

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments to Rules Governing Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Pts. 7045.0075, 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638

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 standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. These amendments to the state hazardous waste rules will bring state rules into conformance with existing federal regulations found in Title 40, Code of Federal Regulations (hereinafter "CFR") Parts 264.221, 264.301, 265.221, 265.254, and 265.301. The proposed amendments pertain to the following:

A. Surface Impoundments (Facility Standards). Imposes a requirement for an impermeable top liner for new or replacement units.

B. Landfills (Facility Standards). Imposes a requirement for an impermeable top liner for new or replacement units. Also adds the requirement for a leak detection, collection, and removal system above and between the double liners.

C. Surface Impoundments (Interim Status Standards). Subjects owners or operators to the design requirements (double liners and leak detection, collection, and removal system) of permitted facilities.

D. Waste Piles (Interim Status Standards). Subjects owners or operators to the design requirements (single liner and leak detection, collection, and removal system) of permitted facilities.

E. Landfills (Interim Status Standards). Subjects owners or operators to the design requirements (double liners and leak detection, collection, and removal system) of permitted facilities.

F. Petitions for Alternate Design and Operating Practices. Allows the above cited facilities the option of petitioning the Commissioner for alternate design and operating practices.

All of the above amendments serve to bring state rules regarding minimum technology standards into conformity with federal regulations. Federal regulations governing minimum technology standards were promulgated by the U.S. Environmental Protection Agency (hereinafter "EPA") under the authority of the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA"). The federal amendments were published in the Federal Register on July 15, 1985 (see Exhibit 1). A subsequent amendment was published in the May 9, 1990, Federal Register (see Exhibit 2). Amendments promulgated under HSWA, such as the minimum technology rule, are immediately effective in Minnesota on the effective date of the rule. The effective date for the minimum technology rule was July 15, 1985.

The Statement of Need and Reasonableness (hereinafter "Statement") is divided into eight parts. Following this introduction, Part II contains the Agency's statutory authority for the amendments. Part III contains the Agency's explanation of the need for the proposed amendments. Part IV discusses the reasonableness of the proposed amendments. Part V 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 (1988). Part VI discusses the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1988). Part VII sets forth the Agency's conclusion regarding the amendments. Part VIII contains a list of 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 North, St. Paul, Minnesota 55155.

II. STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat. § 116.07, subd. 4 (1988). Under this statute the Agency has the necessary authority to adopt the proposed rules.

III. NEED FOR THE PROPOSED AMENDMENTS

Minn. Stat. ch. 14 (1988) requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms, this means that an agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate. Need is a broad test that does not easily lend itself to evaluation of each proposed revision. In the broad sense, the need for amendments to the Agency's rules is based on the need for consistency with the federal hazardous waste regulations.

In 1976, Congress adopted the Resource Conservation and Recovery Act (hereinafter "RCRA") to regulate the management of hazardous waste. 42 U.S.C. § 6901 et seq. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and established the mechanism for the EPA to grant authority to states to operate the program. States that receive EPA authorization administer the state hazardous waste program in lieu of the federal program. To receive and maintain authorization, the state must adopt rules that are "equivalent" to the federal regulations and consistent with federal or state programs applicable to other states. The EPA has defined equivalent to mean that state requirements are no less restrictive than federal requirements. In terms of consistency, the EPA's goal is to achieve an

integrated national program which requires that final state programs do not conflict with each other or with the federal program.

Minnesota received final authorization from the EPA for its hazardous waste program pursuant to RCRA effective February 11, 1985. See 50 FR 3756 (January 28, 1985). In order to maintain authorization, the state must enact equivalent requirements within specific time frames when new, more stringent federal requirements are promulgated by EPA. Federal regulations promulgated under RCRA are not in effect in Minnesota until the state rules are amended to incorporate the federal changes. However, federal regulations promulgated under HSWA (1984), become effective nationally regardless of state authorization and subsequently are enforced by EPA until the states modify their programs by adopting HSWA amendments. Thus, Minnesota must modify its hazardous waste program by adopting HSWA amendments and apply for and receive authorization under HSWA in order to enforce HSWA provisions in lieu of EPA as part of its authorized state program. Since the Minimum Technology rule is promulgated under HSWA, the Agency proposes adopting these amendments in order to be consistent with federal regulations and to remain authorized by the EPA to administer Minnesota's hazardous waste program.

IV. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The Agency proposes to incorporate specific federal regulations as part of this rulemaking. A complete discussion of the reasonableness of the federal regulations is presented in Exhibits 1 and 2, Part VIII of this document, which is hereby incorporated by reference. The reasonableness of each of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules pt. 7045.0075 - Petitions.

Minn. Rules pt. 7045.0075 establishes conditions for petitioning the agency for regulatory treatment different from that prescribed in the main body of the rules. The proposed revision provides the opportunity for owners or operators of surface impoundments, waste piles, and landfills (interim status and those seeking permits) to petition the Commissioner for approval of alternative design and operating standards.

Providing this alternative in rule is reasonable because the design and operating standards provided in Minn. Rules pts. 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638 were developed on a state and federal level to provide a consistent technical basis for meeting broader environmental standards. The consulting and engineering community is most often able to use the specific parameters set forth in the rules, thus expediting the regulatory process. Nevertheless, it is reasonable to make provision for the exception, which is what the petition process does. The Agency's goal is to have facilities meet the environmental standard while not impeding possible technological developments or innovations. Several other areas of environmental regulation, as can be ascertained by reviewing the existing subparts of 7045.0075, allow for alternate approaches to regulation.

B. Minn. Rules pt. 7045.0532 Surface Impoundments (Facility Standards).

Minn. Rules pt. 7045.0532 establishes conditions for owners and operators of permitted surface impoundments. These conditions must be met in order to obtain a permit under Minn. Rules pt. 7001.0590. All of the existing conditions in the rule remain unchanged except subpart 3 which addresses design and operating requirements.

The existing rule requires facilities to have two liners with a leak detection, collection, and removal system between the liners. Either or both of

the liners may allow waste to migrate into the liner but not through the liner. The proposed revision continues to require a double liner with leak detection, collection, and removal system. The difference is that the top liner must prevent wastes from migrating into the liner. The lower liner and leak detection, collection, and removal system requirements remain the same.

The revisions apply to new facilities, new units at existing facilities, replacement units, and lateral expansions, thereby negating the need for retrofitting of existing facilities due solely to these amendments. (There are existing provisions in state and federal law that give the authority for requiring retrofitting if a liner system is leaking or otherwise experiencing failure.) The regulations (existing federal and proposed state) are applied to facility owners and operators submitting Plan B of a permit application after November 8, 1984.

The revisions to this provision are reasonable in order to provide consistency between state and federal law. The federal regulations (40 CFR Part 264.221) are the legal authority in this matter and should be thus reflected in Minnesota rules language to avoid confusion. The proposed revisions incorporate federal language nearly verbatim except for minor modifications due to the difference in format between the CFR and Minnesota rules.

In addition, subp. 3, item F, has been added to allow the owner or operator to petition for alternate design and operating practices under Minn. Rules pt. 7045.0075. The reasonableness of such an option is discussed in Item A (Minn. Rules pt. 7045.0075) of this Statement.

C. Minn. Rules pt. 7045.0534 Waste Piles (Facility Standards).

Minn. Rules pt. 7045.0534 establishes conditions for owners and operators of permitted waste piles. These conditions must be met in order to obtain a permit under Minn. Rules pt. 7001.0600. All of the existing conditions

in rule remain unchanged except for the addition of subp. 3, item H, which allows for the owner or operator to petition for alternate design and operating practices under Minn. Rules pt. 7045.0075. The reasonableness of such is discussed in Item A of this Statement.

