

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJM 10/16/91

RULE REVIEW CHECKLIST

File No. 1859
DATE RECEIVED 10/15/91
REVIEW DATE 10/24/91
DUE DATE 10/28/91
~~(DIS)~~APPROVED [signature] 10/28/91
WITHDRAWN _____

Docket No. 05.0009.~~0480~~ 0697
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 10/16/91
REVISOR (DIS)APPROVED 10-25-91
FILED W/SEC. OF STATE _____
RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

_____ Notice to Solicit Outside Information/Opinion (if applicable)
_____ Date published in State Register
_____ Comments

_____ ~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution
June 25, 1991 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
116.07 subd 4 Statutory Authority
✓ Small Business Statement
NA Expenditure of public money statement
7-3-91 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
July 19, 1991 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
July 22, 1991 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
September 24, 1991 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
September 24, 1991 Date

_____ ~~Written Requests, Submissions or Comments~~

✓ Declaration of Attorney
Steve Shakman Name of SAAG representing agency

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

_____ ~~Affidavit of Mailing Notice to Attorney General (if applicable)~~

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

OFFICE MEMORANDUM

DATE: October 28, 1991

TO: GLEN SKUTA
Minnesota Pollution Control Agency
520 Lafayette Road North

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Closure of Hazardous Waste Facilities

The above-referenced rule has been approved as to its legality by the Attorney General on October 28, 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.

MJM:sc
Enclosures
cc: Stephen Shakman
William Brown, Chief Judge
MaryAnn Hruby

Pollution Control Agency

Adopted Permanent Rules Relating to Closure of Hazardous Waste Facilities

Rules as Adopted

7045.0458 WASTE ANALYSIS REQUIREMENTS.

Subpart 1. **Waste analysis.** Waste analysis procedures are as follows:

A. Before an owner or operator treats, stores, or disposes of any hazardous waste, or nonhazardous waste if applicable under part 7045.0488, subpart 2a, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. This analysis must contain all the information which must be known in order to treat, store, or dispose of the waste in accordance with the requirements of parts 7045.0450 to 7045.0544 and 7045.1300 to 7045.1380, or with the conditions of a permit issued under the agency's permitting procedures.

[For text of item B, see M.R.]

C. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. The analysis must be repeated at the following times:

(1) when the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or nonhazardous waste if applicable under part 7045.0488, subpart 2a, has changed; and

[For text of subitem (2), see M.R.]

[For text of item D, see M.R.]

Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he or she will carry out to comply with subpart 1. The owner or operator shall keep this plan at the facility. The plan must specify:

A. the parameters for which each hazardous waste, or

nonhazardous waste if applicable under part 7045.0488, subpart 2a, will be analyzed and the rationale for the selection of these parameters;

[For text of items B to H, see M.R.]

7045.0486 CLOSURE.

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

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

[For text of item A, see M.R.]

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

[For text of subitem (1), see M.R.]

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

For units meeting the requirements of part 7045.0488, subpart 2a, the date on which the owner or operator expects to begin closure must be no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous wastes management unit will receive additional nonhazardous wastes, no later than one year

after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the commissioner that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the commissioner shall approve an extension to this one-year limit.

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

[For text of subp 6, see M.R.]

7045.0488 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste, or the final volume of nonhazardous waste if the owner or operator complies with all applicable requirements of subpart 2a, at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site all hazardous waste in accordance with the approved closure plan. The commissioner may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90 day period, that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all permit requirements and:

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the owner or operator complies with subpart 2a, there is a reasonable

likelihood that the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

[For text of item C, see M.R.]

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

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the owner or operator complies with subpart 2a, there is a reasonable likelihood the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

[For text of item C, see M.R.]

Subp. 2a. **Conditions for receiving nonhazardous waste.** The commissioner shall allow an owner or operator to receive only nonhazardous waste in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous waste at that unit if:

A. the owner or operator requests a permit

modification in compliance with all applicable requirements of chapter 7001 and in the permit modification request demonstrates that:

(1) the unit has the existing design capacity, as previously indicated by the owner or operator on the Part A application, to receive nonhazardous wastes;

(2) there is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one year after the final receipt of hazardous waste;

(3) the nonhazardous waste will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under parts 7045.0450 to 7045.0544;

(4) closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(5) the owner or operator is operating and will continue to operate in compliance with all applicable permit requirements;

B. the request to modify the permit includes an amended waste analysis plan required under part 7045.0458, groundwater monitoring and response program required under part 7045.0484, human exposure assessment required under parts 7001.0590 and 7001.0620, closure and postclosure plans required under parts 7045.0486 and 7045.0490, and updated cost estimates and demonstration of financial assurance for closure and postclosure care as necessary and appropriate required under parts 7045.0502 to 7045.0508, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities required under part 7045.0488, including the expected year of closure if applicable under part 7045.0486, subpart 4, as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes;

C. the request to modify the permit includes revisions, as necessary and appropriate, to affected conditions

of the permit to account for the receipt of nonhazardous wastes following receipt of the final volume of hazardous wastes; and

D. the request to modify the permit and the demonstrations referred to in items A and B are submitted to the commissioner no later than 120 days before the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit.

If the owner or operator of a surface impoundment is not in compliance with the liner and leachate collection system minimum technology requirements of part 7045.0532, subpart 3, the owner or operator may not delay closure in order to accept nonhazardous wastes.

[For text of subps 3 and 4, see M.R.]

