~When~~ Within 60 days after closure is completed for each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit and within 60 days after final closure is completed, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until he or she releases the owner or operator from the financial assurance requirements for closure under part 7045.0612, subpart 9.

7045.0600 POST-CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Submittal of post-closure plan.** The post-closure plan must be submitted as follows:

A. The owner or operator of a disposal facility shall have a written post-closure plan. A copy of the most current plan ~~and all revisions to the plan~~ must be ~~kept at the facility~~ furnished to the director upon request, including request by mail, until the post-closure care period begins. ~~This~~ For facilities without approved post-closure plans, it must also be provided to the director as requested, during site inspections, on the day of inspection. For each hazardous waste management unit subject to post-closure care requirements, the plan must identify the activities which will be carried on after closure of the unit and the frequency of these activities, and it must include:

(1) a description of the planned ground water monitoring activities and frequencies at which they will be performed;

(2) a description of the planned monitoring activities, and frequencies at which they will be performed to comply with parts 7045.0630, 7045.0632, 7045.0634, and 7045.0638 during the post-closure care period;

(3) a description of the planned maintenance activities and frequencies at which they will be performed to ensure the

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integrity of the cap and final cover or other containment structures, where applicable, and the function of the facility monitoring equipment; and

~~(3)~~ (4) the name, address, and telephone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure period. After final closure has been certified, this person or office must keep an updated post-closure plan during the post-closure period.

B. The owner or operator may amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure period. An owner or operator with an approved post-closure plan must submit a written request to the director to authorize a change in the approved plan. The owner or operator shall amend the plan whenever the following conditions affect the post-closure plan:

(1) changes in operating plans or facility design~~,~~; or

(2) unexpected events ~~which~~ occur during the active life of the facility, including partial and final closure, or during the post-closure period ~~affect the post-closure plan. He or she shall also amend the plan whenever~~; or

(3) there is a change in the expected year of closure, if applicable.

A request for modification of the post-closure plan must be made to the director ~~within~~ at least 60 days ~~after~~ before the proposed changes in operating plans or facility design, or no later than 60 days after the events which affect the post-closure plan occur. This request must include the revised post-closure plan and indicate the reasons for modifying the plan. The request must be made in accordance with ~~the procedures of~~ subpart 3 and the director shall take actions ~~in accordance with the procedures~~ required in subpart 3. A modification to the plan will be approved in accordance with item D unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4. The director may request modifications to the post-closure plan under the conditions described in subitems (1) to (3). An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days after the director's request. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with part 7045.0630, subpart 6; or 7045.0632, subpart 7, is required to close as a landfill in accordance with part 7045.0638, subpart 4. The owner or operator must submit a post-closure plan within 90 days after the owner or operator or director determines that the unit must be closed as a landfill.

C. The owner or operator of a facility with hazardous waste management units subject to post-closure requirements shall submit the post-closure plan to the director at least 180 days before the date he or she expects to begin closure of the first hazardous waste disposal unit. The date ~~he or she~~ on which the owner or operator "expects to begin closure" ~~must begin immediately after the date on which he or she expects to receive the final volume of wastes~~ is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional volumes of hazardous waste" if the owner or operator in fact receives additional hazardous wastes within one year after the last volume was received.

The owner or operator also shall submit the plan to the director no later than 15 days after:

~~(1)~~ termination of interim status, except when a permit is issued to the facility simultaneously with termination of interim status; or

~~(2)~~ issuance of a judicial decree or agency order to cease receiving waste or close.

D. The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments, to request modification, or to request a public information meeting on the post-closure plan or substantive amendments to the post-closure plan within 30 days of the date of the notice. In response to a request or at his or her own discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. The director shall approve, modify, or disapprove post-closure plans for facilities having interim status within 90 days of the receipt of the plan. If the director does not approve the plan, he or she shall provide the owner or operator with a detailed written statement of reasons for the refusal, and the owner or operator shall submit a modified or new plan for approval within 30 days after receiving this written statement. The director shall approve or modify this plan in writing within 60 days. If the director modifies the plan, this modified plan becomes the approved post-closure plan. A copy of the modified plan and a detailed statement of reasons for the modifications shall be mailed to the owner or operator. The director shall ensure that the approved post-closure plan is consistent with part 7045.0602.

Subp. 3. **Modification of post-closure period.** The post-closure period may be modified during the post-closure care period as described in items A and B:

A. The owner or operator or any member of the public may petition the director to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility or alter the requirements of the post-closure care period based on cause.

(1) The petition must include evidence demonstrating that the secure nature of the hazardous waste management unit or facility makes the post-closure care requirements unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan, or that the requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment. Areas which must be considered in demonstrating the secure nature of the facility include leachate or ground water monitoring results, characteristics of the waste, application of advanced technology; or alternative disposal, treatment, or reuse techniques that indicate the facility is secure.

(2) [Unchanged.]

B. The director may decide to modify the post-closure plan if necessary to prevent threats to human health and the environment. Extension or reduction of the post-closure care period or alteration of the requirements of the post-closure care period may be proposed based on cause.

