

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

QBE

RULE REVIEW CHECKLIST

File No. 1495 Docket No. 05-0089-0697

DATE RECEIVED 6/13/88 ADOPTED W/O HEARING X

REVIEW DATE 6/22/88 EMERGENCY RULE _____

DUE DATE 6/27/88 REVISOR APPROVED X

APPROVED 6/22/88 REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)

12/22/86 Date published in State Register
_____ Comments

_____ ~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution

2/23/88 Date adopted

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

116.07(4) Statutory Authority
yes Small Business Statement
no Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)

yes Small Business Statement
n/a Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

3/31/88 Date (30)/25 days before adoption
yes Notice attached
yes Copy of rule or summary attached

✓ Publication in State Register

4/4/88 Date (30)/25 days before adoption

_____ 180-day deadline from:

yes end of comment period (§ 14.26) (rules without hearing)
_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

✓ Resolution Adopting

5/24/88 Date adopted (signed on 5/26/ but adopted)

✓ Findings of Fact, Conclusions & Order Adopting

5/24/88 Date

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney

Joseph Matuszewski Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

FILE COPY

ATTORNEY GENERAL

June 22, 1988

JOSEPH G. MATERNOWSKI
Special Assistant Attorney General
Suite 200, 520 Lafayette Road

CHRISTIE B. ELLER
Assistant Attorney General
515 Transportation Building

6-9421

In the Matter of the Adopted Rule Relating to Hazardous Waste; Tanks - Our RR#1495

The above-referenced rule has been approved as to its legality by the Attorney General on June 22, 1988.

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, submissions 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 establish 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.

CBE:bbl
Enclosures

cc: Maryanne Hruby
Duane Harves

Pollution Control Agency

Adopted Permanent Rules Relating to Hazardous Waste; Tanks

Rules as Adopted

7045.0020 DEFINITIONS.

Subpart 1. to 23. [Unchanged.]

Subp. 23a. **Existing tank system or existing component.** "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste that is in operation, or for which installation has commenced on or before the effective date of this subpart, or a tank system or component that is regulated as an existing tank system or component under Code of Federal Regulations, title 40, section 260.10. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

Subp. 24. to 59. [Unchanged.]

Subp. 59a. **New tank system or new tank component.** "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after the effective date of this subpart, or a tank system or component that is regulated as a new tank system or component under Code of Federal Regulations, title 40, section 260.10. However, for purposes of obtaining approval for a petition under part 7045.0075, subpart 7, a new tank system is one for which construction commences after the applicable effective dates of

regulation as required in this subpart.

Subp. 59b. to 109. [Unchanged.]

7045.0075 PETITIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Petition for alternate design or operating practices for secondary containment of tank systems.** A person may submit a petition to the commissioner for approval to use alternate design or operating practices in lieu of the requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4. The commissioner's decision shall be based on a demonstration by the petitioner that the alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous wastes or hazardous constituents into surface and ground water as effectively as the secondary containment requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4, during the active life of the tank system.

A. In order to determine equivalent protection, the commissioner shall consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operating practices;

(3) the hydrogeologic setting of the facility, including the thickness of soils present between the tank system and ground water; and

(4) factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

B. to E. [Unchanged.]

Subp. 7. [Unchanged.]

7045.0528 TANKS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Design and installation of new tank systems or components.** New tank systems and components must be designed as follows:

A. Owners or operators of new tank systems or components must obtain and submit a written assessment, reviewed and certified by an independent, qualified registered professional engineer, attesting that the tank system has sufficient structural integrity and is acceptable for storing and treating hazardous waste. The owners or operators of tank systems that were required to conduct this assessment by Code of Federal Regulations, title 40, section 264.192(a), must submit this assessment as required by that regulation. Owners or operators of other new tank systems must submit this assessment to the commissioner at the time of submittal of Part B information. The certification must include the statements in parts 7001.0070 and 7001.0540. The assessment must show that the foundation, structural support, seams, connections, and pressure controls, if applicable, are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the commissioner to review and approve or disapprove the acceptability of the tank system design, must include the following information:

(1) design standards according to which tanks and/or the ancillary equipment are constructed;

(2) hazardous characteristics of the waste to be handled;

(3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of the factors affecting the potential for corrosion, including soil moisture content, soil pH, soil sulfides level, soil resistivity, structure to soil potential, influence of nearby underground metal structures such as piping, existence of stray electric current, and existing corrosion-protection measures such as coating and cathodic protection. The determination must also

address the type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component. This protection must consist of corrosion-resistant materials of construction such as special alloys or fiberglass reinforced plastic; corrosion-resistant coating, such as epoxy or fiberglass, with cathodic protection such as impressed current or sacrificial anodes; or electrical isolation devices such as insulating joints, or flanges;

(4) for underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage;

(5) design considerations to ensure that tank foundations will maintain the load of a full tank, tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, and tank systems will withstand the effects of frost heave; and

(6) any additional information that the commissioner determines is relevant to the tank system design.

B. to G. [Unchanged.]

Subp. 4. **Containment and detection of releases.** The following requirements apply to the containment and detection of releases from tanks:

A. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this part must be provided, except as provided in item H:

(1) for new tank systems or components, before they are put into service;

(2) for an existing tank system that on the effective date of this item is less then ten years old, within five years of the effective date of this item;

(3) for an existing tank system that on the effective date of this item is ten or more years old but less than 15 years old, by the date the tank system is 15 years old

or by January 12, 1989, whichever is later;

(4) for an existing tank system that on the effective date of this item is 15 or more years old, by January 12, 1989;

(5) for an existing tank system for which the age cannot be documented, the tank system must be treated as if it is 15 years old as specified in subitem (4); however, if the owner or operator demonstrates that the age of the tank system does not exceed 15 years, the tank system shall be treated as specified in subitem (2) or (3), as applicable;

(6) for a tank system that stores or treats a material that is not a hazardous waste on the effective date of this item, but which later becomes subject to regulation as a hazardous waste, within two years of the date the material becomes subject to regulation as a hazardous waste; and

(7) for an existing tank system used to store or treat hazardous wastes F020, F021, F022, F023, F026, F027, and F028, listed under part 7045.0135, subpart 2, by January 12, 1989.

B. to H. [Unchanged.]

Subp. 5. to 8. [Unchanged.]

Subp. 9. **Closure and post-closure care.** The requirements for closure and post-closure care of tank systems are as follows:

A. At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, such as liners, contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless it can be demonstrated that they are not a hazardous waste. Metal tanks and tank system components that have been decontaminated in accordance with an approved closure plan prepared in accordance with part 7045.0486, subpart 3, or 7045.0594, subpart 3, must be considered scrap metal for purposes of part 7045.0125, subpart 4, and if recycled, are not subject to parts 7045.0205 to 7045.0685. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must

meet all of the requirements of parts 7045.0486 to 7045.0524.

B. and C. [Unchanged.]

Subp. 10. and 11. [Unchanged.]

7045.0628 TANKS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Design and installation of new tank systems or components.**

A. Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls, if applicable, are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer, attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. Owners or operators of new tank systems that were required to conduct this assessment by Code of Federal Regulations, title 40, section 265.192(a), must conduct and keep this assessment on file as required by that regulation. Owners and operators of other new tank systems shall conduct this assessment within six months of the effective date of this item and keep it on file at the facility. The certification must include the statements in parts 7001.0070 and 7001.0540. This assessment must include the following information:

(1) design standards according to which the tank and ancillary equipment is or will be constructed;

(2) hazardous characteristics of the waste to be handled;

(3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of the

factors affecting the potential for corrosion, including soil moisture content, soil pH, soil sulfides level, soil resistivity, structure to soil potential, influence of nearby underground metal structures such as piping, stray electric current, and existing corrosion-protection measures such as coating and cathodic protection. The determination must also address the type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component. This protection must consist of corrosion-resistant materials of construction such as special alloys or fiberglass-reinforced plastic; corrosion-resistant coating, such as epoxy or fiberglass, with cathodic protection such as impressed current or sacrificial anodes; and electrical isolation devices such as insulating joints or flanges;

(4) for underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage;

(5) design considerations to ensure that tank foundations will maintain the load of a full tank, tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, and tank systems will withstand the effects of frost heave; and

(6) any additional information that the commissioner determines is relevant to the tank system design.