7045.0502 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with parts 7045.0486 and 7045.0488 and applicable closure requirements in parts 7045.0526, subpart 9; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; 7045.0539, subparts 2 to 4; and 7045.0542, subpart 8. The closure cost estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

[For text of item A, see M.R.]

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous wastes if applicable under part 7045.0488, subpart 2a, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable

under part 7045.0488, subpart 2a, that might have economic value.

[For text of subps 2 to 4, see M.R.]

7045.0564 WASTE ANALYSIS REQUIREMENTS.

Subpart 1. **Waste analysis.** The analysis must comply with the following requirements:

A. Before an owner or operator treats, stores, or disposes of any hazardous waste, or nonhazardous waste if applicable under part 7045.0596, subpart 2a, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. This analysis must contain all the information which must be known in order to treat, store, or dispose of the waste in accordance with the requirements of parts 7045.0552 to 7045.0642 and 7045.1300 to 7045.1380.

[For text of item B, see M.R.]

C. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. The analysis must be repeated:

(1) when the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or nonhazardous waste if applicable under part 7045.0596, subpart 2a, has changed; and

[For text of subitem (2), see M.R.]

[For text of item D, see M.R.]

Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a written waste analysis plan which describes the procedures the owner or operator will carry out to comply with subpart 1. The owner or operator shall keep this plan at the facility. The plan must specify:

A. The parameters for which each hazardous waste, or nonhazardous waste if applicable under part 7045.0596, subpart 2a, will be analyzed and the rationale for the selection of these parameters.

[For text of items B to H, see M.R.]

7045.0594 CLOSURE.

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

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

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

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

[For text of subitem (1), see M.R.]

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

For units meeting the requirements of part 7045.0596, subpart 2a, the date on which the owner or operator expects to begin closure must be no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the commissioner that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and the owner or operator has taken, and

will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the commissioner shall approve an extension to this one-year limit.

[For text of item F, see M.R.]

[For text of subp 4, see M.R.]

7045.0596 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste, or the final volume of nonhazardous waste if the owner or operator complies with all applicable requirements in subpart 2a, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the unit or facility, or dispose on-site all hazardous waste in accordance with the approved closure plan. The commissioner may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90 day period, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, and:

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the facility owner or operator complies with subpart 2a, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

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

closure activities.

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

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous wastes if the facility owner or operator complies with subpart 2a, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

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

Subp. 2a. **Conditions for receiving nonhazardous waste.** The commissioner shall allow an owner or operator to receive only nonhazardous waste in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous waste at that unit if:

A. the owner or operator submits an amended Part B application, or a Part B application, if not previously

required, and demonstrates that:

(1) the unit has the existing design capacity, as previously indicated by the owner or operator on the Part A application, to receive nonhazardous wastes;

(2) there is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one year after the final receipt of hazardous waste;

(3) the nonhazardous waste will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under parts 7045.0552 to 7045.0642;

(4) closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(5) the owner or operator is operating and will continue to operate in compliance with all permit applicable interim status requirements;

B. the Part B application includes an amended waste analysis plan required under part 7045.0564, groundwater monitoring and response program required under parts 7045.0590 and 7045.0592, human exposure assessment required under parts 7001.0590 and 7001.0620, closure and postclosure plans required under parts 7045.0594 and 7045.0600, and updated cost estimates and demonstration of financial assurance for closure and postclosure care as necessary and appropriate required under parts 7045.0610 to 7045.0618, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities required under part 7045.0596, including the expected year of closure if applicable under part 7045.0594, subpart 3, item A, subitem (5), as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes;

C. the Part B application is amended, as necessary and appropriate, to account for the receipt of nonhazardous wastes following receipt of the final volume of hazardous

wastes; and

D. the Part B application and the demonstrations referred to in items A and B are submitted to the commissioner no later than 120 days before the date which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit.

If the owner or operator of a surface impoundment is not in compliance with the liner and leachate collection system minimum technology requirements of part 7045.0630, subpart 1a, the owner or operator may not delay closure in order to accept nonhazardous wastes.

[For text of subps 3 and 4, see M.R.]

7045.0610 COST ESTIMATE FOR FACILITY CLOSURE.

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

[For text of item A, see M.R.]

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous wastes if applicable under part 7045.0596, subpart 2a, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable under part 7045.0596, subpart 2a, that might have economic value.

[For text of subps 2 to 4, see M.R.]

APPROVED AS TO FORM AND LEGALITY

10/28 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY
SPECIAL ASSISTANT ATTORNEY GENERAL

APPROVED AS TO FORM AND LEGALITY

19

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

OCT 28 1991

Joan Anderson Growe
Secretary of State

12:45 PM
P.B.

Stat Authority 116.07 subd 4

Pursuant and subject to the provisions of chapter 14, and the provisions, the pollution control agency may ~~add~~ adopt, amend and rescind rules and standard having the force of law

end of comment period Sept 3, 1991

reçd Oct 15,

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

October 14, 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 Rule Amendments Governing the Delay of Closure of Hazardous Waste Facilities, Minn. Rules Pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610.

Dear Ms. Nolte:

On September 24, 1991, the Minnesota Pollution Control Agency adopted the above-captioned rule amendments governing the delay of closure of hazardous waste treatment, storage, and disposal facilities. Enclosed for your review are the following:

1. Certificate of Agency's Authorizing Resolution (June 25, 1991).
2. Rules as proposed with Revisor's certificate.
3. Notice of Intent to Adopt Rule Amendments Without a Public Hearing, as mailed (July 19, 1991).
4. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List (July 22, 1991).
5. Statement of Need and Reasonableness.
6. Notice of Intent to Adopt Rules Without a Public Hearing and rule amendments as proposed (15 SR 129-135, July 22, 1991).
7. Rules as adopted (original and three copies).
8. Certificate of Resolution Adopting Rules (September 24, 1991).
9. Findings of Fact, Conclusions, and Order Adopting Rules (September 24, 1991) (two copies).