The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments or request a public information meeting within 30 days of the date of the notice. The director shall in response to a request or at his or her own discretion hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. After considering the comments, a final determination shall be issued.

The director shall base the final determination upon the criteria outlined in item A, subitem (1). A modification of the post-closure plan may include, when appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the director shall determine whether the requirements should be permanently discontinued or reinstated to prevent threats to human health and the environment.

7045.0602 POST-CLOSURE CARE AND USE OF PROPERTY.

Subpart 1. **Post-closure care requirements.** Post-closure care for each hazardous waste management unit subject to these requirements must continue for 30 years after the date of completing closure of the unit and must consist of at least ground water monitoring and reporting and the maintenance of monitoring and waste containment systems in accordance with parts 7045.0630, 7045.0632, 7045.0634, and 7045.0638, as applicable.

The director may reduce the post-closure care period to less than 30 years for the hazardous waste management unit or facility, if all disposal units have been closed, if it is found that the reduced period is sufficient to protect human health and the environment. This determination must be based on leachate or ground water monitoring results, waste characteristics, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicating the hazardous waste management unit or facility is secure.

~~Prior to~~ Before the time that the post-closure care period is due to expire, the director may extend the post-closure care period applicable to the hazardous waste management unit or facility, if it is found that the extended period is necessary to protect human health and the environment. This determination must be based on leachate or groundwater monitoring results which indicate a potential for migration of wastes at levels which may be harmful to the environment.

All post-closure care activities must be in accordance with the provisions of the approved post-closure plan.

Subp. 2. **Continuation of security requirements.** The director may require, at partial or final closure, continuation of any of the security requirements during part of or all of the post-closure period after the date of completing closure when wastes may remain exposed after completion of closure or when access by the public or domestic livestock may pose a hazard to human health.

Subp. 3. [Unchanged.]

Subp. 4. **Certification of completion of post-closure care.** Within 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the director, by registered mail, certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation

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supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for post-closure care under part 7045.0616, subpart 9.

7045.0604 NOTICE TO LOCAL LAND AUTHORITY.

Subpart 1. **Submission of survey plat.** ~~Within 90 days after~~ No later than the certification of closure ~~is completed~~ of each hazardous waste disposal unit is submitted to the director, the owner or operator ~~of a disposal facility~~ shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified.

Subp. 2. **Post-closure notices.** Within 60 days after closure is certified for each hazardous waste disposal unit, in addition, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility. For hazardous waste disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the waste to the best of his or her knowledge and in accordance with any records ~~he has~~ kept. Any changes in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occur after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

7045.0606 NOTICE IN DEED TO PROPERTY.

Subpart 1. **Deed notation.** Within 60 days after closure of the first hazardous waste disposal unit is certified and within 60 days after closure of the last hazardous waste disposal unit is certified, the owner or operator of the property on which a disposal ~~facility~~ unit is located shall:

A. record, in accordance with state law, a notation on the deed to the facility property, or on another instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

~~A.~~ (1) the land has been used to manage hazardous waste;

~~B.~~ (2) the land use is restricted; and

~~C.~~ (3) the survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or ~~area~~ other hazardous waste disposal unit of the facility required in part 7045.0604 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

B. submit a certification signed by the owner or operator that he or she has recorded the notation specified in this subpart, including a copy of the document in which the notation has been placed, to the director.

Subp. 2. **Changes to deed.** If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located ~~removes~~ intends to remove the hazardous waste and hazardous waste residues, the liner, if any, and all contaminated underlying and surrounding soil, ~~he or she may remove~~ the owner or operator must request a modification to the approved post-closure plan in accordance with part 7045.0600, subpart 2, item B. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of part 7045.0602, subpart 3. If the owner or operator is granted approval to conduct removal activities, he or she may request that the director approve either:

A. removal of the notation on the deed to the facility property or other instrument normally examined during title search~~,~~; or ~~he or she may add~~

B. addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

~~Upon~~ By removing ~~the~~ hazardous waste and hazardous waste residue; the liner, if any; and the contaminated soil, the owner or operator, unless he or she can demonstrate that any waste removed is not a hazardous waste, becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter.

7045.0608 FINANCIAL REQUIREMENTS.

Subpart 1. [Unchanged.]

Subp. 2. **Definitions.** Definitions are as follows:

A. When used in parts 7045.0608 to 7045.0624, the following terms have the meanings given.

(1) "Closure plan" means the plan for closure prepared in accordance with ~~the requirements of~~ part 7045.0594.

(2) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0610, subparts 1, 2, and 3.

(3) "Current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities" means the most recent of the estimates prepared in accordance with Code of Federal Regulations, title 40, section 144.62(a), (b), and (c).

(4) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0614, subparts 1, 2, and 3.

~~(4)~~ (5) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

~~(5)~~ (6) "Post-closure plan" means the plan for post-closure care prepared in accordance with ~~the requirements of~~ parts 7045.0600 to 7045.0606.