B. to G. [Unchanged.]

Subp. 4. **Containment and detection of releases.**

A. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this part must be provided, except as provided in item H:

(1) for new tank systems or components, before being put into service;

(2) for an existing tank system that on the effective date of this item is less than ten years old, within

five years of the effective date of this item;

(3) for an existing tank system that on the effective date of this item is ten or more years old but less than 15 years old, by the date the tank system is 15 years old or by January 12, 1989, whichever is later;

(4) for an existing tank system that on the effective date of this item is 15 or more years old, by January 12, 1989;

(5) for an existing tank system for which the age cannot be documented, the tank system must be treated as if it is 15 years old as specified in subitem (4); however, if the owner or operator demonstrates that the age of the tank system does not exceed 15 years, the tank system shall be treated as specified in subitem (2) or (3), as applicable;

(6) for a tank system that stores or treats a material that is not a hazardous waste on the effective date of this item, but which later becomes subject to regulation as a hazardous waste, within two years of the date the material becomes subject to regulation as a hazardous waste; and

(7) for an existing tank system used to store or treat hazardous wastes F020, F021, F022, F023, F026, F027, and F028, listed under part 7045.0135, subpart 2, by January 12, 1989.

B. to G. [Unchanged.]

H. Ancillary equipment must be provided with full secondary containment, such as trench, jacketing, or double-walled piping, that meets the requirements of items B and C, except for:

(1) aboveground piping, exclusive of flanges, joints, valves, and other connections, that are visually inspected for leaks on a daily basis;

(2) welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(3) sealless or magnetic coupling pumps, that are visually inspected for leaks on a daily basis; and

(4) pressurized aboveground piping systems with automatic shut-off devices, such as excess flow check valves, flow metering shutdown devices, and loss of pressure actuated shut-off devices, that are visually inspected for leaks on a daily basis.

Subp. 5. to 8. [Unchanged.]

Subp. 9. **Closure and post-closure care.** The requirements for closure and post-closure care of tank systems are as follows:

A. At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as liners, contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless it can be demonstrated that they are not a hazardous waste. Metal tanks and tank system components which have been decontaminated in accordance with an approved closure plan prepared in accordance with part 7045.0486, subpart 3, or 7045.0594, subpart 3, must be considered scrap metal for purposes of part 7045.0125, subpart 4, and if recycled, are not subject to parts 7045.0205 to 7045.0685. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet the requirements of parts 7045.0594 to 7045.0624.

B. and C. [Unchanged.]

Subp. 10. to 12. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 22 1988

Joan Anderson Growe
Secretary of State

11:05 AM

APPROVED AS TO FORM AND LEGALITY

June 22 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Christee L Eller
ASSISTANT ATTORNEY GENERAL

Pollution Control Agency

Outside Opinions Sought 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 amendments to the U.S. 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 the storage of hazardous waste in tanks. The regulations promulgated by EPA on July 14, 1986 impose specific conditions for the evaluation of tank integrity, design and installation of tanks, containment and detection of released waste, operating requirements, closure and post-closure care of tank systems.

2. Regulations applying to the export of hazardous waste. Amendments to the federal regulations promulgated August 8, 1986, include provisions relating to hazardous waste exporters' use of manifests, reporting and record keeping and the exporting transporters' responsibilities.

3. Amendments to the lists of hazardous wastes. Amendments to the federal regulations promulgated October 24, 1986 add four wastes to the lists of hazardous wastes. These wastes are generated during the production and formulation of ethylenebisdithiocarbamic acid (EBDC) and its salts.

4. Corrections and modifications to the lists of hazardous wastes. Amendments to the federal regulations promulgated August 6, 1986 correct 57 existing entries in the lists of hazardous waste and add Chemical Abstracts Service registry numbers to all listings.

The MPCA requests information and comments concerning the subject matter of the proposed amendments. Written or oral information or comments will be accepted until January 19, 1987. Written statements should be addressed to:

Carol Nankivel
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
520 Lafayette Road
St. Paul, Minnesota 55155

Oral statements will be received during regular business hours at 612/296-7260.

Department of Transportation

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

Notice is hereby given that the County Board of the County of Hubbard has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a resurfacing project on County State Aid Highway 11 from Trunk Highway 87 to Trunk Highway 34.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9914 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit design speeds of 33 MPH, 34 MPH and 36 MPH instead of the required speed of 40 MPH.

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

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

Dated: 16 December 1986

Leonard W. Levine
Commissioner of Transportation

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Gerald L. Willet, do hereby certify that I am the Commissioner 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 23rd day of February 1988, 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 Commissioner of the Minnesota Pollution Control Agency (MPCA) is hereby granted the authority to sign and 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 the management, storage, treatment, and disposal of hazardous waste in tanks, Minn. Rules pts. 7045.0020, subps. 23a and 59a, 7045.0075, subp. 6, 7045.0528, subps. 3, 4 and 9, and 7045.0628, subps. 3, 4 and 9, to all persons who have registered their names with the MPCA for that purpose and publish the notice and rule amendments in the State Register, and to perform any 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 Commissioner 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 for and Notice of Hearing, as well as acting as the MPCA's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of Feb., 1988.

Gerald L. Willet

GERALD L. WILLET
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste; Tanks

Rules as Proposed

7045.0020 DEFINITIONS.

Subpart 1. to 23. [Unchanged.]

Subp. 23a. **Existing tank system or existing component.** "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste ~~and~~ that is in operation, or for which installation has commenced on or before ~~July 14, 1986~~ the effective date of this subpart, or a tank system or component that is regulated as an existing tank system or component under Code of Federal Regulations, title 40, section 260.10. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

Subp. 24. to 59. [Unchanged.]

Subp. 59a. **New tank system or new tank component.** "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after ~~July 14, 1986~~ the effective date of this subpart, or a tank system or component that is regulated as a new tank system or component under Code of Federal Regulations, title 40, section 260.10. However, for purposes of obtaining approval for a petition ~~pursuant to~~ under part 7045.0075, subpart 7, a new tank

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system is one for which construction commences after ~~July 14, 1986~~ the applicable effective dates of regulation as required in this subpart.

Subp. 59b. to 109. [Unchanged.]

7045.0075 PETITIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Petition for alternate design or operating practices for secondary containment of tank systems.** A person may submit a petition to the commissioner for approval to use alternate design or operating practices in lieu of the requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4. The commissioner's decision shall be based on a demonstration by the petitioner that the alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous wastes or hazardous constituents into surface and ground water as effectively as the secondary containment requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4, during the active life of the tank system.

A. In order to determine equivalent protection, the commissioner shall consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operating practices;

(3) the hydrogeologic setting of the ~~tank system~~ facility, including the thickness of soils present between the tank system and ground water; and

(4) factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

B. to E. [Unchanged.]

Subp. 7. [Unchanged.]