D. Minn. Rules pt. 7045.0538 Landfills (Facility Standards).

Minn. Rules pt. 7045.0538 establishes conditions for owners and operators of permitted landfills. These conditions must be met in order to obtain a permit under Minn. Rules pt. 7001.0620. All of the existing conditions in rule remain unchanged except subpart 3 which addresses design and operating requirements.

The existing rule requires facilities to have two liners with a leak detection, collection, and removal system between the liners. One of the liners may allow waste to migrate into the liner but not through the liner. One of the liners, either top or lower, must prevent wastes from migrating into the liner. The proposed revision continues to require a double liner with leak detection, collection, and removal system. There are two differences. One is that it must be the top liner that is constructed to prevent wastes from migrating into the liner. The second change is that there must be a leak detection, collection, and removal system above and between the liners as opposed to just between the liners.

40 CFR Part 264.301 is the federal legal citation for design requirements for permitted landfills. Applicability of and reasonableness of this provision are identical to that found in the discussion of permitted surface impoundments (item B of this Statement). Similarly, the option to petition is proposed.

E. Minn. Rules pt. 7045.0630 - Surface Impoundments (Interim Status Standards).

Minn. Rules pt. 7045.0630 establishes conditions for owners and operators of interim status surface impoundments. All of the existing conditions remain unchanged except for the addition of design and notification requirements for each new unit, replacement unit, or lateral expansion at an existing interim facility.

The existing rule does not impose design requirements (liners or leak detection, collection, and removal systems) on interim status facilities. The proposed revision requires that the design requirements of Minn. Rules pt. 7045.0532, subp. 3 (as proposed) be met for each new unit, replacement unit, or lateral expansion at an existing interim facility. The regulations (existing federal and proposed state) are applied to facilities receiving wastes after May 8, 1985.

40 CFR Part 265.221 is the federal legal citation for design requirements for interim status surface impoundments. The reasonableness of this provision is identical to that found in the discussion of permitted surface impoundments (item B of this Statement).

F. Minn. Rules pt. 7045.0632 - Waste Piles (Interim Status Standards).

Minn. Rules pt. 7045.0632 establishes conditions for owners and operators of interim status waste piles. All of the existing conditions remain unchanged except for the addition of design and notification requirements for each new unit, replacement unit, or lateral expansion at an existing interim facility. The proposed revision requires that the design requirements of Minn. Rules pt. 7045.0534, subp. 3 be met.

40 CFR Part 265.254 is the federal legal citation for design requirements for interim status waste piles. Applicability of and

reasonableness of this provision are identical to that found in the discussion of interim status surface impoundments (item E of this Statement).

G. Minn. Rules pt. 7045.0638 - Landfills (Interim Status Standards).

Minn. Rules pt. 7045.0638 establishes conditions for owners and operators of interim status landfills. All of the existing conditions remain unchanged except for the addition of design and notification requirements for each new unit, replacement unit, or lateral expansion at an existing interim facility. The proposed revision requires that the design requirements of Minn. Rules pt. 7045.0538, subp. 3 (as proposed) be met.

40 CFR Part 265.301 is the federal legal citation for design requirements for interim status landfills. Applicability of and reasonableness of this provision are identical to that found in the discussion of interim status surface impoundments (item E of this Statement).

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rule amendments on small business. In proposing these amendments, the Agency has given due consideration to available information as to any impacts the proposed amendments would have on small businesses. The amendments impose no requirements on the regulated community, small businesses included, above and beyond those already required by federal regulation. Therefore, the inclusion of such requirements in the state hazardous waste rules will not impose any additional burden.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1988) 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 that may result therefrom, and shall take or provide for such action as may be reasonable, feasible, practical under the circumstances.

In proposing these amendments, the Agency has given due consideration to available information as to any economic impacts the proposed amendments would have. The amendments impose no requirements on the regulated community above and beyond those already required by federal regulation. Therefore, the inclusion of such requirements in the state hazardous waste rules will not impose any additional economic burden.

VII. 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.

VIII. EXHIBITS

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

Agency Ex. No.	Title
1	Federal Register, Vol. 50, No. 135, pages 28702-28755, July 15, 1985.
2	Federal Register, Vol. 65, No. 90, pages 19262-19264, May 9, 1990.

Date: September 12, 1990

for Ann M Hlumac
Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing Minimum Standards (Double Liners) for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Ch. 7045

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)

Jeanne Eggleston, 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 (1988) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of the 16th day of October, 1990.

That on the 16th day of October, 1990, 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.

Jeanne Eggleston

Subscribed and sworn to before me
this 5 day of November 1990.

Ardith M. Vos
Notary Public

ARDITH M. VOS
NOTARY PUBLIC — MINNESOTA
ANOKA COUNTY
My commission expires 1-12-94

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minnesota Rules Parts 7045.0532 (Facility Standards, Surface Impoundments), 7045.0534 (Facility Standards, Waste Piles), 7045.0538 (Facility Standards, Landfills), 7045.0630 (Interim Status Standards, Surface Impoundments), 7045.0632 (Interim Status Standards, Waste Piles) and 7045.0638 (Interim Status Standards, Landfills)

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jeanne Eggleston, being duly sworn on oath deposes and says:

1. That she is the person named in the Notice of Intent to Solicit Outside Opinion (14 SR 3009, June 25, 1990) as the person to receive comments on the Minnesota Pollution Control Agency's intent to adopt rule amendments concerning the above-entitled matter.

2. That the comment period set forth in the notice terminated at 4:30 p.m. on July 25, 1990.

3. That during the public comment period, there were no comments received by the the Minnesota Pollution Control Agency regarding the above-entitled matter.

Jeanne Eggleston

Subscribed and sworn to before me this 14th day of August, 1990.

Diane Fox
Notary Public

DIANE FOX
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 2-25-96

CERTIFICATION 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 25th day of September, 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 is hereby granted the authority to sign and to give notice of the Minnesota Pollution Control Agency's intent to adopt, without a public hearing, the attached amendments to the Minnesota Pollution Control Agency's permit rules and hazardous waste rules governing standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, Minn. Rules pts. 7045.0075, 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638, to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and publish the notice and the rule amendments in the State Register, and to perform any acts incidental thereto, including making any form changes in the rule amendments that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1988).

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 rule amendments as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for the Notice of Hearing, as well as acting as the Minnesota Pollution Control Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 25 day of September 1990.

Gerald L. Willet

GERALD L. WILLET
Commissioner

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Barbara Lindsey Sims, do hereby certify that I am the Deputy 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 18th day of December, 1990, 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 hereby approves and adopts the attached amendments to the Minnesota Pollution Control Agency's rules governing standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, Minn. Rules pts. 7045.0075, 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638, pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 116.12, subd. 1 (1990).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Deputy Commissioner is authorized to make any form changes to the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's Certification as required by Minn. Stat. § 14.07, subd. 2 (1990).
>
> BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency adopts the Findings of Fact, Conclusions, and Order Adopting Rule Amendments and that the Deputy Commissioner is hereby authorized to sign the above-mentioned document on behalf of the Minnesota Pollution Control Agency 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 19 day of December 1990.