B. and C. [Unchanged.]

7045.0610 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall prepare a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan in part 7045.0594 and applicable closure requirements in parts 7045.0626, subpart 8; 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; and 7045.0642, subpart 5. The closure cost estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

A. The closure cost estimate may be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if it can be demonstrated that on-site disposal capacity will exist at all times through the life of the facility.

B. The closure cost estimate may not incorporate any salvage value that may be realized with the scale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first closure cost estimate was prepared~~ financial instruments used to comply with part 7045.0612 were established. Owners and operators using the financial test or corporate guarantee shall adjust the closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in part 7045.0504, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

Adjustments must be made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the closure cost estimate ~~whenever~~ within 30 days after a change in the closure plan increases the cost of closure, or within 30 days after the director has approved the request to modify the plan, for facilities with approved closure plans. The revised closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ supply the following ~~at the facility during the operating life of the facility~~ to the director upon request, including request by mail until closure is completed: the latest closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted closure cost estimate.

7045.0612 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure trust fund.** Requirements for closure trust funds are as follows:

A. to K. [Unchanged.]

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L. After beginning partial or final closure, an owner or operator or any other person authorized to perform partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the director shall determine whether the partial or final closure expenditures comply with the closure plan or are otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, under subpart 9, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

M. The director shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** Requirements for surety bonds that guarantee payment into a closure trust fund are as follows:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. **Closure letter of credit.** Requirements for closure letters of credit are as follows:

A. to I. [Unchanged.]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 5. **Closure insurance.** Requirements for closure insurance are as follows:

A. to D. [Unchanged.]

E. After beginning partial or final closure, an owner or operator, or other person authorized to perform closure, may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in the amounts the director specifies in writing. If the director has reason to believe that the maximum cost of closure will be significantly greater than the face amount of the policy, the director may withhold reimbursement of the amounts deemed prudent until it is determined in accordance with subpart 9 that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to I. [Unchanged.]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 6. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least $10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer, as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to J. [Unchanged.]

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the ~~agency~~ director releases the owner or operator from the requirements of this part in accordance with subpart 9.

L. [Unchanged.]

Subp. 7. and 8. [Unchanged.]

Subp. 9. **Release of the owner or operator from the requirements of this part.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the ~~agency~~ director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for final closure of the particular facility, unless the agency has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

7045.0614 COST ESTIMATE FOR POST-CLOSURE CARE.

Subpart 1. **Cost estimate requirements.** The owner or operator of a disposal facility shall prepare a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in parts 7045.0600 to 7045.0606; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; and 7045.0638, subpart 4. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under part 7045.0602. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is neither a parent nor a subsidiary of the owner or operator.

Subp. 2. **Yearly update of cost estimate.** During the ~~operating~~ active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first post-closure cost estimate was prepared~~ financial instruments used to comply with part 7045.0616 were established. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be adjusted for inflation within 30 days after

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the close of the firm's fiscal year and before the submission of updated information to the director as specified in part 7045.0616, subpart 6, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the "Survey of Current Business" issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator of the previous year. Adjustments must be made as follows:

A. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

B. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the post-closure cost estimate during the ~~operating~~ active life of the facility ~~whenever~~ within 30 days after a change in the post-closure plan increases the cost of post-closure care, or within 30 days after the director has an approved request to modify the plan, for facilities with approved post-closure plan. The revised post-closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ furnish the following ~~at the facility during the operating life of the facility~~ to the director upon request, including request by mail: the latest post-closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted post-closure cost estimate.

7045.0616 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

Subpart 1. **In general.** An owner or operator of a disposal facility shall establish financial assurance for post-closure care of the facility ~~by choosing~~ 60 days before the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall choose from the options specified in subparts 2 to 6.

Subp. 2. **Post-closure trust fund.** Requirements of a post-closure trust fund are as follows:

A. to L. [Unchanged.]

M. An owner or operator or other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in the amounts the director specifies in writing. If the director does not instruct the trustee to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

N. [Unchanged.]

Subp. 3. **Surety bond guaranteeing payment into a post-closure trust fund.** The following are requirements for surety bonds that guarantee payment into a post-closure trust fund:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. [Unchanged.]

Subp. 5. **Post-closure insurance.** The following requirements apply to post-closure insurance:

A. to D. [Unchanged.]

E. An owner or operator or other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, he or she shall instruct the insurer to make reimbursement in the amounts the director specifies in writing. If the director does not instruct the insurer to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to K. [Unchanged.]

Subp. 6. **Financial test and corporate guarantee for post-closure care.** The following is the financial test and corporate guarantee for post-closure care:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets located in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C, refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer, as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimates" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to M. [Unchanged.]

Subp. 7. and 8. [Unchanged.]