7045.0528 TANKS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Design and installation of new tank systems or**

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components. New tank systems and components must be designed as follows:

A. Owners or operators of new tank systems or components must obtain and submit ~~to the commissioner at time of submittal of Part B information,~~ a written assessment, reviewed and certified by an independent, qualified registered professional engineer, attesting that the tank system has sufficient structural integrity and is acceptable for ~~the~~ storing and treating ~~of~~ hazardous waste. The owners or operators of tank systems that were required to conduct this assessment by Code of Federal Regulations, title 40, section 264.192(a), must submit this assessment as required by that regulation. Owners or operators of other new tank systems must submit this assessment to the commissioner at the time of submittal of Part B information. The certification must include the statements in parts 7001.0070 and 7001.0540. The assessment must show that the foundation, structural support, seams, connections, and pressure controls, if applicable, are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the commissioner to review and approve or disapprove the acceptability of the tank system design, must include the following information:

(1) design standards according to which tanks and/or the ancillary equipment are constructed;

(2) hazardous characteristics of the waste to be handled;

(3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of the factors affecting the potential for corrosion, including soil moisture content, soil pH, soil sulfides level, soil resistivity, structure to soil potential, influence of nearby underground

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metal structures such as piping, existence of stray electric current, and existing corrosion-protection measures such as coating and cathodic protection. The determination must also address the type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component. This protection must consist of corrosion-resistant materials of construction such as special alloys or fiberglass reinforced plastic; corrosion-resistant coating, such as epoxy or fiberglass, with cathodic protection such as impressed current or sacrificial anodes; or electrical isolation devices such as insulating joints, or flanges;

(4) for underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; ~~and~~

(5) design considerations to ensure that tank foundations will maintain the load of a full tank, tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, and tank systems will withstand the effects of frost heave; and

(6) any additional information that the commissioner determines is relevant to the tank system design.

B. to G. [Unchanged.]

Subp. 4. **Containment and detection of releases.** The following requirements apply to the containment and detection of releases from tanks:

A. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this part must be provided, except as provided in item H:

(1) for new tank systems or components, before they are put into service;

(2) for an existing tank ~~systems, within five years of the effective date of these rules, except as provided in subitem (3)~~ system that on the effective date of this item is

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less then ten years old, within five years of the effective date of this item;

(3) for an existing tank ~~systems-that-are-known-to-be-more-than-15-years-old-or-that-will-reach-15-years-of-age-before-the-time-provided-in-subitem-(2),-by-January-12,-1989~~ system that on the effective date of this item is ten or more years old but less than 15 years old, by the date the tank system is 15 years old or by January 12, 1989, whichever is later;

(4) for an existing tank ~~systems-that-store-or-treat-materials-that-become-hazardous-wastes,-within-two-years-of-the-date-the-material-becomes-hazardous-waste~~ system that on the effective date of this item is 15 or more years old, by January 12, 1989; ~~and~~

(5) for an existing tank system for which the age cannot be documented, the tank system must be treated as if it is 15 years old as specified in subitem (4); however, if the owner or operator demonstrates that the age of the tank system does not exceed 15 years, the tank system shall be treated as specified in subitem (2) or (3), as applicable;

(6) for a tank system that stores or treats a material that is not a hazardous waste on the effective date of this item, but which later becomes subject to regulation as a hazardous waste, within two years of the date the material becomes subject to regulation as a hazardous waste; and

(7) for ~~all~~ an existing ~~tanks~~ tank system used to store or treat ~~EPA~~ hazardous ~~waste-Nos.~~ wastes F020, F021, F022, F023, F026, F027, and F028, listed under part 7045.0135, subpart 2, by January 12, 1989.

B. to H. [Unchanged.]

Subp. 5. to 8. [Unchanged.]

Subp. 9. **Closure and post-closure care.** The requirements for closure and post-closure care of tank systems are as follows:

A. At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, such as liners, contaminated

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soils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless it can be demonstrated that they are not a hazardous waste. Metal tanks and tank system components that have been decontaminated in accordance with an approved closure plan prepared in accordance with part 7045.0486, subpart 3, or 7045.0594, subpart 3, must be considered scrap metal for purposes of part 7045.0125, subpart 4, and if recycled, are not subject to parts 7045.0205 to 7045.0685. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements of parts 7045.0486 to 7045.0524.

B. and C. [Unchanged.]

Subp. 10. and 11. [Unchanged.]

7045.0628 TANKS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Design and installation of new tank systems or components.**

A. Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls, if applicable, are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer, attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. Owners or operators of new tank systems that were required to conduct this assessment by Code of Federal Regulations, title 40, section 265.192(a), must conduct and keep this assessment on file as required by that regulation. Owners and operators of other new tank systems shall conduct this assessment within six months of the effective date of this item and keep it on file at the facility. The certification must include the statements in

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parts 7001.0070 and 7001.0540. This assessment must include the following information:

(1) design standards according to which the tank and ancillary equipment is or will be constructed;

(2) hazardous characteristics of the waste to be handled;

(3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of the factors affecting the potential for corrosion, including soil moisture content, soil pH, soil sulfides level, soil resistivity, structure to soil potential, influence of nearby underground metal structures such as piping, stray electric current, and existing corrosion-protection measures such as coating and cathodic protection. The determination must also address the type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component. This protection must consist of corrosion-resistant materials of construction such as special alloys or fiberglass-reinforced plastic; corrosion-resistant coating, such as epoxy or fiberglass, with cathodic protection such as impressed current or sacrificial anodes; and electrical isolation devices such as insulating joints or flanges;

(4) for underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; ~~and~~

(5) design considerations to ensure that tank foundations will maintain the load of a full tank, tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, and tank systems will withstand the effects of frost heave; and

(6) any additional information that the commissioner determines is relevant to the tank system design.

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B. to G. [Unchanged.]

Subp. 4. **Containment and detection of releases.**

A. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this part must be provided, except as provided in item H:

(1) for new tank systems or components, before being put into service;

(2) for an existing tank ~~systems, within five years of the effective date of these rules except as provided in subitem (3)~~ system that on the effective date of this item is less than ten years old, within five years of the effective date of this item;

(3) for an existing tank ~~systems that are known to be more than 15 years old or that will reach 15 years of age before the time provided in subitem (2), by January 12, 1989~~ system that on the effective date of this item is ten or more years old but less than 15 years old, by the date the tank system is 15 years old or by January 12, 1989, whichever is later;

(4) for an existing tank ~~systems that store or treat material that becomes a hazardous waste, within two years of the date the material becomes a hazardous waste~~ system that on the effective date of this item is 15 or more years old, by January 12, 1989; ~~and~~

(5) for an existing tank system for which the age cannot be documented, the tank system must be treated as if it is 15 years old as specified in subitem (4); however, if the owner or operator demonstrates that the age of the tank system does not exceed 15 years, the tank system shall be treated as specified in subitem (2) or (3), as applicable;

(6) for a tank system that stores or treats a material that is not a hazardous waste on the effective date of this item, but which later becomes subject to regulation as a hazardous waste, within two years of the date the material becomes subject to regulation as a hazardous waste; and

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(7) for an existing ~~tanks~~ tank system used to store or treat ~~EPA~~ hazardous ~~Waste Nos.~~ wastes F020, F021, F022, F023, F026, F027, and F028, listed under part 7045.0135, subpart 2, by January 12, 1989.

B. to G. [Unchanged.]

H. Ancillary equipment must be provided with full secondary containment, such as trench, jacketing, or double-walled piping, that meets the requirements of items B and C, except for:

(1) aboveground piping, exclusive of flanges, joints, valves, and other connections, that are visually inspected for leaks on a daily basis;

(2) welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(3) sealless or magnetic coupling pumps, that are visually inspected for leaks on a daily basis; and

(4) pressurized aboveground piping systems with automatic shut-off devices, such as excess flow check valves, flow metering shutdown devices, and loss of pressure actuated shut-off devices, that are visually inspected for leaks on a daily basis.

Subp. 5. to 8. [Unchanged.]

Subp. 9. **Closure and post-closure care.** The requirements for closure and post-closure care of tank systems are as follows:

A. At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as liners, contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless it can be demonstrated that they are not a hazardous waste. Metal tanks and tank system components which have been decontaminated in accordance with an approved closure plan prepared in accordance with part 7045.0486, subpart 3, or 7045.0594, subpart 3, must be considered scrap metal for purposes of part 7045.0125, subpart 4, and if recycled, are not subject to parts 7045.0205 to

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7045.0685. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet the requirements of parts 7045.0594 to 7045.0624.

B. and C. [Unchanged.]

Subp. 10. to 12. [Unchanged.]