Barbara Lindsey Sims

BARBARA LINDSEY SIMS
Deputy Commissioner

Rec
1-22-91

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

PUBLIC RESOURCES SECTION
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155
TELEPHONE: (612) 297-1075
FACSIMILE: (612) 297-4139

January 17, 1991

Ms. Patty Nolte
Legal Assistant
Office of the Attorney General
525 Park Street, Suite 500
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendments of Rules Governing Minimum Standards (Double Liners) for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Ch. 7045

Dear Ms. Nolte:

On December 18, 1990, the Minnesota Pollution Control Agency adopted the above-captioned rule amendments governing the management and operation of household hazardous waste collection programs. Enclosed for your review are the following:

1. Notice of Intent to Solicit Outside Opinion (14 S.R. 3009, June 25, 1990).

2. Affidavit of no written comments received pursuant to Notice of Intent to Solicit Outside Opinion (August 14, 1990).

3. Certificate of Agency's Authorizing Resolution (September 25, 1990).

4. Rules as proposed with Revisor's certificate.

5. Notice of Intent to Adopt Rule Amendments Without a Public Hearing, as mailed (October 8, 1990).

6. Affidavit of Mailing the Notice of Intent to Adopt Rule Amendments Without a Public Hearing and Certificate of Mailing List (November 5, 1990).

7. Statement of Need and Reasonableness.

8. Notice of Intent to Adopt Rule Amendments Without a Public Hearing and rule amendments as proposed (15 SR 953-957, October 22, 1990).

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9. Comments received during the comment period (One comment letter from U.S. Environmental Protection Agency dated November 10, 1990).

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

11. Certificate of Resolution Adopting Rules (December 19, 1990).

12. Findings of Fact, Conclusions, and Order Adopting Rules (December 19, 1990) (two copies).

13. Affidavit of Receiving No Requests for Notice of Submission of Rule Amendments Adopted Without a Public Hearing to the Attorney General (December 19, 1990).

14. Declaration of Counsel.

For your information, the four digit client code is 0697.

Very truly yours,

Alan Mitchell

ALAN R. MITCHELL
Special Assistant
Attorney General

Environmental Protection
Division

ARM:jlm:AO9
Enclosures
cc: Jeanne Eggleston, MPCA

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing Minimum Technology Standards (Double Liners) for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Ch. 7045

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) intends to adopt rule amendments to Minn. Rules pts. 7045.0075 (Petitions), 7045.0532 (Surface Impoundments, Facility Standards), 7045.0534 (Waste Piles, Facility Standards), 7045.0538 (Landfills, Facility Standards), 7045.0630 (Surface Impoundments, Interim Status Standards), 7045.0632 (Waste Piles, Interim Status Standards), and 7045.0638 (Landfills, Interim Status Standards) without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rule amendments without a public hearing in Minn. Stat. §§ 14.22 to 14.28 (1988). The MPCA's authority to adopt the rule amendments is set forth in Minn. Stat. §§ 116.07, subd. 4 (1988).

(2) All persons have until 4:30 p.m. on November 26, 1990 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. (3) 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 proposed rule amendments within the comment period. (4) 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. (6) Any person requesting a public hearing must 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. (7) If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1988).

(5) Comments or written requests for a public hearing must be submitted to:

Jeanne Eggleston
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/643-3476

(8) 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.

(1) The proposed rule amendments governing standards for owners and operators of hazardous waste facilities, if adopted, incorporate the federally mandated minimum technology rule for surface impoundments, landfills, and waste piles into state rules. One free copy of the rules is available upon request from Jeanne Eggleston at the address and telephone number stated above.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments has been prepared and is available from Jeanne Eggleston upon request.

(14) You are hereby advised, pursuant to Minn. Stat. § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have no impact on small businesses. The amendments impose no requirements on small businesses above and beyond those already required by federal regulation. Therefore, the inclusion of such requirements in the state hazardous waste rules will not impose any additional burden.

(9) If no hearing is required, upon adoption of the rule amendments, the rule amendments and required 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 rules, must submit the written request to Jeanne Eggleston.

Dated: 10-8-90

Barbara Lindsey Sims
for Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing Minimum Technology Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, Minn. Rules Pts. 7045.0075, 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638

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 18th day of December, 1990. 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 October 22, 1990 (15 SR 953-957), 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 (1990) on October 16, 1990.

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 rule amendments for 36 days after notice of proposed rulemaking. The 36 day comment period, as set out in the notice, expired on November 26, 1990.

4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission of the adopted rule amendments to the Attorney General were received by the MPCA.

6. During the comment period, the MPCA received one written comment letter, that being from the U.S. Environmental Protection Agency (EPA) - Region V. The MPCA finds that modifications to the proposed rules are justified by the record in this proceeding, as follows:

The proposed amendments to Minn. Rules pt. 7045.0532, subp.3, items A, B, and C (Surface Impoundments), and Minn. Rules pt. 7045.0538, subp.3, items A, B, and C (Landfills) have multiple references to the period of time that the design and operating requirements for liners and leachate collection systems are applicable. The time applicability is cited as either "the active life, including the closure period " or "through the scheduled post closure care period."

The federal regulations, with which the state rules must be equivalent, require that the design and operation requirements for liners and leachate collection systems apply through a facility's post closure period. The MPCA proposes to amend Item A of Minn. Rules pts. 7045.0532 and 7045.0538 to include the post closure period. References to time applicability are deleted from items B and C in both Minn. Rule parts since the references are redundant.

The proposed new language makes the time applicability provisions consistent internally within Minn. Rules, and responds to the EPA's comments that the proposed rules lack equivalency with federal regulations (40 CFR Parts 264.221 and 264.301).

Minn. Rules pt. 7045.0532, subp. 3., items A to C is modified to read:

7045.0532 SURFACE IMPOUNDMENTS

Subp. 3. Design and operating requirements. Design and operating requirements are as follows:

A. A surface impoundment must have a double liner system that is designed, constructed, and installed to prevent migration of waste out of the impoundment to the adjacent soil or ground water or surface water at any time during the active life, including the closure ~~period~~ and post closure periods, of the impoundment. The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the surface impoundment. The liners must conform to the requirements of item B or C, as appropriate, and must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

B. For any surface impoundment that is not covered by item C or part 7045.0630, the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or

ground water or surface water, ~~during the active life, including the closure period, of the facility~~ provided that the impoundment is closed according to subpart 7, item A, subitem (1). For impoundments that will be closed according to subpart 7, item A, subitem (2), at least one liner must be constructed of materials that can prevent wastes from migrating into the liner ~~during the active life, including the closure period, of the facility.~~

C. For any new surface impoundment, new surface impoundment unit at an existing facility, replacement of an existing surface impoundment unit, and lateral expansion of an existing surface impoundment unit that accepts waste after issuance of a permit for units where Part B of the permit application is received by the commissioner after November 8, 1984, the top liner must be constructed of materials that ~~can~~ prevent wastes from migrating into the liner ~~during the active life, including the closure period, of the facility~~. The lower liner may be constructed of materials that allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water~~, during the active life, including the closure period~~. For the purpose of the preceding sentence, a lower liner satisfies the requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1 X 10 -7 centimeter per second.