Subp. 9. **Release of the owner or operator from the requirements of this part.** ~~When an~~ Within 60 days after receiving certification from the owner or operator ~~has completed, to the satisfaction of the agency, all~~ and an independent registered professional engineer that the post-closure care requirements have been completed for a hazardous waste disposal unit in accordance with the post-closure plan, the agency shall, at the request of the owner or operator, notify him or her in writing that he or she is no longer required by this part to maintain financial assurance for post-closure care of ~~the particular facility~~ that unit, unless the agency has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The agency shall provide the owner or operator with a detailed written statement of any reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

7045.0620 LIABILITY REQUIREMENTS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this part, until certifications of closure of the facility, as specified in part 7045.0596, are received by the director. Within 60 days after receiving such certifications from the owner or operator and an independent registered professional engineer, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the director has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 5. [Unchanged.]

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Department of Public Service, Energy Division

Proposed Permanent Rules Relating to Testing Requirements

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Public Service proposes to adopt amendments to Minnesota Rules, Chapter 4155.0130, subpart 2.A.(1), without a public hearing. The Director has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in the Minn. Stat., sections 14.22 to 14.28. Authority for the adoption of these rules is contained in Minn. Stat., sections 325F.20, subd. 1 and 325F.21, subd. 1 and 2.

Minnesota Rules, Chapter 4155 apply to manufacturers of all residential thermal insulation products sold or installed in Minnesota.

All persons have 30 days in which to submit comment in support of or in opposition to any part of the proposed amendments. Comment is encouraged. Each comment should identify the proposed amendment addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed amendments within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing must state his or her name and address and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minn. Stat., sections 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to: Bruce D. Nelson, Department of Public Service, Energy Division, 900 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, (612) 297-2313.

Comments or requests for a public hearing must be received by the Department of Public Service, Energy Division by 4:00 p.m., April 9, 1987. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed amendments as noticed.

A Copy of the proposed rule amendment is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available by requesting a copy from Mr. Nelson at the address listed above.

The implementation of these amendments will not require the expenditure of public money in excess of $100,000 by local bodies in either of the two years following their adoption, nor do the rules have any impact on agricultural land.

The adoption of these amendments will affect small businesses in Minnesota. The Department has evaluated the effect of the proposed rules on small businesses and has considered each of the methods prescribed by Minn. Stat. Section 14.155, subd. 2, for reducing the impact of the rules on small businesses. Small businesses would benefit from the proposed rule, since the required frequency of testing is reduced, resulting in less stringent compliance, schedules and deadlines in conformance with Minn. Stat. Section 14.155, subd. 2(a) and (b). The proposed rule would have no effect on reporting requirements addressed by Minn. Stat. Section 14.155, subd. 2(a), (b) or (c). The requirements of Chapter 4155 are already performance standards for all insulation types in conformance with Minn. Stat. Section 14.155, subd. 2(d). The Department has determined that small businesses cannot be exempted from any or all requirements of the rules in conformance with Minn. Stat. Section 14.155, subd. 2(e).

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent that form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rules must submit a written request for such to Mr. Nelson at the above address.

Dated: 20 February 1987

Tony Perpich, Director
Department of Public Service

Rules as Proposed

4155.0130 INSULATION MATERIALS STANDARDS.

Subpart 1. [Unchanged.]

Subp. 2. **General testing and reporting requirements.** General testing and reporting requirements for regulated thermal insulation materials in this part are as follows:

A. All regulated thermal insulation materials shall be tested for compliance with the standards ~~set forth~~ in this part within 120 days of the effective date of this chapter. Testing procedures are as follows:

(1) Testing ~~shall, at a minimum,~~ must be performed ~~annually and the testing shall be completed prior to June 1 of~~ at least every other year. ~~Annual tests shall be performed at least ten months apart~~ The testing must be completed by June 1 of every even-numbered year.

(2) to (6) [Unchanged.]

B. to D. [Unchanged.]

Subp. 3. **Cellulose fiber in loose-fill form.** The following requirements apply to cellulose fiber in loose-fill form:

A. [Unchanged.]

B. All manufacturers shall contract with an independent NVLAP approved laboratory for the following two purposes:

(1) The laboratory shall pick up three unopened bags of manufacturer's cellulose from the marketplace for ~~annual~~ testing under this chapter.

(2) [Unchanged.]

C. [Unchanged.]

Subp. 4. to 15. [Unchanged.]

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Ethical Practices Board

Adopted Permanent Rules Relating to Ethics in Government

The rules proposed and published at *State Register*, Volume 11, Number 23, pages 1027-1031, December 8, 1986 (11 S.R. 1027) are adopted with the following modifications:

Rules as Adopted

4525.0200 COMPLAINTS OF VIOLATIONS.

Subp. 5. **Confidentiality.** Any portion of a meeting during which the board is hearing testimony or taking action concerning any complaint, investigation, preparation of a conciliation agreement, or a conciliation meeting must be closed to the public. The minutes and tape recordings of ~~the~~ a meeting closed to the public must be kept confidential.

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.