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Hazardous Waste; Tanks

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 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 Amendments of Rules Governing the Management, Storage, Treatment and Disposal of Hazardous Waste, Minn. Rules Pts. 7045.0020, 7045.0075, 7045.0528 and 7045.0628

NOTICE OF INTENT TO ADOPT RULE AMENDMENTS WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule amendments 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 (1986). The MPCA's authority to adopt the rule amendments is set forth in Minn. Stat. § 116.07, subd. 4 (1986).

All persons have until 4:30 p.m. on May 4, 1988, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments 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 comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests 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 rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be addressed to:

Carol Nankivel
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

The proposed rule amendments 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 rule amendments as noticed.

The proposed rule amendments, if adopted, will include definitions applicable to the regulation of tanks used to treat, store or accumulate hazardous waste. The proposed rule amendments also include a schedule for providing secondary containment for tanks and for conducting an assessment of hazardous waste tank suitability.

One free copy of the proposed rule amendments is available upon request from Carol Nankivel at 612/296-7260 or at the address stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from Carol Nankivel upon request.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1986), "small business considerations in rulemaking," that the proposed rule amendments will have a minimal impact on small businesses. The effect of the proposed rule amendments will be to provide the owners and operators of certain tanks that contain hazardous waste with additional time to install secondary containment and to conduct required assessments. This will result in a decrease in the cost of compliance with the standards for hazardous waste tanks.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 rule amendments as adopted, must submit a written request to Carol Nankivel at the address stated above.

Dated: March 31, 1988

Gerald L. Willet

Gerald L. Willet
Commissioner

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, 7045.0075, 7045.0528, and 7045.0628

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the management, treatment, storage, and disposal of hazardous waste. The amendments will incorporate provisions promulgated by the U.S. Environmental Protection Agency (hereinafter "EPA") under authority of the Resource Conservation and Recovery Act (hereinafter "RCRA") and provisions of the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA").

The EPA promulgated regulations governing hazardous waste treatment, storage, and accumulation tanks in the July 14, 1986 Federal Register (51 FR 25422-25486). The July 14, 1986 federal regulations are hereinafter referred to as the federal tank regulations. On February 23, 1988, amendments to Minnesota's hazardous waste rules were adopted to incorporate regulations based on the July 14, 1986 publication. However, additional amendments are proposed to address effective dates of the requirements and to provide greater consistency with the federal regulations.

These rule amendments are proposed pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (1986).

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the Agency's explanation of the need for the proposed amendments. Part III discusses the reasonableness of the proposed amendments. Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses as

required by Minn. Stat. § 14.115 (1986). Part V documents the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1986). Part VI sets forth the Agency's conclusion regarding the amendments. Part VII 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 proposing to adopt or amend a rule to make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rules or amendments. 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 the management, treatment, storage, and disposal of hazardous waste has two bases: 1) the need for consistency with the federal hazardous waste regulations, and 2) the need for rules which provide protection of human health and the environment without unduly restricting normal commerce.

In 1976, Congress adopted 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.

Pursuant to RCRA, EPA granted the Agency final authorization for its hazardous waste program, 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.

However, the authorization did not extend to those federal requirements promulgated by the EPA pursuant to HSWA. A state must obtain authorization specifically under HSWA. Before the Agency can apply for authorization under HSWA, any rule amendments intended to maintain equivalency to the federal program must be in effect in Minnesota. The existing federal regulations establish specific time frames for the adoption of State rules intended to maintain equivalency to the federal 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 that, as a general matter, it is desirable to maintain consistency with 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 only very limited commercial treatment facilities. This means that many generators must be knowledgeable about requirements of both the State and federal hazardous waste programs. The need to comply with multiple sets of rules makes compliance difficult.

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. Where, however, the Agency believes a more stringent requirement is needed to adequately protect public health and welfare given the available scientific evidence and technological factors, the Agency has proposed a more stringent standard. The reasonableness of these more stringent requirements is demonstrated below.

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 reasonableness of each of the proposed amendments is discussed below.

A. Minn. Rules Pt. 7045.0020 (Definitions).

The Agency is proposing to amend Minn. Rules pt. 7045.0020 to amend two definitions of terms used throughout the proposed amendments. The definitions proposed to be amended are, "existing tank system or existing component" and "new tank system or new tank component." These two terms are based on definitions in 40 CFR § 260.10 of the federal regulations. Because the state rules are based on the federal regulations and are intended to be equivalent to those regulations the Agency tries to maintain the same definitions to the extent possible. However, the two definitions that are proposed differ somewhat from the federal regulations.

It was necessary to modify the definitions of existing tanks and new tanks from the federal definitions because the federal definitions incorporated effective dates that preceded the effective date of the State rules. Under the federal regulations, July 14, 1986 is the dividing date between new and existing

tanks. However, by incorporating the federal date into the State rules, a situation would be created where a tank built after the federal dividing date would be considered a new tank even though no State rules were in effect yet to regulate it.

In order to accomodate the federal requirements which are applicable to tanks regulated under HSWA, it is reasonable to include in these definitions a reference to the federal definition to specifically apply to those tanks. However, for tanks that are not subject to HSWA, it is reasonable to provide a definition that is only applicable to the tanks regulated under the State rules. The proposed amendments to subparts 23a and 59a, therefore, establish July 14, 1986 as the dividing point between new and existing tanks for those tanks that have been federally subject to those requirements since that date because they are regulated under HSWA. The effective date of the State rules is a reasonable dividing point between new and existing tanks that will not be regulated until the State rules become effective.

B. Minn. Rules Pt. 7045.0075 (Petitions).

Minn. Rules pt. 7045.0075, subp. 6 establishes petitioning procedures for obtaining an exception to the secondary containment requirements for tank systems. The requirements of this subpart correspond to the provisions of 40 CFR §§ 264.193(g) for permitted facilities and 265.193(g) for interim status facilities.

The federal regulations allow a person to "obtain a variance" from the secondary containment requirements of 40 CFR §§ 264.193 and 265.193. A person may demonstrate that an alternate design or operating practice will provide an equivalent level of protection of human health and the environment. The federal regulations identify the EPA Regional Administrator as the person who will decide whether a variance should be granted.

Upon authorization of the State program, this authority can be delegated to either the Agency Commissioner or the Agency. Minn. Rules pt. 7045.0075, subp. 6 establish the procedural mechanism through which the State can exercise this authority. Under the State rules, the Agency Commissioner has the authority to grant petitions for alternative design or operating practices.

Subpart 6 of the State rules establishes the requirements for petitions for alternate design or operating practices to be used in lieu of the secondary containment requirements established in Minn. Rules pts. 7045.0528, subp. 4 and 7045.0628, subp. 4. Those subparts require secondary containment for all permitted tank facilities and also for all interim status tank facilities and tanks used by generators to accumulate hazardous waste.

The substantive requirements described in proposed Minn. Rules pt. 7045.0075, subp. 6, item A are the same as those provided in the federal regulations. Item A of subpart 6 establishes the factors the Agency Commissioner must consider in evaluating the petition to determine if the proposal will provide equivalent protection. The factors to be considered relate to the waste to be contained in the tank system, the design and operating practices of the tank system, the hydrogeologic setting of the tank system, and any factors that would affect the extent of possible contamination of surface and ground water.

However, when the State rules were amended to incorporate the federal requirements for evaluating petitions, a phrase was used in the State rules which caused the State rules to be less stringent than the federal regulations. Subitem 3 of item A requires the commissioner to consider the hydrogeologic setting of the tank system in the review of the petition. The corresponding federal language requires consideration of the hydrogeologic setting of the facility. Minn. Rules pt. 7045.0020, subp. 24 defines facility as "all contiguous land, structures, other appurtenances and improvements on the land used

for treating or disposing of hazardous waste." A facility may consist of several treatment, storage or disposal operational units, such as one or more landfills, surface impoundments or combinations thereof.

Thus, a tank system may be a subset of a facility. By specifying the hydrogeologic setting of the tank system, the State rules may be addressing a smaller area and therefore may be considered less stringent than the corresponding federal requirement. It is reasonable to replace the term "tank system" with "facility" in order to provide for the review of the same scope of information as would be required under the federal regulations.