10. Affidavit of Receiving No Requests for Notice of Submission of Rule Amendments Adopted Without a Public Hearing to the Attorney General (October 4, 1991).

11. Declaration of Counsel.

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

Sincerely,

Glenn D. Skuta

Glenn D. Skuta
Rules Unit
Program Development Section
Hazardous Waste Division

GDS:jp

Enclosures

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing The Delay of Closure Period at Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the management of hazardous waste. Specifically, the amendments the Agency is proposing pertain to the delay of the closure period allowed for hazardous waste treatment, storage, and disposal facilities. The proposed amendments set forth the conditions under which the owners or operators of hazardous waste facilities may delay closure of their facilities in order to receive nonhazardous wastes. The proposed amendments incorporate into state rules federal regulations promulgated August 14, 1989 (see Exhibit 2).

The federal amendments were promulgated by the U.S. Environmental Protection Agency (EPA) under the authority of the Resource Conservation and Recovery Act (RCRA). Amendments promulgated under the authority of RCRA, such as these, are not effective in Minnesota until they are incorporated into state rules. The Agency is required to adopt federal regulations in order to maintain EPA authorization to administer its hazardous waste program when the new regulations are more stringent than current state rules. In contrast, the Agency is not required to adopt federal regulations which are less stringent than current state rules. The proposed amendments incorporate federal regulations which are less stringent than existing rules. Although not required to adopt these amendments, the Agency believes that doing so will improve the

hazardous waste rules by allowing for flexibility in the rules and addressing a situation heretofore not addressed by the rules. The authority to adopt these amendments is provided under Minn. Stat. § 116.07, subd. 4 (1990).

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the Agency's explanation of the need for the proposed amendments. Part III discusses the reasonableness of the proposed amendments. Part IV documents how the agency has considered the methods of reducing the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1990). Part V documents the economic factors the Agency considered in drafting the proposed amendments as required by Minn. Stat. § 116.07, subd. 6 (1990). Part VI sets forth the Agency's conclusion regarding the proposed amendments. Part VII 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. NEED FOR THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

Minn. Stat. ch. 14 (1990) 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 which does not easily lend itself to evaluation of each proposed revision. In the case of this proceeding, the need for amendments to the Agency's rules governing the management of hazardous waste has two bases: (A) the need for consistency with federal hazardous waste

regulations; and (B) the need to provide for flexibility within the hazardous waste rules while still providing adequate protection of human health and the environment.

A. Need for Consistency With Federal Regulations.

In 1976, Congress adopted RCRA (42 U.S.C. § 6901 et seq.) to regulate the management of hazardous waste. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and set up a mechanism for the EPA to grant authority to states to operate the program. In states that receive authorization, the state environmental agency administers the state program in lieu of the federal program. To receive and maintain authorization, the state program must be "equivalent" to the federal program and consistent with federal or state programs applicable to other states. EPA has defined "equivalent" to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, EPA's goal is to achieve an integrated national program which requires that final state programs do not conflict with each other or with the federal program. The proposed amendments contained in this rulemaking are at least as stringent as the federal amendments which they adopt. The proposed amendments are more stringent than the federal amendments in one area. The federal amendments allow for delay of closure at surface impoundments which are not in compliance with the minimum technology requirements for liners and leachate collection systems. The proposed amendments do not allow the delay of closure in these situations. The rest of the proposed amendments are as stringent as the federal amendments which they adopt.

The Agency has decided to incorporate these less stringent amendments into state rules in order to provide for consistency between state rules and federal regulations. Consistency between federal regulations and state rules is

desireable in order simplify the regulation of hazardous waste for both the regulated community and the regulators. The Agency desires to maintain consistency between federal regulations and state rules when the federal regulations are determined to be environmentally protective and beneficial to the hazardous waste program. This is the case in these proposed amendments. These regulations, being promulgated under the authority of RCRA, will not be effective in Minnesota until they are adopted by the Agency.

B. Need to Provide for Flexibility Within the Hazardous Waste Rules While Still Providing Adequate Protection of Human Health and the Environment.

The proposed amendments provide flexibility in the hazardous waste rules and address a situation previously not addressed in the rules. They do so by allowing the delay of closure of hazardous waste facility units in order to allow the owners or operators of facilities to accept nonhazardous waste. Through these proposed amendments, the Agency intends to afford facility owners or operators the oportunity to engage in the environmentally beneficial activity of managing nonhazardous waste in a secure facility. At the same time, the proposed amendments specify the conditions under which facility owners or operators may delay closure. The proposed amendments require facility owners or operators to submit permit modifications, or amended Part B applications in the case of interim status facilities, which address the conditions under which closure may be delayed and nonhazardous wastes may be accepted. These requirements will help insure protection of human health and the environment, while making the hazardous waste rules more flexible. It is necessary to adopt the proposed amendments for these reasons.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1990) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or

amendments. The Agency proposes to incorporate federal requirements promulgated by EPA into the state hazardous waste rules. A complete discussion of the reasonableness of these federal amendments is presented in Exhibits 1 and 2 listed in Part VII of this document, which are hereby incorporated by reference. The proposed amendments to the state rules incorporating these federal amendments are found in Minn. Rules pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610. The reasonableness of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules pts. 7045.0488 and 7045.0596.