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Thomas J. Kalitowski, do hereby certify that I am the Executive Director 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 28th day of April, 1987, 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:

BE IT RESOLVED, that the Minnesota Pollution Control Agency (MPCA) hereby approves and adopts the amendments to the MPCA's hazardous waste rules governing closure, post-closure, and financial assurance requirements for hazardous waste treatment, storage, and disposal facilities, Minn. Rules pts. 7045.0020, 7045.0486, 7045.0488, 7045.0490, 7045.0492, 7045.0494, 7045.0496, 7045.0498, 7045.0502, 7045.0504, 7045.0506, 7045.0508, 7045.0518, 7045.0524, 7045.0594, 7045.0596, 7045.0600, 7045.0602, 7045.0604, 7045.0606, 7045.0608, 7045.0610, 7045.0612, 7045.0614, 7045.0616, 7045.0620, 7001.0190, 7001.0560, 7001.0650, and 7001.0730, pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1986), with the following modifications: the proposal to amend Minn. Rules pt. 7045.0504, subp. 4, item E is withdrawn and the reference in Minn. Rules pt. 7045.0594, subp. 2 is corrected to refer to Minn. Rules pt. 7045.0640, subp. 5 in place of Minn. Rules pt. 7045.0634, subp. 5.

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 MPCA to make in order to obtain the Revisor's Certification as required by Minn. Stat. § 14.07, subd. 2 (1986).

BE IT FURTHER RESOLVED, that the MPCA adopts the attached Findings of Fact, Conclusions, and Order Adopting Rule Amendments and that the Executive Director is hereby authorized to sign the above-mentioned document on behalf of the MPCA and to perform the necessary acts to provide that the rule amendments shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of May, 1987.

Thomas J. Kalitowski
Executive Director

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments of Rules Governing
the Management, Storage, Treatment,
and Disposal of Hazardous Waste,
Minn. Rules Pts. 7045.0020,
7045.0486, 7045.0488, 7045.0490,
7045.0492, 7045.0494, 7045.0496,
7045.0498, 7045.0502, 7045.0504,
7045.0506, 7045.0508, 7045.0518,
7045.0524, 7045.0594, 7045.0596,
7045.0600, 7045.0602, 7045.0604,
7045.0606, 7045.0608, 7045.0610,
7045.0612, 7045.0614, 7045.0616,
7045.0620, 7001.0190, 7001.0560,
7001.0650, and 7001.0730

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the 28th day of April 1987. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the MPCA, in accordance with statutory requirements regarding the adoption of non-controversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the MPCA, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the MPCA's intent to adopt the above-mentioned rule amendments without a public hearing was published in the State Register on March 9, 1987 (11 SR 1579), and was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. §§ 14.14, subd. 12 and 14.22 (1986) on March 6, 1987.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the proposed rules for 30 days after notice of proposed rulemaking. The 30-day comment period, as set out in the notice, expired on April 8, 1987.

4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received by the MPCA.

6. During the comment period the MPCA received two written comments, one in the form of a letter from Koch Refining Company, dated March 24, 1987, and one in a memorandum from the MPCA staff to the file, dated April 8, 1987. Each of these comments is addressed below.

A. Koch Letter

The Koch letter addressed the MPCA's hazardous waste rulemaking in a general sense and was therefore broader in scope than this particular rulemaking. That is, the Koch letter does not request that the MPCA make any particular modifications to the language of the proposed amendments; neither does it make any specific comments on the proposed amendments. Rather, the Koch letter makes a general request that the MPCA adopt federal rules verbatim, rather than modify federal rules for incorporation into the state's existing hazardous waste rules.

The MPCA does not believe that it is advisable to adopt federal Resource Conservation and Recovery Act (RCRA) regulations verbatim, even where the MPCA intends its rules to be no more restrictive than the federal requirements. (There are, of course situations in which the MPCA may elect to adopt more restrictive hazardous waste requirements; but this rulemaking does not involve that situation.)

Because Minnesota's hazardous waste rules are already in existence, changes to the program must be made by means of rule amendment. Minnesota has already received authorization from the U.S. Environmental Protection Agency (EPA) for the current hazardous waste rules. The State applies for authorization from the EPA for program changes when the rules are amended. In order to adopt federal regulations verbatim, the established State hazardous waste program would need to be abolished, new rules would need to be adopted, and re-authorization would be necessary for a new State hazardous waste program based on the adoption of federal regulations. Moreover, federal and State statutory definitions (e.g., solid waste) are not identical to each other. Differences in statutory definitions make it difficult, if not impossible, for MPCA rules to follow the federal language verbatim.

In sum, the MPCA has considered Koch's suggestion that it adopt federal rules verbatim and has concluded that this suggestion raises issues broader than this particular rulemaking. The MPCA also has concluded that, even where the MPCA intends its rules to be no more restrictive than federal requirements, it is impractical, if not impossible, for the MPCA to adopt verbatim the federal language. Thus, the MPCA rejects Koch's suggestion that it adopt the federal rules verbatim and concludes that no modification to the proposed rule amendments is required to reasonably respond to this comment.