Minn. Rules pt. 7045.0538, subp. 3., items A to C is modified to read:

7045.0538 LANDFILLS.

Subp. 3. Design and operation. Design and operation requirements are as follows:

A. A landfill must have a double liner system that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at any time during the active life, including the closure ~~period~~ and post closure periods, of the landfill. The double liner system must consist of two liners with a leak detection, collection, and removal system. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids without clogging, through the scheduled post closure care period of the landfill. Both liners and the leak detection, collection, and removal system must conform to the ~~requirement~~ requirements of item B or C, as appropriate, and must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

B. For any landfill that is not covered by item C or part 7045.0638, the liners may be constructed of materials that ~~may~~ allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water~~, during the active life of the facility and the post-closure care period~~. At least one liner must be constructed of materials that prevent wastes from passing into the liner ~~during the active life of the facility including the post-closure care period~~. The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. ~~This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post-closure care period of the landfill.~~

C. For any new landfill, new landfill unit at an existing facility, replacement of an existing landfill unit, and lateral expansion of an existing landfill unit that accepts waste after issuance of a permit for units where Part B of the permit application is received by the commissioner after November 8, 1984, the top liner must be constructed of materials that ~~can~~ prevent wastes from migrating into the liner ~~during the active life, including the closure period, of the facility~~. The lower liner may be constructed of materials that ~~may~~ allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water~~, during the active life, including the closure period~~. For the purpose of the preceding sentence, a lower liner satisfies the requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1 X 10 -7 centimeter per second. The double liner system must consist of two liners with a leak detection, collection, and removal system above and between the liners. ~~This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post-closure care period of the landfill.~~

7. The MPCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The MPCA hereby incorporates the Statement of Need and Reasonableness into these findings, except as modified in Finding No. 6.

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 the rule amendments 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. 7045.0075, 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638 governing minimum technology standards for owners and operators of hazardous waste treatment, storage, and disposal facilities are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1990).

(9)

MINNESOTA POLLUTION CONTROL AGENCY

Dated: 12-19-90

Barbara Lindsey Sims

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing Minimum Stabdards (Double Liners) for Owners and Operators Of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Ch. 7045

AFFIDAVIT OF RECEIVING NO REQUESTS FOR NOTICE OF SUBMISSION OF RULE AMENDMENTS ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jeanne Eggleston, being duly sworn says:

1. That he is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing (15 SR 953-957, October 22, 1990) as the person to receive requests for notification of submission of rule adopted without a public hearing to the Attorney General concerning the above-entitled matter.

2. That there were no requests received by the the Minnesota Pollution Control Agency for notification of submission of rule adopted without a public hearing to the Attorney General concerning the above-entitled matter.

Jeanne Eggleston

Subscribed and sworn to before me this 19 day of December, 1990.

Ardith M. Vos
Notary Public

ARDITH M. VOS
NOTARY PUBLIC — MINNESOTA
ANOKA COUNTY
My commission expires 1-12-94

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule
Amendments Governing Minimum
Standards (Double Liners) for Owners
and Operators of Hazardous Waste Treatment,
Storage, and Disposal Facilities,
Minn. Rules Ch. 7045.

DECLARATION OF COUNSEL

I, Alan R. Mitchell, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed.

Alan R. Mitchell

ALAN R. MITCHELL
Special Assistant
Attorney General

January 17, 1991

CH

RULE REVIEW CHECKLIST

File No. 1787
DATE RECEIVED 1-22-91
REVIEW DATE 1-31-91
DUE DATE 2-5-91
(DIS)APPROVED 2-5-91
WITHDRAWN _____

Docket No. 050009 0697
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 1/28/91
REVISOR (DIS)APPROVED 2/1/91
FILED W/SEC. OF STATE 2/5/91
RETURNED TO AGENCY 2/7/91

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
June 25, 1990 Date published in State Register
_____ Comments

~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution
September 25, 1990 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
116.07 subd 4 Statutory Authority
_____ Small Business Statement
_____ Expenditure of public money statement
10-8-90 Signature

✓ Statement of Need and Reasonableness (if applicable)
NA Small Business Statement
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
October 16, 1990 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
October 22, 1990 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ ~~end of comment period (§ 14.26)~~ (rules without hearing)
✓ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
December 19, 1990 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
12-19-90 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Alan Mitchell Name of SAAG representing agency

~~Notice of Submission to Attorney General (if applicable)~~

~~Affidavit of~~

Pollution Control Agency

Adopted Permanent Rules Relating to Owners and Operators of Hazardous Waste Facilities

Rules as Adopted

7045.0075 PETITIONS.

[For text of subps 1 to 11, see M.R.]

Subp. 12. **Petition for alternate design or operating practices.** An owner or operator may submit a petition to the commissioner for approval to use alternate design or operating practices in lieu of the requirements of parts 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638. The commissioner's decision shall be based on a demonstration by the petitioner that the alternate design or 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 requirements of parts 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638.

7045.0532 SURFACE IMPOUNDMENTS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Design and operating requirements.** Design and operating requirements are as follows:

A. A surface impoundment must have a double liner system that is designed, constructed, and installed to prevent migration of waste out of the impoundment to the adjacent soil or ground water or surface water at any time during the active life, including the closure ~~period~~ and post closure periods, of the impoundment. The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the surface impoundment.

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The liners must conform to the requirements of item B or C, as appropriate, and must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

B. For any surface impoundment that is not covered by item C or part 7045.0630, the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water~~, during the active life, including the closure period, of the facility~~ provided that the impoundment is closed according to subpart 7, item A, subitem (1). For impoundments that will be closed according to subpart 7, item A, subitem (2), at least one liner must be constructed of materials that can prevent wastes from migrating into the liner ~~during the active life, including the closure period, of the facility~~.

C. For any new surface impoundment, new surface impoundment unit at an existing facility, replacement of an existing surface impoundment unit, and lateral expansion of an existing surface impoundment unit that accepts waste after issuance of a permit for units where Part B of the permit application is received by the commissioner after November 8, 1984, the top liner must be constructed of materials that ~~can~~ prevent wastes from migrating into the liner ~~during the active life, including the closure period, of the facility~~. The lower

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liner may be constructed of materials that ~~may~~ allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water~~,-during the-active-life,-including-the-closure-period~~. For the purpose of the preceding sentence, a lower liner satisfies the requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

D. A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and water action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

E. A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. Massive failure of the dikes means any uncontrolled flow of hazardous waste from the surface impoundment. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

F. The owner or operator of a surface impoundment shall have a method of emptying its wastes in an emergency. Acceptable methods include backup surface impoundments or tanks.

G. The owner or operator of a surface impoundment shall submit to the agency with the permit application a plan for the treatment and disposal of leachate which is removed from the surface impoundment.

H. An owner or operator may petition for alternate design and operating practices under part 7045.0075, subpart 12.

I. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to H are satisfied.

[For text of subps 4 to 10, see M.R.]

7045.0534 WASTE PILES.

[For text of subps 1 and 2, see M.R.]

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Subp. 3. **Design and operating requirements.** Design and operating requirements are as follows:

[For text of items A to G, see M.R.]

H. An owner or operator may petition for alternate design or operating practices under part 7045.0075, subpart 12.

I. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to H are satisfied.

[For text of subps 6 to 10, see M.R.]