The existing Minn. Rules pts. 7045.0488 and 7045.0596 contain the requirements for closure activities at hazardous waste facilities. Minn. Rules pt. 7045.0488 addresses fully permitted facilities and part 7045.0596 addresses facilities operating under interim status requirements, but both parts contain parallel requirements. The proposed amendments create a new subpart 2a in both of these parts by adopting federal regulations which set out the conditions under which a hazardous waste facility owner or operator may accept nonhazardous wastes at his or her facility. It is reasonable to adopt these provisions in order to enable facility owners and operators to provide the environmentally beneficial function of managing nonhazardous waste at a secure facility. The proposed amendments require facility owners or operators wishing to accept nonhazardous wastes at their facilities to submit a request for permit modifications or an amended Part B application, as applicable. These petitions must address specific aspects of facility operations, structure, and contents. It is reasonable to adopt these provisions in order to ensure that human health and the environment will continue to be protected as operations at the facility change with the onset of the management of nonhazardous wastes.

The federal amendments include provisions for allowing surface impoundments which do not meet the double-liner and leachate collection system minimum technology requirements to receive nonhazardous wastes. The proposed amendments do not allow the acceptance of nonhazardous wastes at surface impoundments of this type. It would not be reasonable to allow owners and operators of facilities that do not meet the full requirements of the hazardous waste rules to delay closure of their facilities because these facilities are not constructed in a manner promoting a high level of protection of human health and the environment. It is reasonable to not include these provisions in the proposed amendments to ensure protection of human health and the environment.

B. Minn. Rules pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.594, 7045.0596, 7045.0610.

The proposed amendments to these rules are necessitated by the proposed amendments to Minn. Rules pt. 7045.0488, subp. 2a and Minn. Rules pt. 7045.0596, subp. 2a discussed above. The current rules do not address the possibility of a facility operator delaying closure of a facility in order to accept nonhazardous wastes. Since these parts and subparts do not currently address this situation, and in light of the amendments to the rules discussed above, which provide for the delay of closure, it is reasonable to amend these supporting rules in order to address this situation.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

To comply with Minn. Stat. § 14.115 (1990), the Agency has considered the statutory methods for reducing the impact of the proposed rules on small businesses. The statute requires that each of the following methods be considered:

1. The establishment of less stringent compliance or reporting requirements;

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;

3. The consolidation or simplification of compliance or reporting requirements;

4. The establishment of performance standards for small businesses to replace design or operational standards in the rule; and,

5. The exemption of small businesses from any or all requirements of the rule.

None of the proposed amendments will have a negative impact on small businesses. The proposed amendments are designed to allow for flexibility in the rules and are less stringent than current rules, thus having a beneficial effect on all businesses to which they apply.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercizing its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1990) 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, and practical under the circumstances.

The proposed amendments reduce the burden of the hazardous waste rules. The proposed amendments are designed to allow for flexibility in the rules and are less stringent than current rules, thus having a beneficial economic effect on all businesses to which they apply. The proposed amendments will not result in any adverse economic impacts on any business.

VI. CONCLUSION

The Agency has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's hazardous waste rules. The Agency has also stated in this document that the proposed amendments will not adversely affect small businesses and will not incur greater economic costs for businesses. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to the hazardous waste rules.

VII. LIST OF EXHIBITS

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

Agency Ex. No.	Title
1	Federal Register, Vol. 53, No. 108, pages 20738-20761, June 6, 1988.
2	Federal Register, Vol. 54, No. 155, pages 33376-33398, August 14, 1989.

June 13, 1991
Date

for Ann Glumac
Charles W. Williams

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Charles W. Williams, 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 twenty-fifth day of June, 1991, 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 hazardous waste rules governing the management, treatment, storage, and disposal of hazardous waste, Minn. Rules pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610, 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 (1990).

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 and 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 June, 1991.

Charles W. Williams
Commissioner

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Charles W. Williams, 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 twenty-fourth day of September 1991, 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 rule amendments governing the management of hazardous waste treatment, storage, and disposal facilities, Minn. Rules pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610, 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 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 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 24 day of September, 1991.

CHARLES W. WILLIAMS
Commissioner

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Pollution Control Agency

Proposed Permanent Rules Relating to Closure 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 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 (1990). The MPCA's authority to adopt the rule amendments is set forth in *Minnesota Statutes* § 116.07, subd. 4 (1990).

All persons have until 4:30 p.m. on September 3, 1991, 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 should state his or her name and address, and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to Glenn Skuta, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155 (telephone 612/297-8319).

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 pertaining to the management of hazardous waste, if adopted, incorporate federal regulations into state rules. The proposed rule amendments specify the conditions under which owners and operators of hazardous waste treatment, storage, and disposal facilities may delay closure of their facilities in order to receive nonhazardous wastes. One free copy of the rules is available upon request from Glenn Skuta at the address and telephone number given 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 Glenn Skuta upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1990), "Small business considerations in rulemakings," that the proposed rule amendments will not negatively affect small businesses which generate hazardous waste. The proposed rule amendments are designed to allow for flexibility in the rules and are less stringent than current rules, thus having a beneficial effect on all businesses to which they apply.

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

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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 as adopted, must submit the written request to Glenn Skuta.

Charles W. Williams
Commissioner

Rules as Proposed

7045.0458 WASTE ANALYSIS REQUIREMENTS.

Subpart 1. **Waste analysis.** Waste analysis procedures are as follows:

A. Before an owner or operator treats, stores, or disposes of any hazardous waste, ~~he or she~~ or nonhazardous waste if applicable under part 7045.0488, subpart 2a, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. This analysis must contain all the information which must be known in order to treat, store, or dispose of the waste in accordance with the requirements of parts 7045.0450 to 7045.0544 and 7045.1300 to 7045.1380, or with the conditions of a permit issued under the agency's permitting procedures.

[For text of item B, see M.R.]

C. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. The analysis must be repeated at the following times:

(1) when the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or nonhazardous waste if applicable under part 7045.0488, subpart 2a, has changed; and

[For text of subitem (2), see M.R.]

[For text of item D, see M.R.]

Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he or she will carry out to comply with subpart 1. The owner or operator shall keep this plan at the facility. The plan must specify:

A. the parameters for which each hazardous waste, or nonhazardous waste if applicable under part 7045.0488, subpart 2a, will be analyzed and the rationale for the selection of these parameters;

[For text of items B to H, see M.R.]

7045.0486 CLOSURE.

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

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

[For text of item A, see M.R.]

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

[For text of subitem (1), see M.R.]

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

For units meeting the requirements of part 7045.0488, subpart 2a, the date on which the owner or operator expects to begin closure must be no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous wastes management unit will receive additional nonhazardous wastes, no later than one year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the commissioner that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the commissioner shall approve an extension to this one-year limit.

If the facility's permit or interim status is terminated, or if the facility is otherwise ordered by judicial decree or compliance order

to cease receiving hazardous waste or to close, then the requirement in this item does not apply. However, the owner or operator shall close the facility in accordance with established deadlines.

[For text of subp 6, see M.R.]

7045.0488 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste, or the final volume of nonhazardous waste if the owner or operator complies with all applicable requirements of subpart 2a, at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site all hazardous waste in accordance with the approved closure plan. The commissioner may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90 day period, that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all permit requirements and:

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the owner or operator complies with subpart 2a, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

[For text of item C, see M.R.]

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

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the owner or operator complies with subpart 2a, there is a reasonable likelihood the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

[For text of item C, see M.R.]

Subp. 2a. **Conditions for receiving nonhazardous waste.** The commissioner shall allow an owner or operator to receive only nonhazardous waste in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous waste at that unit if:

A. the owner or operator requests a permit modification in compliance with all applicable requirements of chapter 7001 and in the permit modification request demonstrates that:

(1) the unit has the existing design capacity, as previously indicated by the owner or operator on the Part A application, to receive nonhazardous wastes;

(2) there is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one year after the final receipt of hazardous waste;

(3) the nonhazardous waste will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under parts 7045.0450 to 7045.0544;

(4) closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(5) the owner or operator is operating and will continue to operate in compliance with all applicable permit requirements;

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B. the request to modify the permit includes an amended waste analysis plan required under part 7045.0458, groundwater monitoring and response program required under part 7045.0484, human exposure assessment required under parts 7001.0590 and 7001.0620, closure and postclosure plans required under parts 7045.0486 and 7045.0490, and updated cost estimates and demonstration of financial assurance for closure and postclosure care as necessary and appropriate required under parts 7045.0502 to 7045.0508, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities required under part 7045.0488, including the expected year of closure if applicable under part 7045.0486, subpart 4, as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes;

C. the request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of nonhazardous wastes following receipt of the final volume of hazardous wastes; and

D. the request to modify the permit and the demonstrations referred to in items A and B are submitted to the commissioner no later than 120 days before the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit.

If the owner or operator of a surface impoundment is not in compliance with the liner and leachate collection system minimum technology requirements of part 7045.0532, subpart 3, the owner or operator may not delay closure in order to accept nonhazardous wastes.

[For text of subps 3 and 4, see M.R.]

7045.0502 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with parts 7045.0486 and 7045.0488 and applicable closure requirements in parts 7045.0526, subpart 9; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; 7045.0539, subparts 2 to 4; and 7045.0542, subpart 8. The closure cost estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

[For text of item A, see M.R.]

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous wastes if applicable under part 7045.0488, subpart 2a, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable under part 7045.0488, subpart 2a, that might have economic value.

[For text of subps 2 to 4, see M.R.]

7045.0564 WASTE ANALYSIS REQUIREMENTS.

Subpart 1. **Waste analysis.** The analysis must comply with the following requirements:

A. Before an owner or operator treats, stores, or disposes of any hazardous waste, ~~he or she~~ or nonhazardous waste if applicable under part 7045.0596, subpart 2a, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. This analysis must contain all the information which must be known in order to treat, store, or dispose of the waste in accordance with the requirements of parts 7045.0552 to 7045.0642 and 7045.1300 to 7045.1380.

[For text of item B, see M.R.]

C. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. The analysis must be repeated:

(1) when the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or nonhazardous waste if applicable under part 7045.0596, subpart 2a, has changed; and

[For text of subitem (2), see M.R.]

[For text of item D, see M.R.]

Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a written waste analysis plan which describes the procedures the owner or operator will carry out to comply with subpart 1. The owner or operator shall keep this plan at the facility. The plan must specify:

A. The parameters for which each hazardous waste, or nonhazardous waste if applicable under part 7045.0596, subpart 2a, will be analyzed and the rationale for the selection of these parameters.

[For text of items B to H, see M.R.]

7045.0594 CLOSURE.

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

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

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

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

[For text of subitem (1), see M.R.]