B. Staff Memorandum

The staff memorandum identified two errors in the proposed amendments as published in the State Register (11 SR 1579-1609) on March 9, 1987. It is the view of the MPCA that correction of these errors is simple and does not constitute a substantial change.

(1) Minn. Rules pt. 7045.0504, subp. 4, item E.

Among the rule parts proposed to be amended is Minn. Rules pt. 7045.0504. That rule currently recognizes several different methods of providing adequate financial assurance. One of these methods is through a surety bond guaranteeing performance of closure. See Minn. Rules pt. 7045.0504, subp. 4.

The version of the rule amendments published in the March 9, 1987, State Register include proposed amendments to Minn. Rules pt. 7045.0504, subp. 4, items E, I, and J. Publication of a proposed amendment to item E of subpart 4 was in error. The proposed amendment to item E of subpart 4 calls for the insertion of the word "final" before the word "determination." However insertion of the word would be meaningless since there is no reference in the rules to more than one type of determination (i.e., there is no preliminary determination which precedes the final determination). Further on January 27, 1987 when the MPCA authorized the publication of the proposed amendments in the State Register, the MPCA did not include the word "final" in item E of its set of authorized proposed rules. Thus, inclusion of the word in the State Register version was in error. Minn. Rules pt. 7045.0504, subp. 4, item E requires no amendment and the MPCA did not authorize the publication of any amendment of that item.

(2) Minn. Rules pt. 7045.0594, subp. 2.

The second error in the version of the rules published in the March 9, 1987, State Register was in the proposed amendment to Minn. Rules pt. 7045.0594, subp. 2. The current rule establishes general closure performance standards which apply to all hazardous waste treatment, storage and disposal facilities. The proposed amendment to Minn. Rules pt. 7045.0594, subp. 2 includes the addition of cross-references to the facility-specific closure performance standards elsewhere in the rules. One of the cross-references is in error. The cross-reference to Minn. Rules pt. 7045.0634, subp. 5 is in error and should be replaced with the correct cross-reference which is to Minn. Rules pt. 7045.0640, subp. 5. The proposed amendment to Minn. Rules pt. 7045.0594, subp. 2 should be corrected by replacing the cross-reference to Minn. Rules pt. 7045.0634, subp. 5 with Minn. Rules pt. 7045.0640, subp. 5. An explanation for the cause of this error is contained in the MPCA staff's memorandum commenting on the proposed rules.

7. Based on the information provided by the MPCA staff memorandum commenting on the proposed rules, the MPCA finds the two corrections to the proposed rule amendments are justified and reasonable. Specifically, the MPCA concludes that it is reasonable to withdraw the (erroneously-published)

proposal to amend Minn. Rule pt. 7045.0504, subp. 4, item E. Further, the MPCA concludes that it is reasonable to amend the reference in Minn. Rule pt. 7045.0594, subp. 2 to refer to 7045.0640, subp. 5 instead of 7045.0634, subp. 5.

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

9. The above-captioned rule amendments, together with the modifications made by the MPCA in the above-findings to respond to comments received during the comment period, are needed and reasonable.

CONCLUSIONS

1. The MPCA duly acquired and has jurisdiction over this proceedings.

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

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed amendments to the rules are supported by the record and do not result in a substantial change in the proposed amendments to the rules.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7045.0020, 7045.0486, 7045.0488, 7045.0490, 7045.0492, 7045.0494, 7045.0496, 7045.0498, 7045.0502, 7045.0504, 7045.0506, 7045.0508, 7045.0518, 7045.0524, 7045.0594, 7045.0596, 7045.0600, 7045.0602, 7045.0604, 7045.0606, 7045.0608, 7045.0610, 7045.0612, 7045.0614, 7045.0616, 7045.0620, 7001.0190, 7001.0560, 7001.0650, and 7001.0730, governing closure, post-closure, and financial assurance requirements for hazardous waste treatment, storage, and disposal facilities, are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1986).

Thomas J. Kalitowski
Executive Director

Dated: April 28, 1987

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Management, Storage Treatment, and Disposal of Hazardous Waste, Minn. Rules Pts. 7045.0020, 7045.0486, 7045.0488, 7045.0490, 7045.0492, 7045.0494, 7045.0496, 7045.0498, 7045.0502, 7045.0504, 7045.0506, 7045.0508, 7045.0518, 7045.0524, 7045.0594, 7045.0596, 7045.0600, 7045.0602, 7045.0604, 7045.0606, 7045.0608, 7045.0610, 7045.0612, 7045.0614, 7045.0616, 7045.0620, 7001.0190, 7001.0560, 7001.0650, and 7001.0730

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Nankivel, being duly sworn on oath deposes and says:

1. That she is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing (10 S.R. 2516, June 16, 1986) as the person to receive comments on the Agency's Notice of Intent to Solicit Outside Opinion.

2. That the comment period set forth in the notice terminated at 4:30 p.m. on July 16, 1986.

3. That during the public comment period no comments were received by the Agency.

Carol Nankivel

Subscribed and sworn to before me
this 26 day of May, 1987.