7045.0538 LANDFILLS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Design and operation.** Design and operation requirements are as follows:

A. A landfill must have a double liner system that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at any time during the active life, including the closure ~~period~~ and post closure periods, of the landfill. The double liner system must consist of two liners with a leak detection, collection, and removal system. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids without clogging, through the scheduled post closure care period of the landfill. Both liners and the leak detection, collection, and removal system must conform to the ~~requirement~~ requirements of item B or C, as appropriate, and must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure

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gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

B. For any landfill that is not covered by item C or part 7045.0638, one of the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil, drainage layer, or ground water or surface water~~,-during-the-active-life-of-the-facility and-the-post-closure-care-period~~. At least one liner must be constructed of materials that prevent wastes from passing into the liner ~~during-the-active-life-of-the-facility-including-the post-closure-care-period~~. The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. ~~This-system-must-be-designed, constructed,-maintained,-and-operated-to-detect,-collect,-and remove-liquids-from-the-space-between-the-liners,-without clogging,-through-the-scheduled-post-closure-care-period-of-the landfill.~~

C. For any new landfill, new landfill unit at an existing facility, replacement of an existing landfill unit, and lateral expansion of an existing landfill unit that accepts waste after issuance of a permit for units where Part B of the permit application is received by the commissioner after November 8, 1984, the top liner must be constructed of materials that can prevent wastes from migrating into the liner ~~during-the active-life,-including-the-closure-period,-of-the-facility~~. The lower liner may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water~~,-during-the-active-life,-including-the-closure-period~~. For the purpose of the preceding sentence, a lower liner satisfies the requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second. The double liner system must consist of two liners

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with a leak detection, collection, and removal system above and between the liners. ~~This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the landfill.~~

D. A landfill must have a leachate collection and removal system immediately above each liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The agency shall specify design and operating conditions in the permit to ensure that the leachate depth over each liner does not exceed 30 centimeters (one foot) at any point. The leachate collection and removal systems must be:

(1) constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(2) designed, constructed, maintained, and operated to function without clogging through the scheduled post closure care period of the landfill.

E. The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

F. The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm.

G. Collection and holding facilities such as tanks or basins, associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

H. The owner or operator shall cover or otherwise manage the landfill to control wind dispersal of particulate

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matter.

I. The owner or operator shall develop the landfill in appropriately sized cells to minimize the amounts of liquids entering each cell due to precipitation.

J. The owner or operator of a landfill shall submit to the agency with the permit application a plan for the treatment and disposal of run-off contained in the run-off management system and leachate which is removed from the landfill.

K. An owner or operator may petition for alternate design or operating practices under part 7045.0075, subpart 12.

L. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to K are satisfied.

[For text of subps 4 to 13, see M.R.]

7045.0630 SURFACE IMPOUNDMENTS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Design requirements.** Design requirements are as follows:

A. The owner or operator of a surface impoundment must install two or more ~~lines~~ liners and leachate collection systems according to part 7045.0532, subpart 3, items A to H, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

B. The owner or operator of each unit referred to in item A must notify the commissioner at least 60 days before receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the commissioner's receipt of the notice.

[For text of subps 2 to 8, see M.R.]

7045.0632 WASTE PILES.

[For text of subps 1 to 4, see M.R.]

Subp. 4a. **Design requirements.** The owner or operator of a

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by Revisor _____

waste pile is subject to the requirements for liners and leachate collection and removal systems provided in part 7045.0534, subpart 3, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in Part A permit application, and with respect to waste received beginning May 8, 1985.

[For text of subps 5 to 7, see M.R.]

7045.0638 LANDFILLS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Design requirements.** Design requirements are as follows:

A. The owner or operator of a landfill must install two or more ~~liners~~ liners and leachate collection systems according to part 7045.0538, subpart 3, items A to K, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the part A permit application, with respect to waste received beginning May 8, 1985.

B. The owner or operator of each unit referred to in item A must notify the commissioner at least 60 days before receiving waste. The owner or operator of each facility submitting notice must file a part B application within six months of the commissioner's receipt of the notice.

[For text of subps 2 to 9, see M.R.]

Approved
by Revisor _____

APPROVED AS TO LEGALITY

February 5, 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene M. Hatch
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 05 1991

Joan Anderson Growe
Secretary of State

4:00 P.M.

M

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: February 7, 1991

TO: JEANNE EGGLESTON
Minnesota Pollution Control Agency

FROM: CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to
Owners and Operators of Hazardous Waste Facilities

The above-referenced rule has been approved as to its legality by the Attorney General on February 5, 1991.

Enclosed is your 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 along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

CH:sc
Enclosures
cc: Alan Mitchell
William Brown, Chief Judge
MaryAnn Hruby

Stat Authority 116.07 subd 4
... the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating

end of comment period November 26, 1990

call - did they send the SONAR to the LACR

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

Celebrate MINNESOTA 1990

October 11, 1990

Ms. Maryann Hruby, Director
Legislative Commission to Review
Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

As required by 1990 amendments to the Administrative Procedures Act, we are forwarding copies of our Statement of Need and Reasonableness (SONAR) for five separate proposed rule and rule amendment packages. These SONARs support rulemakings which govern the following:

- Toxicity Characteristics Testing Procedures
- Household Hazardous Waste Management Plans
- Lead Abatement in Soils
- Minimum Technology (Double Liners) for Hazardous Waste Facilities
- Management of Household Batteries

If you have any questions please contact me at 612/643-3498.

Sincerely,

Randall G. Hubred
for
Carol Nankivel, Supervisor
Rules Unit
Program Development Section
Hazardous Waste Division

CN/JAE:jao

Enclosures

RECEIVED
JAN 2 ? 1991
ATTORNEY GENERAL'S OFFICE
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155

Subp. 7. **Treatment.** Operators conducting treatment of collected household hazardous wastes are subject to the requirements of items A to C.

A. An operator intending to perform any treatment not specified in item B must submit a request for approval to the commissioner. The commissioner shall approve the request if the commissioner determines that the requirements of item C have been satisfied and that all other management practices at the collection site are adequate to protect human health and the environment.

B. Treatment methods which do not require approval of the commissioner are bulking of:

(1) paints;

(2) solvents;

(3) oil; and

(4) antifreeze.

When bulking is being done, the personnel training and safety procedures required in subpart 4 must specifically address how this activity will be conducted.

C. All other methods of waste treatment must be identified in the notification required under subpart 2 and the commissioner's approval obtained for those specific activities. In addition to the information required in subpart 2, the notification must provide the following information:

(1) the name of the person appointed to direct and oversee the treatment process;

(2) a statement that individuals conducting treatment must have performed the specific treatment procedure at least once prior to performing that treatment procedure at a household hazardous waste collection site; and

(3) evidence of liability insurance.

Pollution Control Agency

Proposed Permanent Rules Relating to Owners and Operators of Hazardous Waste Facilities

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt rule amendments to *Minnesota Rules* pts. 7045.0075 (Petitions), 7045.0532 (Surface Impoundments, Facility Standards), 7045.0534 (Waste Piles, Facility Standards), 7045.0538 (Landfills, Facility Standards), 7045.0630 (Surface Impoundments, Interim Status Standards), 7045.0632 (Waste Piles, Interim Status Standards), and 7045.0638 (Landfills, Interim Status Standards) without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rule amendments without a public hearing in *Minnesota Statutes* 14.22 to 14.28 (1988). The MPCA's authority to adopt the rule amendments is set forth in *Minnesota Statutes* 116.07, subd. 4 (1988).

All persons have until 4:30 p.m. on November 26, 1990, 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 proposed rule amendments 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 must 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 (1988).

Comments or written requests for a public hearing must be submitted to Jeanne Eggleston, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155 (612/643-3476).

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 governing standards for owners and operators of hazardous waste facilities, if adopted, incorporate the federally mandated minimum technology rule for surface impoundments, landfills, and waste piles into state rules. The proposed

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

rule amendments are published below. One free copy of the rules is available upon request from Jeanne Eggleston at the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule amendments has been prepared and is available from Jeanne Eggleston upon request.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* 14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have no effect on small businesses. The amendments impose no requirements on small businesses above and beyond those already required by federal regulation. Therefore, the inclusion of such requirements in the state hazardous waste rules will not impose any additional burden.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and required 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 rules, must submit the written request to Jeanne Eggleston.