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

For units meeting the requirements of part 7045.0596, subpart 2a, the date on which the owner or operator expects to begin closure must be no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the commissioner that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the commissioner shall approve an extension to this one-year limit.

[For text of item F, see M.R.]

[For text of subp 4, see M.R.]

7045.0596 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste, or the final volume of nonhazardous waste if the owner or operator complies with all applicable requirements in subpart 2a, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the unit or facility, or dispose on-site all hazardous waste in accordance with the approved closure plan. The commissioner may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90 day period, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, and:

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the facility owner or operator complies with subpart 2a, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

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

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

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

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous wastes if the facility owner or operator complies with subpart 2a, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

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

Subp. 2a. **Conditions for receiving nonhazardous waste.** The commissioner shall allow an owner or operator to receive only nonhazardous waste in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous waste at that unit if:

A. the owner or operator submits an amended Part B application, or a Part B application, if not previously required, and demonstrates that:

(1) the unit has the existing design capacity, as previously indicated by the owner or operator on the Part A application, to receive nonhazardous wastes;

(2) there is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one year after the final receipt of hazardous waste;

(3) the nonhazardous waste will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under parts 7045.0552 to 7045.0642;

(4) closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(5) the owner or operator is operating and will continue to operate in compliance with all permit applicable interim status requirements;

B. the Part B application includes an amended waste analysis plan required under part 7045.0564, groundwater monitoring and response program required under parts 7045.0590 and 7045.0592, human exposure assessment required under parts 7001.0590 and 7001.0620, closure and postclosure plans required under parts 7045.0594 and 7045.0600, and updated cost estimates and demonstration of financial assurance for closure and postclosure care as necessary and appropriate required under parts 7045.0610 to 7045.0618, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities required under part 7045.0596, including the expected year of closure if applicable under part 7045.0594, subpart 3, item A, subitem (5), as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes;

C. the Part B application is amended, as necessary and appropriate, to account for the receipt of nonhazardous wastes following receipt of the final volume of hazardous wastes; and

D. the Part B application and the demonstrations referred to in items A and B are submitted to the commissioner no later than 120 days before the date which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit.

If the owner or operator of a surface impoundment is not in compliance with the liner and leachate collection system minimum technology requirements of part 7045.0630, subpart 1a, the owner or operator may not delay closure in order to accept nonhazardous wastes.

[For text of subps 3 and 4, see M.R.]

7045.0610 COST ESTIMATE FOR FACILITY CLOSURE.

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

[For text of item A, see M.R.]

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous wastes if applicable under part 7045.0596, subpart 2a, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable under part 7045.0596, subpart 2a, that might have economic value.

[For text of subps 2 to 4, see M.R.]

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. §14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. §14.33 and upon the approval of the Revisor of Statutes as specified in §14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under §14.18.

Board of Assessors

Adopted Permanent Rules Relating to Licensing

The rules proposed and published at *State Register*, Volume 15, Number 42, pages 2262-2265, April 15, 1991 (15 SR 2262) are adopted as proposed.

Department of Public Safety

Office of Pipeline Safety

Adopted Permanent Rules Relating to One Call Excavation Notice System Enforcement and Sanctions

The rules proposed and published at *State Register*, Volume 15, Number 44, pages 2344-2349, April 29, 1991 (15 SR 2344) are adopted with the following modifications:

Rules as Adopted

7560.0200 ~~UNDERGROUND FACILITY LOCATE; RELIANCE~~ EXCAVATOR: DUTY TO NOTIFY NOTIFICATION CENTER.

After facilities are located by an operator, an excavator ~~must be able to rely on the locate for a period of 48 hours from the date and the time when excavation is to begin unless~~ shall notify the notification center if:

A. the excavator postpones the excavation commencement time stated in the excavation notice by more than 48 hours or cancels the excavation;

B. the markings have been obliterated or obscured;

~~B.~~ C. weather conditions have impeded visibility of the markings;

~~C.~~ D. the site shows evidence of recent excavation; or

~~D.~~ E. the excavator has other reason to believe the markings are incorrect or missing.

An excavator may not use a locate more than 48 hours after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

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.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments of Rules Governing the Delay of Closure of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610

AFFADAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Glenn Skuta, 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 (1990) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of the 19th day of July, 1991.

That on the 19th day of July, 1991, 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.

Glenn Skuta

Subscribed and sworn to before me
this 22 day of July, 1991.

Diane Fox
Notary Public

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

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments
Governing the Delay of Closure Period
at Hazardous Waste Treatment, Storage and
Disposal Facilities, Minn. Rules Ch. 7045

DECLARATION OF COUNSEL

I, Stephen Shakman, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is .0697.

Dated: October 11, 1991.

Stephen Shakman
Special Assistant
Attorney General

Pollution Control Agency

Proposed Permanent Rules Relating to Closure of Hazardous Waste Facilities

Rules as Proposed

7045.0458 WASTE ANALYSIS REQUIREMENTS.

Subpart 1. **Waste analysis.** Waste analysis procedures are as follows:

A. Before an owner or operator treats, stores, or disposes of any hazardous waste, ~~he or she~~ or nonhazardous waste if applicable under part 7045.0488, subpart 2a, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. This analysis must contain all the information which must be known in order to treat, store, or dispose of the waste in accordance with the requirements of parts 7045.0450 to 7045.0544 and 7045.1300 to 7045.1380, or with the conditions of a permit issued under the agency's permitting procedures.

[For text of item B, see M.R.]

C. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. The analysis must be repeated at the following times:

(1) when the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or nonhazardous waste if applicable under part 7045.0488, subpart 2a, has changed; and

[For text of subitem (2), see M.R.]

[For text of item D, see M.R.]

Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he or she will carry out to comply with subpart 1. The owner or operator shall keep this plan at the facility. The plan must specify:

A. the parameters for which each hazardous waste, or

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nonhazardous waste if applicable under part 7045.0488, subpart 2a, will be analyzed and the rationale for the selection of these parameters;

[For text of items B to H, see M.R.]

7045.0486 CLOSURE.

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

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

[For text of item A, see M.R.]

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

[For text of subitem (1), see M.R.]

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

For units meeting the requirements of part 7045.0488, subpart 2a, the date on which the owner or operator expects to begin closure must be no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous wastes management unit will receive additional nonhazardous wastes, no later than one year

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after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the commissioner that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and the owner or operator has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the commissioner shall approve an extension to this one-year limit.

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

[For text of subp 6, see M.R.]

7045.0488 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste, or the final volume of nonhazardous waste if the owner or operator complies with all applicable requirements of subpart 2a, at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site all hazardous waste in accordance with the approved closure plan. The commissioner may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90 day period, that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all permit requirements and:

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the owner or operator complies with subpart 2a, there is a reasonable

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likelihood that the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

[For text of item C, see M.R.]

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

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the owner or operator complies with subpart 2a, there is a reasonable likelihood the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

[For text of item C, see M.R.]

Subp. 2a. **Conditions for receiving nonhazardous waste.** The commissioner shall allow an owner or operator to receive only nonhazardous waste in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous waste at that unit if:

A. the owner or operator requests a permit

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modification in compliance with all applicable requirements of chapter 7001 and in the permit modification request demonstrates that:

(1) the unit has the existing design capacity, as previously indicated by the owner or operator on the Part A application, to receive nonhazardous wastes;

(2) there is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one year after the final receipt of hazardous waste;

(3) the nonhazardous waste will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under parts 7045.0450 to 7045.0544;

(4) closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(5) the owner or operator is operating and will continue to operate in compliance with all applicable permit requirements;

B. the request to modify the permit includes an amended waste analysis plan required under part 7045.0458, groundwater monitoring and response program required under part 7045.0484, human exposure assessment required under parts 7001.0590 and 7001.0620, closure and postclosure plans required under parts 7045.0486 and 7045.0490, and updated cost estimates and demonstration of financial assurance for closure and postclosure care as necessary and appropriate required under parts 7045.0502 to 7045.0508, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities required under part 7045.0488, including the expected year of closure if applicable under part 7045.0486, subpart 4, as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes;

C. the request to modify the permit includes revisions, as necessary and appropriate, to affected conditions

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of the permit to account for the receipt of nonhazardous wastes following receipt of the final volume of hazardous wastes; and

D. the request to modify the permit and the demonstrations referred to in items A and B are submitted to the commissioner no later than 120 days before the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit.

If the owner or operator of a surface impoundment is not in compliance with the liner and leachate collection system minimum technology requirements of part 7045.0532, subpart 3, the owner or operator may not delay closure in order to accept nonhazardous wastes.

[For text of subps 3 and 4, see M.R.]

7045.0502 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with parts 7045.0486 and 7045.0488 and applicable closure requirements in parts 7045.0526, subpart 9; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; 7045.0539, subparts 2 to 4; and 7045.0542, subpart 8. The closure cost estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

[For text of item A, see M.R.]

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous wastes if applicable under part 7045.0488, subpart 2a, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable

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under part 7045.0488, subpart 2a, that might have economic value.

[For text of subps 2 to 4, see M.R.]

7045.0564 WASTE ANALYSIS REQUIREMENTS.

Subpart 1. **Waste analysis.** The analysis must comply with the following requirements:

A. Before an owner or operator treats, stores, or disposes of any hazardous waste, ~~he or she~~ or nonhazardous waste if applicable under part 7045.0596, subpart 2a, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. This analysis must contain all the information which must be known in order to treat, store, or dispose of the waste in accordance with the requirements of parts 7045.0552 to 7045.0642 and 7045.1300 to 7045.1380.

[For text of item B, see M.R.]

C. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. The analysis must be repeated:

(1) when the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste, or nonhazardous waste if applicable under part 7045.0596, subpart 2a, has changed; and

[For text of subitem (2), see M.R.]

[For text of item D, see M.R.]

Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a written waste analysis plan which describes the procedures the owner or operator will carry out to comply with subpart 1. The owner or operator shall keep this plan at the facility. The plan must specify:

A. The parameters for which each hazardous waste, or nonhazardous waste if applicable under part 7045.0596, subpart 2a, will be analyzed and the rationale for the selection of these parameters.

[For text of items B to H, see M.R.]

7045.0594 CLOSURE.

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

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

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

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

[For text of subitem (1), see M.R.]

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

For units meeting the requirements of part 7045.0596, subpart 2a, the date on which the owner or operator expects to begin closure must be no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of nonhazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional nonhazardous wastes, no later than one year after the date on which the unit received the most recent volume of nonhazardous wastes. If the owner or operator can demonstrate to the commissioner that the hazardous waste management unit has the capacity to receive additional nonhazardous wastes and the owner or operator has taken, and

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will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the commissioner shall approve an extension to this one-year limit.

[For text of item F, see M.R.]

[For text of subp 4, see M.R.]

7045.0596 CLOSURE ACTIVITIES.

Subpart 1. **Time allowance to begin closure activities.** Within 90 days after receiving the final volume of hazardous waste, or the final volume of nonhazardous waste if the owner or operator complies with all applicable requirements in subpart 2a, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the unit or facility, or dispose on-site all hazardous waste in accordance with the approved closure plan. The commissioner may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90 day period, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, and:

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous waste if the facility owner or operator complies with subpart 2a, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

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

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closure activities.

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

[For text of item A, see M.R.]

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, or has the capacity to receive nonhazardous wastes if the facility owner or operator complies with subpart 2a, there is a reasonable likelihood that the owner or operator or another person will recommence operation of the unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

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

Subp. 2a. **Conditions for receiving nonhazardous waste.** The commissioner shall allow an owner or operator to receive only nonhazardous waste in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous waste at that unit if:

A. the owner or operator submits an amended Part B application, or a Part B application, if not previously

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required, and demonstrates that:

(1) the unit has the existing design capacity, as previously indicated by the owner or operator on the Part A application, to receive nonhazardous wastes;

(2) there is a reasonable likelihood that the owner or operator or another person will receive nonhazardous wastes in the unit within one year after the final receipt of hazardous waste;

(3) the nonhazardous waste will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under parts 7045.0552 to 7045.0642;

(4) closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(5) the owner or operator is operating and will continue to operate in compliance with all permit applicable interim status requirements;

B. the Part B application includes an amended waste analysis plan required under part 7045.0564, groundwater monitoring and response program required under parts 7045.0590 and 7045.0592, human exposure assessment required under parts 7001.0590 and 7001.0620, closure and postclosure plans required under parts 7045.0594 and 7045.0600, and updated cost estimates and demonstration of financial assurance for closure and postclosure care as necessary and appropriate required under parts 7045.0610 to 7045.0618, to reflect any changes due to the presence of hazardous constituents in the nonhazardous wastes, and changes in closure activities required under part 7045.0596, including the expected year of closure if applicable under part 7045.0594, subpart 3, item A, subitem (5), as a result of the receipt of nonhazardous wastes following the final receipt of hazardous wastes;

C. the Part B application is amended, as necessary and appropriate, to account for the receipt of nonhazardous wastes following receipt of the final volume of hazardous

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wastes; and

D. the Part B application and the demonstrations referred to in items A and B are submitted to the commissioner no later than 120 days before the date which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit.

If the owner or operator of a surface impoundment is not in compliance with the liner and leachate collection system minimum technology requirements of part 7045.0630, subpart 1a, the owner or operator may not delay closure in order to accept nonhazardous wastes.

[For text of subps 3 and 4, see M.R.]

7045.0610 COST ESTIMATE FOR FACILITY CLOSURE.

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

[For text of item A, see M.R.]

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous wastes if applicable under part 7045.0596, subpart 2a, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes, or nonhazardous wastes if applicable under part 7045.0596, subpart 2a, that might have economic value.

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[For text of subps 2 to 4, see M.R.]

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Closure 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

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments Governing the Delay of Closure Period at 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 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 Minn. Stat. §§ 14.22 to 14.28 (1990). The MPCA's authority to adopt the rule amendments is set forth in Minn. Stat. § 116.07, subd. 4 (1990).

(2) All persons have until 4:30 p.m. on September 3, 1991, 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 should state his or her name and address, and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1990).

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

Glenn Skuta
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/297-8319

(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.

(9) The proposed rule amendments pertaining to the management of hazardous waste, if adopted, incorporate federal regulations into state rules. The proposed rule amendments specify the conditions under which owners and operators of hazardous waste treatment, storage, and disposal facilities may delay closure of their facilities in order to receive nonhazardous wastes. One free copy of the rules is available upon request from Glenn Skuta at the address and telephone number given 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 Glenn Skuta upon request.

(14) You are hereby advised, pursuant to Minn. Stat. § 14.115 (1990), "Small business considerations in rulemakings", that the proposed rule amendments will not negatively affect small businesses which generate hazardous waste. The proposed rule amendments are designed to allow for flexibility in the rules and are less stringent than current rules, thus having a beneficial effect on all businesses to which they apply.

(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 as adopted, must submit the written request to Glenn Skuta.

Dated: 7/3/91

Charles W. Williams
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing the Delay of Closure of Hazardous Waste Facilities, Minn. Rules Pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Glenn Skuta, 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 129 - 135, July 22, 1991) 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.

Glenn Skuta

Subscribed and sworn to before me
this 4th day of Oct, 1991.

Jodi D. Rasmussen
Notary Public

JODI D. RASMUSSEN
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 10-23-94

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing the Closure of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the twenty-fourth day of September 1991. 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 amendment without a public hearing was published in the State Register on July 22, 1991 (16 State Register 129 - 135), 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 July 19, 1991.

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 43 days after notice of proposed rulemaking. The 43-day comment period, as set out in the notice, expired on September 3, 1991.

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. The MPCA received no written comment letters during the comment period.

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.

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. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610 governing the closure 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).

Dated: 9/24/91

Charles W. Williams
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing the Closure of Hazardous Waste Treatment, Storage, and Disposal Facilities, Minn. Rules Pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the twenty-fourth day of September 1991. 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 amendment without a public hearing was published in the State Register on July 22, 1991 (16 State Register 129 - 135), 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 July 19, 1991.

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6. The MPCA received no written comment letters during the comment period.

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.

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. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610 governing the closure 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)

Dated: 9/24/91

Charles W. Williams
Commissioner