Mary Ann Hammer
Notary Public

MARY ANN HAMMER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 10, 1991

KOCH

KOCH REFINING COMPANY

March 24, 1987

RECEIVED
MAR 26 1987
MPCA, SOLID & HAZ.
WASTE DIVISION

Ms. Nancy J. Larson
Pollution Control Specialist
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road No.
St. Paul, MN 55155

Dear Ms. Larson:

We have reviewed the Statement of Need and Reasonableness you sent at our request concerning amendments to Rules Governing the Management, Storage, Treatment, and Disposal of Hazardous Waste, Minnesota Rules Part 7045.0020 et al. We have also found the published rule revisions in the Minnesota State Register. We applaud the agency's remarks in the SNR for the ". . . need for consistency with the Federal Hazardous Waste Regulations . . .". However, Koch Refining Company and other members of Minnesota industry have constantly requested that MPCA adopt Federal Rules verbatim to ensure such consistency rather than MPCA modify RCRA language and make a statement that the language is "consistent with" or, "equivalent to", EPA RCRA language.

Our resources are limited in reviewing the overwhelming output of the MPCA and amendments to state hazardous waste rules. We are unable to compare MPCA proposed language word for word with EPA RCRA final rules.

Therefore, we again ask that MPCA adopt RCRA rules verbatim rather than modify the language. To the extent that you feel necessary to amend RCRA language, we request that the SNR contain the side-by-side comparison of RCRA language and changes proposed by MPCA.

Sincerely,

T. W. Segar
Industrial Relations/
Environmental Manager

P.O.Box 64596 ▪ Saint Paul, Minnesota 55164 ▪ 612/437-0700

SF-00006-05 (4/86)

DEPARTMENT : POLLUTION CONTROL AGENCY

STATE OF MINNESOTA

Office Memorandum

DATE : April 8,1987

TO : Karen A. Ryss, Supervisor, Hazardous and Special Waste Unit
Program Development Section
Solid and Hazardous Waste Division

FROM : Nancy J. Larson, Hazardous and Special Waste Unit
Program Development Section
Solid and Hazardous Waste Division

PHONE : 296-7437

SUBJECT : IDENTIFICATION OF TWO ERRORS IN THE PROPOSED AMENDMENTS TO THE CLOSURE, POST-CLOSURE, AND FINANCIAL ASSURANCE RULES AS PUBLISHED IN THE MARCH 9, 1987 STATE REGISTER

This memorandum is written to document two errors in the version of the proposed hazardous waste rules published in the March 9, 1987 State Register. It is my view that correction of these errors is simple and does not constitute a substantial change.

On March 9, 1987, the MPCA published proposed amendments to its hazardous waste rules (11 SR 1579-1609). The proposed amendments would modify the closure, post-closure and financial assurance requirements of the hazardous waste rules so that they will be equivalent to recently-amended federal rules.

Among the rule parts proposed to be amended is Minn. Rules pt. 7045.0504. That rule currently recognizes several different methods of providing adequate financial assurance. One of those methods is through a surety bond guaranteeing performance of closure. See Minn. Rules pt. 7045.0504, subp. 4.

The rule amendments published in the March 9, 1987 State Register include proposed amendments to Minn. Rules pt. 7045.0504, subp. 4. items E, I and J. However, the MPCA only authorized the publication of proposed amendments to Minn. Rules pt. 7045.0504, subp. 4, items I and J and publication of a proposed amendment to subpart 4, item E was in error.

The State Register version of the proposed amendment to subpart 4, item E calls for the insertion of the word "final" before the word "determination." However, insertion of this word would be meaningless since there is no reference in the rules to more than one type of determination (i.e., there is no preliminary determination which precedes the final determination.) Further, on January 27, 1987 when the MPCA authorized that the proposed rule be noticed in the State Register, the MPCA did not include the word "final" in its set of authorized proposed rules. Thus, inclusion of the word in the State Register version of the rules was proposed in error.

The second error appears in the proposed amendment to Minn. Rules pt. 7045.0594, subp. 2. This rule currently establishes general closure performance standards which apply to all hazardous waste treatment, storage, and disposal facilities (see Minn. Rules pt. 7045.0594, subp. 2). The proposed amendment to Minn. Rules pt. 7045.0594, subp. 2 includes the addition of a list of seven cross-references

of the provisions which address closure requirements for specific types of facilities.

One of the cross-references in the list contains an error. The proposed amendment to Minn. Rules pt. 7045.0594, subp. 2 authorized by the MPCA for publication in the State Register contained a typographical error which erroneously identified the sixth cross-reference in the list as Minn. Rules pt. 7045.6034, subp. 5. This typographical error went unnoticed by staff prior to publication in the State Register. The cross-reference to Minn. Rules pt. 7045.6034, subp. 5 was changed by the Office of the Revisor of Statutes to Minn. Rules pt. 7045.0634, subp. 5 since Minn. Rules ch. 7045 does not contain a part 7045.6034. The sixth cross-reference in this list was therefore published in the State Register as Minn. Rules pt. 7045.0634, subp. 5, which was also in error. The correct cross-reference is to Minn. Rules pt. 7045.0640, subp. 5. The correct list of seven cross-references in Minn. Rules pt. 7045.0594, subp. 2 should read "parts 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; and 7045.0642, subpart 5."