Gerald L. Willet
Commissioner

Rules as Proposed

7045.0075 PETITIONS.

[For text of subps 1 to 11, see M.R.]

Subp. 12. **Petition for alternate design or operating practices.** An owner or operator may submit a petition to the commissioner for approval to use alternate design or operating practices in lieu of the requirements of parts 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638. The commissioner's decision shall be based on a demonstration by the petitioner that the alternate design or 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 requirements of parts 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638.

7045.0532 SURFACE IMPOUNDMENTS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Design and operating requirements.** Design and operating requirements are as follows:

A. A surface impoundment must have a double liner system that is designed, constructed, and installed to prevent migration of waste out of the impoundment to the adjacent soil or ground water or surface water at any time during the active life, including the closure period, of the impoundment. The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the surface impoundment. ~~The liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water, during the active life, including the closure period, of the facility provided that the impoundment is closed in accordance with subpart 7, item A, subitem (1). For impoundments that will be closed in accordance with subpart 7, item A, subitem (2), at least one liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life, including the closure period, of the facility.~~ The liners must conform to the requirements of item B or C, as appropriate, and must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

B. For any surface impoundment that is not covered by item C or part 7045.0630, the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water, during the active life, including the closure period, of the facility provided that the impoundment is closed according to subpart 7, item A, subitem (1). For impoundments that will be closed according to subpart 7, item A, subitem (2), at least one liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life, including the closure period, of the facility.

C. For any new surface impoundment, new surface impoundment unit at an existing facility, replacement of an existing surface impoundment unit, and lateral expansion of an existing surface impoundment unit that accepts waste after issuance of a permit

for units where Part B of the permit application is received by the commissioner after November 8, 1984, the top liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life, including the closure period, of the facility. The lower liner may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water, during the active life, including the closure period. For the purpose of the preceding sentence, a lower liner satisfies the requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

~~B.~~ D. A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and water action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

~~C.~~ E. A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. Massive failure of the dikes means any uncontrolled flow of hazardous waste from the surface impoundment. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

~~D.~~ F. The owner or operator of a surface impoundment shall have a method of emptying its wastes in an emergency. Acceptable methods include backup surface impoundments or tanks.

~~E.~~ G. The owner or operator of a surface impoundment shall submit to the agency with the permit application a plan for the treatment and disposal of leachate which is removed from the surface impoundment.

~~F.~~ H. An owner or operator may petition for alternate design and operating practices under part 7045.0075, subpart 12.

I. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to ~~E~~ H are satisfied.

[For text of subps 4 to 10, see M.R.]

7045.0534 WASTE PILES.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Design and operating requirements.** Design and operating requirements are as follows:

[For text of items A to G, see M.R.]

H. An owner or operator may petition for alternate design or operating practices under part 7045.0075, subpart 12.

I. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to ~~G~~ H are satisfied.

[For text of subps 6 to 10, see M.R.]

7045.0538 LANDFILLS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Design and operation.** Design and operation requirements are as follows:

A. A landfill must have a double liner system that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at any time during the active life, including the closure period, of the landfill. ~~The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the landfill. One of the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil, drainage layer, or ground water or surface water, during the active life of the facility and the post closure care period. At least one liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility including the post closure care period.~~ Both liners must conform to the requirement of item B or C, as appropriate, and must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

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

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

B. For any landfill that is not covered by item C or part 7045.0638, one of the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil, drainage layer, or ground water or surface water, during the active life of the facility and the post closure care period. At least one liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility including the post closure care period. The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the landfill.

C. For any new landfill, new landfill unit at an existing facility, replacement of an existing landfill unit, and lateral expansion of an existing landfill unit that accepts waste after issuance of a permit for units where Part B of the permit application is received by the commissioner after November 8, 1984, the top liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life, including the closure period, of the facility. The lower liner may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water, during the active life, including the closure period. For the purpose of the preceding sentence, a lower liner satisfies the requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second. The double liner system must consist of two liners with a leak detection, collection, and removal system above and between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the landfill.

~~B.~~ D. A landfill must have a leachate collection and removal system immediately above each liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The agency shall specify design and operating conditions in the permit to ensure that the leachate depth over each liner does not exceed 30 centimeters (one foot) at any point. The leachate collection and removal systems must be:

(1) constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(2) designed, constructed, maintained, and operated to function without clogging through the scheduled post closure care period of the landfill.

~~C.~~ E. The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

~~D.~~ F. The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm.

~~E.~~ G. Collection and holding facilities such as tanks or basins, associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

~~F.~~ H. The owner or operator shall cover or otherwise manage the landfill to control wind dispersal of particulate matter.

~~G.~~ I. The owner or operator shall develop the landfill in appropriately sized cells to minimize the amounts of liquids entering each cell due to precipitation.

~~H.~~ J. The owner or operator of a landfill shall submit to the agency with the permit application a plan for the treatment and disposal of run-off contained in the run-off management system and leachate which is removed from the landfill.

~~I.~~ K. An owner or operator may petition for alternate design or operating practices under part 7045.0075, subpart 12.

L. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to ~~H~~ K are satisfied.

[For text of subps 4 to 13, see M.R.]

7045.0630 SURFACE IMPOUNDMENTS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Design requirements.** Design requirements are as follows:

A. The owner or operator of a surface impoundment must install two or more lines and leachate collection systems according to part 7045.0532, subpart 3, items A to H, with respect to each new unit, replacement of an existing unit, or lateral expansion of an

existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

B. The owner or operator of each unit referred to in item A must notify the commissioner at least 60 days before receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the commissioner's receipt of the notice.

[For text of subps 2 to 8, see M.R.]

7045.0632 WASTE PILES.

[For text of subps 1 to 4, see M.R.]

Subp. 4a. **Design requirements.** The owner or operator of a waste pile is subject to the requirements for liners and leachate collection and removal systems provided in part 7045.0534, subpart 3, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in Part A permit application, and with respect to waste received beginning May 8, 1985.

[For text of subps 5 to 7, see M.R.]

7045.0638 LANDFILLS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Design requirements.** Design requirements are as follows:

A. The owner or operator of a landfill must install two or more lines and leachate collection systems according to part 7045.0538, subpart 3, items A to K, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the part A permit application, with respect to waste received beginning May 8, 1985.

B. The owner or operator of each unit referred to in item A must notify the commissioner at least 60 days before receiving waste. The owner or operator of each facility submitting notice must file a part B application within six months of the commissioner's receipt of the notice.

[For text of subps 2 to 9, see M.R.]

Pollution Control Agency

Proposed Permanent Rules Relating to Toxicity Characteristics

Notice of Intent to Adopt Rules 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 rule amendments without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The MPCA's authority to adopt the rule amendments is set forth in *Minnesota Statutes* § 116.07, subd. 4 (1988).

All persons have until 4:30 p.m. on November 26, 1990, 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 proposed rule amendments 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 must 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 (1988).

Comments or written requests for a public hearing must be submitted to Glenn Skuta, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155, (612/643-3478).

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.

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Pollution Control Agency

Division of Hazardous Waste

Notice of Intent to Solicit Outside Information Regarding Proposed Rule Governing Abatement Methods and Standards for Lead in Bare Soil on Playgrounds and Residential Property

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) is seeking information or opinions from outside sources in preparing to propose the adoption of rules governing abatement methods and standards for lead in bare soil on playgrounds and residential property. The adoption of the rule is authorized by *Minnesota Laws* 1990, ch. 533, sec. 7, subd. 2 (to be codified at *Minnesota Statutes* sec 144.878, subd. 2) which requires the Agency to adopt abatement methods and standards for lead in bare soil on playgrounds and residential property in a manner to protect public health and the environment.