C. Minn. Rules Pt. 7045.0528 (Tanks).

Minn. Rules pt. 7045.0528 establishes the requirements for permitted tank facilities. Except as will be noted, these State rules generally correspond to the federal regulations in 40 CFR §§ 264.190 to 264.199.

Subpart 3 establishes requirements for the design and installation of new tank systems or components. This subpart requires that an assessment be conducted for all new tank systems that will attest to the design and operation of the facility so that no releases will occur. All the substantive requirements of this subpart directly correspond to the equivalent federal requirements of 40 CFR § 264.192. The proposed amendments differ from the federal regulations by establishing two points at which the required assessment is to be submitted. For tanks that are subject to the federal regulations as HSWA regulated facilities, the assessment has been required since the federally established effective date. It is therefore reasonable to clarify that the federal requirements are applicable in this case. For new tanks that have not been subject to the requirements as HSWA regulated facilities, the proposed amendments state that the required assessment is due when all other pertinent information is submitted with the Part B application. The proposed amendment is reasonable because it does not change the time frames for for the submittal of the assessment, but only clarifies the existing requirements.

The proposed amendments also add a phrase to clarify the purpose of the required assessment. The corresponding federal regulations in 40 CRF § 264.192(a) specify that the assessment will "be used by the Regional Administrator to review and approve or disapprove the acceptability of the tank system design." In order to maintain equivalency with the federal regulations it is reasonalble to provide a similar clarifying statement in the proposed rules.

The proposed rules also specify that the assessment must include, in addition to the specific information required in subitems 1 to 5 of item A, any other information that the Commissioner determines is relevant to the tank system design. This is reasonable to ensure that sufficient information will be available to evaluate tank systems that are not conventional, or to address unusual physical conditions at the tank site. The corresponding federal regulations address the potential need for additional information by specifying that the assessment must "at a minimum" address the factors identified, thus providing the option of further requests for information. These requirements are reasonable to ensure that tanks are correctly designed and installed and that corrosion protection systems are provided as necessary.

Subpart 4 establishes the requirements for the containment and detection of releases. The State rules for permitted tanks establish extensive criteria for the design of secondary containment systems, including the requirement for interstitial monitoring. The State rules specify three types of secondary containment and establish criteria for the design and construction of each type. The rules provide a fourth option for secondary containment which would be an equivalent device as approved by the Agency Commissioner through the petition process established in proposed Minn. Rules pt. 7045.0075, subp. 6.

Certain aspects of the schedule for the phase-in period for the installation of secondary containment for existing tanks have been made more stringent in the State rules than in the corresponding federal regulations. 40 CFR § 264.193(a)

establishes specific time frames for providing secondary containment. The State rules provide the same time frames as the federal regulations for new tank systems and tank systems that contain dioxin wastes. These schedules provide a reasonable balance between the need for secondary containment and the recognition that the owners or operators of existing tank systems need time to accomplish the requirements being newly imposed by the proposed amendments.

For existing tank systems or tank systems that contain a waste that at a future time becomes regulated as a hazardous waste, the Agency adopted more restrictive requirements. With regard to existing tanks, the State rules provide an accelerated schedule for compliance with the secondary containment requirements. The federal regulations base the phase-in period on the age of the tank and require that secondary containment be provided by the time the tank is 15 years old, or by January 12, 1989, whichever comes later. If the age of the tank already exceeds 15 years then secondary containment is required by January 12, 1989. The Agency believed that this mechanism for phasing-in the secondary containment requirements did not provide a reasonably rapid response to the need for secondary containment to address the concern regarding releases.

The Agency believed that a maximum of five years is a reasonable time period for phasing-in the requirements to install a secondary containment system and adopted this time period into the State rules. Five years corresponds to the term of a hazardous waste facility permit. Tank systems that have been recently permitted will be allowed to continue to operate until the permit is reissued to include the upgrading necessary to meet the new tank standards. Owners and operators of tank systems that have been permitted for several years will have the option of upgrading the system at the time the permit is reissued or doing the necessary upgrading after five years and requesting the permit be modified to reflect those changes.

However, when the Agency adopted a phase-in period for the installation of secondary containment, the adopted language did not accurately reflect the Agency's intent regarding the phase-in period for tanks that would become 15 years old before the end of the five year phase-in period. As adopted, the State rules require the installation of secondary containment by January 12, 1989 if the tank system would reach 15 years of age within five years. The Agency intended that the owners and operators of tanks that would become 15 years old within five years, be allowed to operate without secondary containment until the tank is 15 years old, or until January 12, 1989, whichever comes later. This provides a more reasonable time period, consistent with the Agency's original decision to provide a maximum period of five years and still comply with the limitations established by the federal program. Therefore, the proposed amendments allow the owners or operators of tanks that are more than ten years old on the effective date of this item, to operate without secondary containment until the tank is 15 years old or until January 12, 1989, whichever is later.

The existing State rules do not specifically address the phase-in schedule for owners or operators who do not know or cannot document the age of the tank. Under the federal regulations, such tanks are assumed to be seven years old and are given eight years to meet secondary containment requirements. If there is evidence that the tank is more than seven years old, the owner or operator must install secondary containment by the time the tank is 15 years old or by January 12, 1989, whichever comes later.

During the drafting of the State rules governing tank standards, there was considerable discussion regarding the phase-in schedule for the installation of secondary containment. As a result of these discussions it was determined that the federal phase-in schedule for existing tanks was excessive and that more stringent requirements were appropriate. This determination continues to be

relevant in those cases where the age of the tank is unknown. It is reasonable to assume that the concerns regarding tank leaks and failure are equally applicable to a tank for which no information or documentation of age is available. It is therefore reasonable to extend the Agency's determination regarding the more stingent phase-in schedule to also apply to tanks of unknown age.

To address tanks of unknown age the Agency is providing a phase-in schedule similar to the schedule provided for tanks of documentable age. The proposed phase-in schedule is based on the ability of the owner or operator to provide information or documentation that will establish the age of the tank within a general age group.

If no information is available and the age of the tank cannot be documented, the proposed amendments require that the tank be considered to be 15 years old, and secondary containment must be installed by January 12, 1989.

In some cases, the exact age of the tank my be unknown, but the owner or operator may be able to establish the age of the tank within a certain time period. For tanks that can be demonstrated to be less than ten years old, the proposed amendments provide the maximum phase-in period of five years. If the tank is between ten and 15 years of age, the proposed amendments require secondary containment by the time the tank is 15 years old or by January 12, 1989, whichever is later. This is a reasonable phase-in schedule that provides consistency with the requirements imposed on tanks of known age and with the schedule established in the federal regulations.

Subpart 9 establishes the requirements for closure and post-closure care of tank facilities. These requirements directly correspond to 40 CFR § 264.197 and require that all contaminated material at a tank facility be either removed or decontaminated at closure. The Agency proposes to amend the rule to clarify that properly decontaminated metal tanks system components shall be considered

scrap metal and, if recycled, are not subject to regulation under Minn. Rules pts. 7045.0205 to 7045.0685. The proposed amendment does not add any additional requirements for closure of tanks or for recycling of tanks as scrap metal. However, it is reasonable to provide the proposed statement of the status of recycled tanks in order to clarify the requirements to the regulated community.

D. Minn. Rules Pt. 7045.0628 (Tanks - Interim Status).

Minn. Rules pt. 7045.0628 establishes the requirements for tank facilities that are not permitted and are regulated under interim status. This part is also referenced under Minn. Rules pt. 7045.0292 as the applicable standards for generators who accumulate hazardous waste in tanks. The Agency does not propose to change any of the technical standards of the State rules. However, clarifying changes and changes to the phase-in schedule are proposed for portions of subparts 3, 4 and 9 of this part.