In sum, Minn. Rules pt. 7045.0504, subp. 4, item E requires no amendment and the MPCA did not authorize the publication of any amendment to that item. Therefore, the proposal to include the word "final" should be withdrawn. The proposed amendment to Minn. Rules pt. 7045.0594, subp. 2 should be corrected by replacing the cross-reference to Minn. Rules pt. 7045.0634, subp. 5 with Minn. Rules pt. 7045.0640, subp. 5.

NJL:rw

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Management, Storage Treatment, and Disposal of Hazardous Waste, Minn. Rules Pts. 7045.0020, 7045.0486, 7045.0488, 7045.0490, 7045.0492, 7045.0494, 7045.0496, 7045.0498, 7045.0502, 7045.0504, 7045.0506, 7045.0508, 7045.0518, 7045.0524, 7045.0594, 7045.0596, 7045.0600, 7045.0602, 7045.0604, 7045.0606, 7045.0608, 7045.0610, 7045.0612, 7045.0614, 7045.0616, 7045.0620, 7001.0190, 7001.0560, 7001.0650, and 7001.0730

DECLARATION OF COUNSEL

I, Mamie S. Segall, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0696.

Mamie S. Segall

MAMIE S. SEGALL
Special Assistant
Attorney General

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Management, Storage Treatment, and Disposal of Hazardous Waste, Minn. Rules Pts. 7045.0020, 7045.0486, 7045.0488, 7045.0490, 7045.0492, 7045.0494, 7045.0496, 7045.0498, 7045.0502, 7045.0504, 7045.0506, 7045.0508, 7045.0518, 7045.0524, 7045.0594, 7045.0596, 7045.0600, 7045.0602, 7045.0604, 7045.0606, 7045.0608, 7045.0610, 7045.0612, 7045.0614, 7045.0616, 7045.0620, 7001.0190, 7001.0560, 7001.0650, and 7001.0730

AFFIDAVIT REGARDING REQUESTS FOR NOTIFICATION AS TO SUBMISSION OF RULES TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nancy Larson, being duly sworn on oath deposes and says:

1. That she is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing (11 S.R. 1579-1609, March 9, 1987) as the person to receive requests for notification of the date of submission of rules to the Attorney General.

2. That no requests for notification were received by the Agency.

Nancy J. Larson

Subscribed and sworn to before me this 26 day of May, 1987.

Mary Ann Hammer
Notary Public

MARY ANN HAMMER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 10, 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
102 CAPITOL BUILDING
ST. PAUL, MN 55155
TELEPHONE: (612) 296-6196

May 20, 1987

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

Re: In the Matter of the Proposed Rules Governing the Management, Storage, Treatment, and Disposal of Hazardous Waste, Minn. Rules pts. 7045.0020, 7045.0486, 7045.0488, 7045.0490, 7045.0492, 7045.0494, 7045.0496, 7045.0498, 7045.0502, 7045.0504, 7045.0506, 7045.0508, 7045.0518, 7045.0524, 7045.0594, 7045.0596, 7045.0600, 7045.0602, 7045.0604, 7045.0606, 7045.0608, 7045.0610, 7045.0612, 7045.0614, 7045.0616, 7045.0620, 7001.0190, 7001.0560, 7001.0650, and 7001.0730

Dear Mr. Miles:

On April 28, 1987, the Minnesota Pollution Control Agency adopted the above-captioned rules governing the Management, Storage, Treatment, and Disposal of Hazardous Waste. Enclosed for your review are the following:

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 (10 S.R. 2516, Monday 16 June, 1986).

5. Affidavit regarding comments received pursuant to notice of intent to solicit outside opinion.

6. Certificate of Agency's Authorizing Resolution.

7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed (11 S.R. 1579-1609, March 9, 1987).

8. Comments Received Pursuant to Notice of Intent to Adopt Rules Without a Public Hearing.

9. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed.

10. Affidavit of Mailing, mailing list, and Certificate concerning mailing list.

11. Statement of Need and Reasonableness.

12. Rules as Proposed.

13. Declaration of Counsel.

14. Affidavit Regarding Requests for Notification as to Submission of Rules to the Attorney General.

Very truly yours,

Mamie S. Segall

MAMIE S. SEGALL
Special Assistant
Attorney General

Enclosures

Approach

Carol
50 sheets letterhead

Facilities Management Dept
PO Box 348
Camp Ripley ~~MN~~
Little Falls, MN 56345-0348

Notice of Intent ok

Authority
116.07 subd. 4 -

Rule
See Proposed - Not all new material

Faculty names not yes written in
p34 line 16
p34 " 24
p34 " 34
~~" 35 " 9~~
~~" 37 " 21~~

} previous rule has done this.