The Agency requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

Placida Venegas
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
Telephone: (612) 643-3474

Oral statements will be received during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday.

All statements of information and opinion will be accepted until July 24, 1990. Any written materials received by the Agency shall become part of the rulemaking record in the event that the rule is adopted.

Gerald L. Willet
Commissioner

Minnesota Pollution Control Agency

Division of Hazardous Waste

Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to Rules Governing Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minnesota Rule Chapter 7045

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) is seeking information or opinions from outside sources regarding the amendment of rules governing minimum technology requirements on owners and operators of hazardous waste treatment, storage, and disposal facilities.

The existing rules under consideration for amendment are found at *Minnesota Rules* pts. 7045.0532 (Facility Standards, Surface Impoundments), 7045.0534 (Facility Standards, Waste Piles), 7045.0538 (Facility Standards, Landfills), 7045.0630 (Interim Status Standards, Surface Impoundments), 7045.0632 (Interim Status Standards, Waste Piles) and 7045.0638 (Interim Status Standards, Landfills). These rules were adopted pursuant to *Minnesota Statutes* Sec. 116.07, subd. 4 (1988), which allows the Agency to adopt rules relating to the regulation of hazardous waste.

The purpose of this rulemaking is to bring state rules into conformance with existing federal regulation found in Title 40, *Code of Federal Regulations* (CFR) Parts 264.221, 264.251, 264.301, 265.221, 265.254 and 265.301. The federal regulations require the installation of two or more liners, a leachate collection system, and ground-water monitoring as permitting and interim status requirements for landfills, surface impoundments, and waste piles.

The Agency requests information and opinions concerning the subject matter of the proposed amendments. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

Jeanne Eggleston
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
Telephone: (612) 643-3476

Oral statements will be received during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday.

Statements and comments will be accepted until July 25, 1990. Any written materials received by the Agency shall become part of the rulemaking record in the event that the rule is amended.

Gerald L. Willet
Commissioner

Public Employment Relations Board

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules and Amendments of Rules Governing Issues and Appeals, Independent Review, Meetings, Code of Ethics, Interest and Grievance Arbitration and the Administration of the Arbitrator Roster

NOTICE IS HEREBY GIVEN that the Public Employment Relations Board is seeking information or opinions from sources outside the agency in preparing to propose the adoption and amendment of rules governing Issues and Appeals, Independent Review, Meetings, Code of Ethics, Interest and Grievance Arbitration and Administration of the Arbitrator Roster. The adoption of the rule is authorized by *Minnesota Statutes*, Section 179A.05, subds. 3, 5 and 6 and 14.06 which requires the Board to adopt rules governing its procedures and the administration of its duties.

The Public Employment Relation Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Jermaine Foslien, Executive Director
Public Employment Relations Board
1380 Energy Lane, Suite #3
St. Paul, Minnesota 55108

Oral statements will be received during regular business hours over the telephone at 612-649-5450 and in person at the above address.

All statements of information and opinions shall be accepted until July 16, 1990. Any written material received by the Public Employment Relations Board shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Jermaine Foslien
Executive Director
Public Employment Relations Board

Dated: 15 June 1990

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:
5HR-JCK-13

NOV 20 1990

Mr. Randall Hukreide
Acting Supervisor
Rules Unit
Program Development Section
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Mr. Hukreide:

Thank you for the opportunity to review Minnesota's draft rules that are analogous to the Federal Double Liner rule of July 15, 1985, and the Toxicity Characteristics rule of March 29, 1990. We have enclosed our comments. We have also reviewed the State's draft household battery management rules, and have no comments.

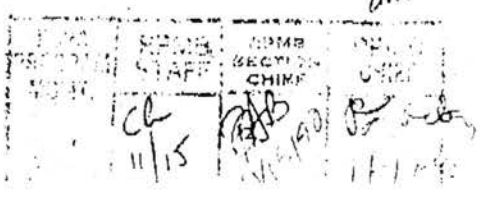
Please contact Christine Klemme, of my staff, at (312) 886-3715, if you have any questions.

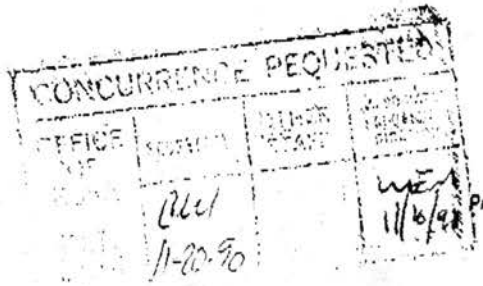
Sincerely yours,

ORIGINAL SIGNED BY
WILLIAM E. MUNO

William E. Muno
Acting Associate Division Director
Office of RCRA

Enclosure





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U.S. EPA, Region V Comments on Minnesota's Draft Double Liner and Toxicity Characteristic Rules

Following are U.S. EPA, Region V's comments on Minnesota's draft double liner and toxicity characteristic rules. In conducting our review, we compared the draft State rules to the Federal double liner rule promulgated on July 15, 1985, (50 Federal Register 28702, RCRA Revision Checklist 17H) and the Federal toxicity characteristic rule promulgated on March 29, 1990 (55 Federal Register 11798, RCRA Revision Checklist 74) as amended and corrected on June 29, 1990, (55 Federal Register 26986); August 2, 1990, (55 Federal Register 31387); and August 10, 1990, (55 Federal Register 32733); September 27, 1990, 55 Federal Register 39409; and, October 5, 1990, 55 Federal Register 40837.

I. Double Liner Rules

A) 40 CFR 264.221(c)/7045.0532(3)(b). On page 3, lines 10 and 14, please change "closure" to read "post-closure". The term "closure" refers to the activities undertaken to properly cease operations at a facility. At that time, the owner/operator must certify that there has been no migration of hazardous constituents or wastes. The term "post-closure" refers to the period of time (30 years) after which the closure activities are completed and during which the owner/operator must monitor to insure there is no migration of hazardous constituents or wastes. The Federal rules require that the liner must be constructed of materials to prevent wastes from migrating into the liner during the active life, including the post-closure period of the facility.

B) 40 CFR 264.301(c)/7045.0538(3)(c). On page 6, lines 7 and 11, please revise "closure" to read "post-closure" (see above comment).

C) 40 CFR 265.221(a)/7045.0630(1)(a). On page 8, lines 2 and 29, please revise "lines" to read liners".

II.Toxicity Rule

D) 40 CFR 265.273(a)/7045.0634. On page 9, line 29, please insert "equal or" after "substances which" and before "exceed the maximum".

We understand your concern about distinguishing between the terms "toxicity", and, "toxicity characteristic". However, we do not believe that the terms "lethal" and "lethality" are appropriate replacements. Since we cannot see any true distinction between those terms, we recommend that you use a lower case "t" for toxicity, and an uppercase "TC" to refer to the term Toxicity Characteristic. In the alternative, you may propose some other method for distinguishing these terms.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V
230 South Dearborn Street
CHICAGO IL 60604

EPA

FACSIMILE REQUEST AND COVER SHEET

PLEASE PRINT IN BLACK INK ONLY

)

Jeannie Eggleston

FICE/PHONE
MPCA,

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VERIFICATION NR:

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612 643-3476

ROM
Christine Klemma

HONE
(312) 886-3715

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PAGE ___ OF ___ PAGES

EPA Form 5040-5 (Rev. 12-83) Replaces EPA Form 5040-5A and the previous edition of EPA Form 5040-5, which are obsolete.