Subpart 3 establishes the requirements for the design and installation of new tank systems or tank system components. In general, this subpart corresponds to 40 CFR § 265.192. However, one aspect of these requirements does not correspond to the federal regulations and must be specifically addressed under the State rules. The State rules and federal regulations require the owners or operators of new tanks to prepare an assessment of the tanks's suitability for storing or treating hazardous waste. Because the federal regulations did not become effective for six months after their publication, the regulated community was provided with a reasonable time to respond to the requirement for the assessment. However, the State rulemaking procedure does not have a similar phase-in period and the State rules become effective five working days after they are published. In order to give the regulated community the opportunity to respond to the requirement to provide an assessment, the proposed rules provide six months before the required assessment must be obtained. However, this six month phase-in

period is only provided for tanks that are not currently regulated under HSWA. New, HSWA regulated tanks are already required to have conducted the necessary assessment by the federal effective date. The proposed rules reasonably distinguish between the HSWA requirements and the requirements for tanks only regulated by the State rules.

An introductory sentence has also been added to subpart 3 to specify that the requirements that follow apply to new tank systems. The addition of this sentence is reasonable to clarify the purpose of this subpart and to provide consistency with the corresponding provisions under Minn. Rules pt. 7045.0528, subp.3.

Subpart 4 establishes the requirements for the design and installation of secondary containment systems. The requirements of this subpart, with certain exceptions, correspond to 40 CFR § 265.193. The proposed amendments to this part address the phase-in period provided for the installation of secondary containment. The proposed amendments add the same phase-in period as is proposed for the permitted tank standards under part 7045.0528, subp. 4. The reasonableness of these proposed requirements and the differences between these requirements and the federal regulations are discussed in section III. C of this Statement.

Item H of subpart 4 requires secondary containment for tank ancillary equipment except under specific circumstances. Subitems (1) to (4) specify the type of equipment that is not required to be provided with secondary containment. The requirements of this item generally correspond to the requirements of 40 CFR § 265.193(f). However, the federal regulations specify that ancillary equipment is exempted from the secondary containment requirements if it is inspected <u>for leaks</u> on a daily basis. The State rules do not specify that the required daily inspection is <u>for leaks</u> and therefore could be considered less stringent than the federal regulations. It is reasonable to amend the State rules to provide the necessary statement regarding the purpose of the daily visual inspections in order to maintain consistency with the federal regulations.

Subpart 9 establishes the requirements for the closure and post-closure care of the tank systems. The requirements of this part correspond to 40 CFR § 265.197 The amendments proposed for this subpart correspond to the amendments proposed for subpart 9, of part 7045.0528. The reasonableness of the proposed amendments to this subpart are also discussed in section III. C of this Statement.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) requires the Agency, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rule amendment on small business. The objective of Minn. Stat. Ch. 116 (1986) is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Application of less stringent standards to the hazardous wastes generated or managed by small businesses would be contrary to the Agency's mandate since small businesses' hazardous wastes can cause the same environmental harm as that of larger businesses.

The volume of hazardous waste generated by a business is not directly proportional to the size of the business. Many large businesses generate very small quantities of hazardous waste and conversely, a small business may generate a very large volume of hazardous waste. Therefore, it is not fair or reasonable to impose regulations based on the size of the business because this may have little relation to the potential for mismanagement or the extent of the adverse effects on human health and the environment if the waste is mismanaged.

Those aspects of the amendments that are based on federal regulations promulgated under HSWA are already in effect in Minnesota. Incorporation of these provisions into the State rules will not impose any additional requirements on small businesses that are not currently being imposed by the federal regulations in effect in Minnesota and elsewhere in the nation.

The portions of the amendments that are based on federal regulations promulgated under RCRA, while not yet in effect in Minnesota, must eventually be incorporated into the State rules and must be equivalent to the federal level of regulation. Again, incorporation of these requirements into the State rules will not impose any additional requirements on small businesses that would not be imposed under the federal program.

The portions of the amendments that exceed the level of regulation in the federal program are the only areas where there is the option of minimizing the impact on small businesses. The amendments provide more stringent regulation regarding some aspects of the phase-in period provided for the installation of secondary containment. These requirements are applicable to permitted and interim status tank facilities and also to full-scale generators of hazardous waste. Agency staff are not aware of any permitted or interim status tank facilities owned or operated by a small business. However, some small businesses may be generators of hazardous waste. The State rules recognize two classes of generators, full-scale and small quantity generators. The amendments provide a lower level of regulation for small quantity generators and the proposed phase-in periods are not applicable. Small businesses that are small quantity generators that accumulate waste in tanks will not be affected by the amendments. Small businesses that are full-scale hazardous waste generators that accumulate waste in tanks will be affected by the more stringent phase-in period. However, Agency staff believes that these additional regulations are justifiable and do not present an unreasonable burden to small businesses that may be subject to these requirements.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1986) to give due consideration to economic factors. The statute provides:

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

In proposing the requirements of these amendments governing hazardous waste tanks, the Agency has given due consideration to available information as to any economic impacts the proposed amendments would have. The amendments will have some economic impacts for owners and operators of hazardous waste tank systems. The amendments will impact the owners and operators of hazardous waste tank systems in some cases by requiring upgrading of existing tank systems according to a more accelerated schedule than required by the federal regulations.

The federal regulations require the installation of secondary containment for existing tanks by the time the tank is 15 years old. Because the State rules have always required secondary containment for permitted tank systems, the proposed phase-in period will only be newly applicable to the owners or operators of interim status facilities and to full-scale generators who accumulate waste in tanks. The amendments also require the installation of secondary containment by the time a tank is 15 years old, but further specify a maximum time of five years from the effective date of the rules before secondary containment must be installed. The effect of this difference will be to accelerate the response time for interim status facilities and generator's accumulation tanks that are less than ten years old. Although the installation of secondary containment is inevitable under the federal program, it is required sooner under the proposed amendments and therefore will result in a more immediate expenditure for owners and operators of interim status facilities or generators with accumulation tanks that are less than ten years old.

The Agency believes that the additional expense that will be incurred as a result of the adoption of more stringent State requirements are justified by the additional environmental protection these requirements will ensure. In no case will the additional State requirements result in immediate expenditure or represent a burdensome expense to the affected owners and operators of hazardous waste tanks.

VI. CONCLUSION

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.

VII. LIST OF EXHIBITS

The Agency is relying on the following documents to support these amendments.

Agency Ex. No.	Title
1	Federal Register, Vol. 51, No. 134, Pages 25422-25486, July 14, 1986.
2	Federal Register, Vol. 50, No. 123, Pages 26444-26504, June 26, 1985.
3	Federal Register, Vol. 51, No. 158, Pages 29430-29431, August 15, 1986.
4	MPCA Statement of Need and Reasonableness, October 16, 1987 regarding proposed amendments to hazardous waste standards.
5	Comment letters received in response to proposed amendments published in November 16, 1987 State Register.

Date: February 11, 1988

Barbara Lindsey Sims for
Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Hazardous Waste Tanks, Minn. Rules Parts 7045.0020, 7045.0075, 7045.0528 and 7045.0628

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Nankivel, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of this 31st day of March, 1988.

That on the 31st day of March, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed 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 a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol Nankivel

Subscribed and sworn to before me this 31 day of March 1988.

Cynthia B. Gillingham
Notary Public

CYNTHIA B. GILLINGHAM
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My commission expires 10-3-91

Minnesota Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste; Tanks
Minn. Rules Pts. 7045.0020, 7045.0075, 7045.0528, and 7045.0628

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule amendments 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 (1986). The MPCA's authority to adopt the rule amendments is set forth in Minn. Stat. § 116.07, subd. 4 (1986).

All persons have until 4:30 p.m. on May 4, 1988 to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments 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 comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests 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 rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be addressed to:

Carol Nankivel
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

The proposed rule amendments 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 rule amendments as noticed.

The proposed rule amendments, if adopted, will include definitions applicable to the regulation of tanks used to treat, store or accumulate hazardous waste. The proposed rule amendments also include a schedule for providing secondary containment for tanks and for conducting an assessment of hazardous waste tank suitability.

The proposed rule amendments follow this notice. One free copy of the proposed rule amendments is available upon request from Carol Nankivel at 612/296-7260 or at the address stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from Carol Nankivel upon request.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1986), "small business considerations in rulemaking," that the proposed rule amendments will have a minimal impact on small businesses. The effect of the proposed rule amendments will be to provide the owners and operators of certain tanks that contain hazardous waste with additional time to install secondary containment and to conduct required assessments. This will result in a decrease in the cost of compliance with the standards for hazardous waste tanks.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 rule amendments as adopted, must submit a written request to Carol Nankivel at the address stated above.

Gerald L. Willet

Commissioner

Sherburne County Total		7,103.57
Anoka County Total		630.54
Stearns County Total	~~1,594.80~~	1,537.33
Wright County Total		4,675.23
Hennepin County Total		964.25
West of River Total	~~7,234.28~~	7,215.61
East of River Total		7,734.11
Grand Total	~~14,968.39~~	14,949.72

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste; Tanks

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1986). The MPCA's authority to adopt the rule amendments is set forth in *Minnesota Statutes* § 116.07, subd. 4 (1986).

All persons have until 4:30 p.m. on May 4, 1988 to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments 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 comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests 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 rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be addressed to:

Carol Nankivel
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

The proposed rule amendments 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 rule amendments as noticed.

The proposed rule amendments, if adopted, will include definitions applicable to the regulation of tanks used to treat, store or accumulate hazardous waste. The proposed rule amendments also include a schedule for providing secondary containment for tanks and for conducting an assessment of hazardous waste tank suitability.

The proposed rule amendments follow this notice. One free copy of the proposed rule amendments is available upon request from Carol Nankivel at 612/296-7260 or at the address stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from Carol Nankivel upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1986), "small business considerations in rulemaking," that the proposed rule amendments will have a minimal impact on small businesses. The effect of the proposed rule amendments will be to provide the owners and operators of certain tanks that contain hazardous waste with additional time to install secondary containment

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and to conduct required assessments. This will result in a decrease in the cost of compliance with the standards for hazardous waste tanks.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 rule amendments as adopted, must submit a written request to Carol Nankivel at the address stated above.

Gerald L. Willet
Commissioner

Rules as Proposed

7045.0020 DEFINITIONS.

Subpart 1. to 23. [Unchanged.]

Subp. 23a. **Existing tank system or existing component.** "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste ~~and~~ that is in operation, or for which installation has commenced on or before ~~July 14, 1986~~ the effective date of this subpart, or a tank system or component that is regulated as an existing tank system or component under Code of Federal Regulations, title 40, section 260.10. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

Subp. 24. to 59. [Unchanged.]

Subp. 59a. **New tank system or new tank component.** "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after ~~July 14, 1986~~ the effective date of this subpart, or a tank system or component that is regulated as a new tank system or component under Code of Federal Regulations, title 40, section 260.10. However, for purposes of obtaining approval for a petition ~~pursuant to~~ under part 7045.0075, subpart 7, a new tank system is one for which construction commences after ~~July 14, 1986~~ the applicable effective dates of regulation as required in this subpart.

Subp. 59b. to 109. [Unchanged.]

7045.0075 PETITIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Petition for alternate design or operating practices for secondary containment of tank systems.** A person may submit a petition to the commissioner for approval to use alternate design or operating practices in lieu of the requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4. The commissioner's decision shall be based on a demonstration by the petitioner that the alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous wastes or hazardous constituents into surface and ground water as effectively as the secondary containment requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4, during the active life of the tank system.

A. In order to determine equivalent protection, the commissioner shall consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operating practices;

(3) the hydrogeologic setting of the ~~tank system~~ facility, including the thickness of soils present between the tank system and ground water; and

(4) factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

B. to E. [Unchanged.]

Subp. 7. [Unchanged.]

7045.0528 TANKS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Design and installation of new tank systems or components.** New tank systems and components must be designed as follows:

A. Owners or operators of new tank systems or components must obtain and submit ~~to the commissioner at time of submittal of Part B information,~~ a written assessment, reviewed and certified by an independent, qualified registered professional engineer, attesting that the tank system has sufficient structural integrity and is acceptable for ~~the~~ storing and treating ~~of~~ hazardous waste. The owners or operators of tank systems that were required to conduct this assessment by Code of Federal Regulations, title 40, section 264.192(a), must submit this assessment as required by that regulation. Owners or operators of other new tank systems must submit this assessment to the commissioner at the time of submittal of Part B information. The certification must include the statements in parts 7001.0070 and 7001.0540. The assessment must show that the foundation, structural support, seams, connections, and pressure controls, if applicable, are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the commissioner to review and approve or disapprove the acceptability of the tank system design, must include the following information:

(1) design standards according to which tanks and/or the ancillary equipment are constructed;

(2) hazardous characteristics of the waste to be handled;

(3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of the factors affecting the potential for corrosion, including soil moisture content, soil pH, soil sulfides level, soil resistivity, structure to soil potential, influence of nearby underground metal structures such as piping, existence of stray electric current, and existing corrosion-protection measures such as coating and cathodic protection. The determination must also address the type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component. This protection must consist of corrosion-resistant materials of construction such as special alloys or fiberglass reinforced plastic; corrosion-resistant coating, such as epoxy or fiberglass, with cathodic protection such as impressed current or sacrificial anodes; or electrical isolation devices such as insulating joints, or flanges;

(4) for underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; ~~and~~

(5) design considerations to ensure that tank foundations will maintain the load of a full tank, tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, and tank systems will withstand the effects of frost heave; and

(6) any additional information that the commissioner determines is relevant to the tank system design.

B. to G. [Unchanged.]

Subp. 4. **Containment and detection of releases.** The following requirements apply to the containment and detection of releases from tanks:

A. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this part must be provided, except as provided in item H:

(1) for new tank systems or components, before they are put into service;

(2) for an existing tank ~~systems, within five years of the effective date of these rules, except as provided in subitem (3)~~ system that on the effective date of this item is less then ten years old, within five years of the effective date of this item;

(3) for an existing tank ~~systems that are known to be more than 15 years old or that will reach 15 years of age before the time provided in subitem (2), by January 12, 1989~~ system that on the effective date of this item is ten or more years old but less than 15 years old, by the date the tank system is 15 years old or by January 12, 1989, whichever is later;

(4) for an existing tank ~~systems that store or treat materials that become hazardous wastes, within two years of the date the material becomes hazardous waste~~ system that on the effective date of this item is 15 or more years old, by January 12, 1989; ~~and~~

(5) for an existing tank system for which the age cannot be documented, the tank system must be treated as if it is 15

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years old as specified in subitem (4); however, if the owner or operator demonstrates that the age of the tank system does not exceed 15 years, the tank system shall be treated as specified in subitem (2) or (3), as applicable;

(6) for a tank system that stores or treats a material that is not a hazardous waste on the effective date of this item, but which later becomes subject to regulation as a hazardous waste, within two years of the date the material becomes subject to regulation as a hazardous waste; and

(7) for ~~all~~ an existing ~~tanks~~ tank system used to store or treat ~~EPA~~ hazardous ~~waste Nos.~~ wastes F020, F021, F022, F023, F026, F027, and F028, listed under part 7045.0135, subpart 2, by January 12, 1989.

B. to H. [Unchanged.]

Subp. 5. to 8. [Unchanged.]

Subp. 9. **Closure and post-closure care.** The requirements for closure and post-closure care of tank systems are as follows:

A. At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, such as liners, contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless it can be demonstrated that they are not a hazardous waste. Metal tanks and tank system components that have been decontaminated in accordance with an approved closure plan prepared in accordance with part 7045.0486, subpart 3, or 7045.0594, subpart 3, must be considered scrap metal for purposes of part 7045.0125, subpart 4, and if recycled, are not subject to parts 7045.0205 to 7045.0685. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements of parts 7045.0486 to 7045.0524.

B. and C. [Unchanged.]

Subp. 10. and 11. [Unchanged.]

7045.0628 TANKS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Design and installation of new tank systems or components.**

A. Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls, if applicable, are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer, attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. Owners or operators of new tank systems that were required to conduct this assessment by Code of Federal Regulations, title 40, section 265.192(a), must conduct and keep this assessment on file as required by that regulation. Owners and operators of other new tank systems shall conduct this assessment within six months of the effective date of this item and keep it on file at the facility. The certification must include the statements in parts 7001.0070 and 7001.0540. This assessment must include the following information:

(1) design standards according to which the tank and ancillary equipment is or will be constructed;

(2) hazardous characteristics of the waste to be handled;

(3) for new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of the factors affecting the potential for corrosion, including soil moisture content, soil pH, soil sulfides level, soil resistivity, structure to soil potential, influence of nearby underground metal structures such as piping, stray electric current, and existing corrosion-protection measures such as coating and cathodic protection. The determination must also address the type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component. This protection must consist of corrosion-resistant materials of construction such as special alloys or fiberglass-reinforced plastic; corrosion-resistant coating, such as epoxy or fiberglass, with cathodic protection such as impressed current or sacrificial anodes; and electrical isolation devices such as insulating joints or flanges;

(4) for underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; ~~and~~

(5) design considerations to ensure that tank foundations will maintain the load of a full tank, tank systems will be anchored to prevent flotation or dislodgement where the tank system is placed in a saturated zone, and tank systems will withstand the effects of frost heave; and

(6) any additional information that the commissioner determines is relevant to the tank system design.

B. to G. [Unchanged.]

Subp. 4. **Containment and detection of releases.**

A. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this part must be provided, except as provided in item H:

(1) for new tank systems or components, before being put into service;

(2) for an existing tank ~~systems, within five years of the effective date of these rules except as provided in subitem (3)~~ system that on the effective date of this item is less than ten years old, within five years of the effective date of this item;

(3) for an existing tank ~~systems that are known to be more than 15 years old or that will reach 15 years of age before the time provided in subitem (2), by January 12, 1989~~ system that on the effective date of this item is ten or more years old but less than 15 years old, by the date the tank system is 15 years old or by January 12, 1989, whichever is later;

(4) for an existing tank ~~systems that store or treat material that becomes a hazardous waste, within two years of the date the material becomes a hazardous waste~~ system that on the effective date of this item is 15 or more years old, by January 12, 1989; ~~and~~

(5) for an existing tank system for which the age cannot be documented, the tank system must be treated as if it is 15 years old as specified in subitem (4); however, if the owner or operator demonstrates that the age of the tank system does not exceed 15 years, the tank system shall be treated as specified in subitem (2) or (3), as applicable;

(6) for a tank system that stores or treats a material that is not a hazardous waste on the effective date of this item, but which later becomes subject to regulation as a hazardous waste, within two years of the date the material becomes subject to regulation as a hazardous waste; and

(7) for an existing ~~tanks~~ tank system used to store or treat ~~EPA~~ hazardous ~~Waste Nos.~~ wastes F020, F021, F022, F023, F026, F027, and F028, listed under part 7045.0135, subpart 2, by January 12, 1989.

B. to G. [Unchanged.]

H. Ancillary equipment must be provided with full secondary containment, such as trench, jacketing, or double-walled piping, that meets the requirements of items B and C, except for:

(1) aboveground piping, exclusive of flanges, joints, valves, and other connections, that are visually inspected for leaks on a daily basis;

(2) welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(3) sealless or magnetic coupling pumps, that are visually inspected for leaks on a daily basis; and

(4) pressurized aboveground piping systems with automatic shut-off devices, such as excess flow check valves, flow metering shutdown devices, and loss of pressure actuated shut-off devices, that are visually inspected for leaks on a daily basis.

Subp. 5. to 8. [Unchanged.]

Subp. 9. **Closure and post-closure care.** The requirements for closure and post-closure care of tank systems are as follows:

A. At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as liners, contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless it can be demonstrated that they are not a hazardous waste. Metal tanks and tank system components which have been decontaminated in accordance with an approved closure plan prepared in accordance with part 7045.0486, subpart 3, or 7045.0594, subpart 3, must be considered scrap metal for purposes of part 7045.0125, subpart 4, and if recycled, are not subject to parts 7045.0205 to 7045.0685. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet the requirements of parts 7045.0594 to 7045.0624.

B. and C. [Unchanged.]

Subp. 10. to 12. [Unchanged.]

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CERTIFICATION OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner 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 24th day of May 1988, 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 attached amendments to the MPCA's hazardous waste rules governing tanks, Minn. Rules pts. 7045.0020, 7045.0075, 7045.0528, and 7045.0628, pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1986).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner 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 Findings of Fact, Conclusions, and Order Adopting Rule Amendments and that the Commissioner 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 26th day of May 1988.

Gerald L. Willet

GERALD L. WILLET
Commissioner

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,
7045.0075, 7045.0528, and
7045.0628

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 twenty-fourth day of May 1988. 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 noncontroversial 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-entitled rule amendments without a public hearing was published in the State Register on April 4, 1988, and was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. §§ 14.14, subd. 1a. and 14.22 (1986) on March 31, 1988.

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 rule amendments for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on May 4, 1988.

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. No comments were received during the comment period.

7. 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.

8. The above-captioned rule amendments are needed and reasonable.

CONCLUSIONS

1. The MPCA duly acquired and has jurisdiction over this proceeding.

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.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7045.0020, 7045.0075, 7045.0528, and 7045.0628, governing the management, treatment and storage of hazardous wastes in tanks, are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1986).

Dated: May 24, 1988

Gerald L. Willet

Gerald L. Willet
Commissioner

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,
7045.0075, 7045.0528, and
7045.0628

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 twenty-fourth day of May 1988. 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 noncontroversial 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-entitled rule amendments without a public hearing was published in the State Register on April 4, 1988, and was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. §§ 14.14, subd. 1a. and 14.22 (1986) on March 31, 1988.

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 rule amendments for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on May 4, 1988.

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. No comments were received during the comment period.

7. 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.

8. The above-captioned rule amendments are needed and reasonable.

CONCLUSIONS

1. The MPCA duly acquired and has jurisdiction over this proceeding.

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.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7045.0020, 7045.0075, 7045.0528, and 7045.0628, governing the management, treatment and storage of hazardous wastes in tanks, are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1986).

Dated: May 24, 1988

Gerald L. Willet
Commissioner

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, 7045.0075, 7045.0528,
and 7045.0628

DECLARATION OF COUNSEL

I, Joseph G. Maternowski, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule amendments 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 .0697.

JOSEPH G. MATERNOWSKI
Special Assistant
Attorney General

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

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RECEIVED
JUN 13 88
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

June 9, 1988

Ms. Christie Eller
Assistant Attorney General
Office of the Attorney General
515 Transportation Building
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendments of Rules Governing the Management, Storage, Treatment and Disposal of Hazardous Waste, Minn. Rules pts. 7045.0020, 7045.0075, 7045.0528, and 7045.0628.

Dear Ms. Eller:

On May 24, 1988, the Minnesota Pollution Control Agency adopted the above-captioned amendments of rules governing the management, storage, treatment and disposal of hazardous waste in tanks. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).
2. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).
3. Certificate of Resolution Adopting Rules.
4. Notice of Intent to Solicit Outside Opinion (11 S.R. 1117, December 22, 1986.
5. Certificate of Authorizing Resolution.
6. Notice of Intent to Adopt Rule Amendments Without a Public Hearing and Rules as proposed (12 S.R. 2203, April 4, 1988).
7. Notice of Intent to Adopt Rule Amendments Without Public Hearing, as mailed.
8. Affidavit of Mailing the Notice of Intent to Adopt Rule Without a Public Hearing and Certificate of Mailing List.
9. Rule Amendments as proposed.
10. Statement of Need and Reasonableness.
11. Declaration of Counsel.

No comments were received pursuant to the Notice of Intent to Solicit Outside Opinion. In addition, no comments were received during the comment period. There were no requests for Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General.

Sincerely,

Joseph G. Maternowski
Special Assistant Attorney General

Environmental Protection Division

JGM:jl
Enc.