Pollution Control Agency

Proposed Permanent Rules Relating to Owners and Operators of Hazardous Waste Facilities

Rules as Proposed

7045.0075 PETITIONS.

[For text of subps 1 to 11, see M.R.]

Subp. 12. **Petition for alternate design or operating practices.** An owner or operator may submit a petition to the commissioner for approval to use alternate design or operating practices in lieu of the requirements of parts 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638. The commissioner's decision shall be based on a demonstration by the petitioner that the alternate design or 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 requirements of parts 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638.

7045.0532 SURFACE IMPOUNDMENTS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Design and operating requirements.** Design and operating requirements are as follows:

A. A surface impoundment must have a double liner system that is designed, constructed, and installed to prevent migration of waste out of the impoundment to the adjacent soil or ground water or surface water at any time during the active life, including the closure period, of the impoundment. The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the surface impoundment. ~~The liners may~~

Approved by Revisor

~~be-constructed-of-materials-that-may-allow-wastes-to-migrate into-the-liner,-but-not-into-the-adjacent-subsurface-soil-or drainage-layer-or-ground-water-or-surface-water,-during-the active-life,-including-the-closure-period,-of-the-facility provided-that-the-impoundment-is-closed-in-accordance-with subpart-7,-item-A,-subitem-(1).--For-impoundments-that-will-be closed-in-accordance-with-subpart-7,-item-A,-subitem-(2),-at least-one-liner-must-be-constructed-of-materials-that-can prevent-wastes-from-migrating-into-the-liner-during-the-active life,-including-the-closure-period,-of-the-facility.~~ The liners must conform to the requirements of item B or C, as appropriate, and must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

B. For any surface impoundment that is not covered by item C or part 7045.0630, the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water, during the active life, including the closure period, of the facility provided that the impoundment is closed according to subpart 7, item A, subitem (1). For impoundments that will be closed according to subpart 7, item A, subitem (2), at least one liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life, including the closure period, of

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the facility.

C. For any new surface impoundment, new surface impoundment unit at an existing facility, replacement of an existing surface impoundment unit, and lateral expansion of an existing surface impoundment unit that accepts waste after issuance of a permit for units where Part B of the permit application is received by the commissioner after November 8, 1984, the top liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life, including the closure period, of the facility. The lower liner may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water, during the active life, including the closure period. For the purpose of the preceding sentence, a lower liner satisfies the requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

~~B.~~ D. A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and water action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

~~C.~~ E. A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. Massive failure of the dikes means any uncontrolled flow of hazardous waste from the surface impoundment. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

~~D.~~ F. The owner or operator of a surface impoundment shall have a method of emptying its wastes in an emergency. Acceptable methods include backup surface impoundments or tanks.

~~E.~~ G. The owner or operator of a surface impoundment shall submit to the agency with the permit application a plan for the treatment and disposal of leachate which is removed from

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the surface impoundment.

~~F.~~ H. An owner or operator may petition for alternate design and operating practices under part 7045.0075, subpart 12.

I. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to ~~E~~ H are satisfied.

[For text of subps 4 to 10, see M.R.]

7045.0534 WASTE PILES.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Design and operating requirements.** Design and operating requirements are as follows:

[For text of items A to G, see M.R.]

H. An owner or operator may petition for alternate design or operating practices under part 7045.0075, subpart 12.

I. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to ~~G~~ H are satisfied.

[For text of subps 6 to 10, see M.R.]

7045.0538 LANDFILLS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Design and operation.** Design and operation requirements are as follows:

A. A landfill must have a double liner system that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at any time during the active life, including the closure period, of the landfill. ~~The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the landfill. One of the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil, drainage~~

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~~layer,-or-ground-water-or-surface-water,-during-the-active-life of-the-facility-and-the-post-closure-care-period.--At-least-one liner-must-be-constructed-of-materials-that-prevent-wastes-from passing-into-the-liner-during-the-active-life-of-the-facility including-the-post-closure-care-period.~~ Both liners must conform to the requirement of item B or C, as appropriate, and must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

B. For any landfill that is not covered by item C or part 7045.0638, one of the liners may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil, drainage layer, or ground water or surface water, during the active life of the facility and the post closure care period. At least one liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility including the post closure care period. The double liner system must consist of two liners with a leak detection, collection, and removal system between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the landfill.

C. For any new landfill, new landfill unit at an

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existing facility, replacement of an existing landfill unit, and lateral expansion of an existing landfill unit that accepts waste after issuance of a permit for units where Part B of the permit application is received by the commissioner after November 8, 1984, the top liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life, including the closure period, of the facility. The lower liner may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or drainage layer or ground water or surface water, during the active life, including the closure period. For the purpose of the preceding sentence, a lower liner satisfies the requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second. The double liner system must consist of two liners with a leak detection, collection, and removal system above and between the liners. This system must be designed, constructed, maintained, and operated to detect, collect, and remove liquids from the space between the liners, without clogging, through the scheduled post closure care period of the landfill.

~~B.~~ D. A landfill must have a leachate collection and removal system immediately above each liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The agency shall specify design and operating conditions in the permit to ensure that the leachate depth over each liner does not exceed 30 centimeters (one foot) at any point. The leachate collection and removal systems must be:

(1) constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(2) designed, constructed, maintained, and

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operated to function without clogging through the scheduled post closure care period of the landfill.

~~C.~~ E. The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

~~D.~~ F. The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm.

~~E.~~ G. Collection and holding facilities such as tanks or basins, associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

~~F.~~ H. The owner or operator shall cover or otherwise manage the landfill to control wind dispersal of particulate matter.

~~G.~~ I. The owner or operator shall develop the landfill in appropriately sized cells to minimize the amounts of liquids entering each cell due to precipitation.

~~H.~~ J. The owner or operator of a landfill shall submit to the agency with the permit application a plan for the treatment and disposal of run-off contained in the run-off management system and leachate which is removed from the landfill.

~~I.~~ K. An owner or operator may petition for alternate design or operating practices under part 7045.0075, subpart 12.

L. The agency shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of items A to H K are satisfied.

[For text of subps 4 to 13, see M.R.]

7045.0630 SURFACE IMPOUNDMENTS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Design requirements.** Design requirements are as follows:

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A. The owner or operator of a surface impoundment must install two or more lines and leachate collection systems according to part 7045.0532, subpart 3, items A to H, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

B. The owner or operator of each unit referred to in item A must notify the commissioner at least 60 days before receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the commissioner's receipt of the notice.

[For text of subps 2 to 8, see M.R.]

7045.0632 WASTE PILES.

[For text of subps 1 to 4, see M.R.]

Subp. 4a. **Design requirements.** The owner or operator of a waste pile is subject to the requirements for liners and leachate collection and removal systems provided in part 7045.0534, subpart 3, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in Part A permit application, and with respect to waste received beginning May 8, 1985.

[For text of subps 5 to 7, see M.R.]

7045.0638 LANDFILLS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Design requirements.** Design requirements are as follows:

A. The owner or operator of a landfill must install two or more lines and leachate collection systems according to part 7045.0538, subpart 3, items A to K, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the part A permit application, with respect to waste received beginning May 8, 1985.

B. The owner or operator of each unit referred to in

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item A must notify the commissioner at least 60 days before receiving waste. The owner or operator of each facility submitting notice must file a part B application within six months of the commissioner's receipt of the notice.

[For text of subps 2 to 9, see M.R.]

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Owners and Operators of Hazardous Waste Facilities

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7045

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor