

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

CE (?)

6/24/92

RULE REVIEW CHECKLIST

File No. 1923 Docket No. 06 0009 0697

DATE RECEIVED ~~7-28-92~~ 6-23-92 ADOPTED W/O HEARING _____

REVIEW DATE 7-2-92 EMERGENCY RULE _____

DUE DATE 7-7-92 TO REVISOR ON 6/24/92

~~(DIS)~~APPROVED ~~July 7 92~~ REVISOR (DIS)APPROVED 6/25/92

WITHDRAWN _____ FILED W/SEC. OF STATE 7-8-92

RETURNED TO AGENCY 7-8-92

✓ 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

Nov 26, 1991 Date adopted

✓ Proposed Rule

✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule

116.07 subd 4 Statutory Authority

_____ Small Business Statement

December 4, 1991 Expenditure of public money statement

✓ Signature

✓ Statement of Need and Reasonableness (if applicable)

_____ Small Business Statement

_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

December 20, 1991 Dated 30/25 days before adoption

_____ Notice attached indicates it is attached

✓ Copy of rule or summary attached

✓ Publication in State Register

December 23, 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 not mandatory

_____ end of comment period (§ 14.26) (rules without hearing)

_____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting

April 28, 1992 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

April 28, 1992 Date

✓ Written Requests, Submissions or Comments

_____ Declaration of Attorney

Keith Mohelan Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

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

Rules rel

Silver Celebration 25/20

Minnesota Pollution Control Agency

Celebrating our 25th anniversary and the 20th anniversary of the Clean Water Act

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

Dear Ms. Nolte:

RE: In the Matter of the Proposed Rule Amendments Governing the Management of Hazardous Waste at Wood Treating Operations and the Exemption of Reclaimed Chlorofluorocarbons From Hazardous Waste Regulation Minn. Rules pts. 7001.0623, 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644.

On April 28, 1992, the Minnesota Pollution Control Agency adopted the above-captioned rule amendments governing the management of hazardous waste at wood treating operations and the exemption of reclaimed chlorofluorocarbons from hazardous waste regulation. Enclosed for your review are the following:

1. Certificate of Agency's Authorizing Resolution (November 26, 1991).

2. Rules as proposed with Revisor's certificate.

3. Notice of Intent to Adopt Rule Amendments Without a Public Hearing, as mailed (December 20, 1991).

4. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List (December 30, 1991).

5. Statement of Need and Reasonableness.

6. Notice of Intent to Adopt Rule Amendments Without a Public Hearing and rule amendments as proposed (16 SR 1531 - 1543, December 23, 1991).

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

8. Certificate of Resolution Adopting Rules (April 28, 1992).

9. Findings of Fact, Conclusions, and Order Adopting Rules (April 28, 1992) (two copies).

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Wood Preserving Operation Wastes

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapters 7001 and 7045

APPROVED AS TO FORM AND LEGALITY
July 7 1992
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

original filed
July 8th 1992

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 20 1992
Joan Anderson Growe
Secretary of State

10:00 AM
PRB

The attached rules are approved for filing with the Secretary of State

Carla M. Riehle

Carla M. Riehle
Assistant Revisor

Pollution Control Agency

Adopted Permanent Rules Relating to Wood Preserving Operation Wastes

Rules as Adopted

~~7001.0623 PART B INFORMATION REQUIREMENTS FOR DRIP PADS.~~

~~Except as otherwise provided in part 7045.0450, subpart 1, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:~~

~~A. a list of hazardous wastes placed or to be placed on each drip pad; and~~

~~B. detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated, and maintained to meet the requirements of part 7045.0546, subpart 3, including the as built drawings and specifications. This submission must address the following items as specified in part 7045.0546, subpart 2:~~

~~(1) the design characteristics of the drip pad;~~

~~(2) the liner system;~~

~~(3) the leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous wastes or accumulated liquid at the earliest practicable time;~~

~~(4) practices designed to maintain drip pads;~~

~~(5) the associated collection system;~~

~~(6) control of run on to the drip pad;~~

~~(7) control of run off from the drip pad;~~

~~(8) the interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;~~

Approved by Revisor

~~(9) procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials including, but limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning;~~

~~(10) provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;~~

~~(11) operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;~~

~~(12) procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased, including record keeping practices;~~

~~(13) provisions for ensuring that collection and holding units associated with the run on and run off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;~~

~~(14) if treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;~~

~~(15) a description of how each drip pad, including appurtenances for control of run on and run off, will be inspected in order to meet the requirements of part 7045.0546, subpart 3. This information should be included in the inspection plan submitted under part 7001.0560, item E;~~

~~(16) a certification signed by an independent, qualified, registered professional engineer, stating that the drip pad design meets the requirements of part 7045.0546, subpart 3, items A to F; and~~

~~(17) a description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under part 7045.0546, subpart 4, item A. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans~~

Approved
by Revisor _____

~~and an engineering report describing how part 7045.0538, subpart 7, will be complied with. This information should be included in the closure plan and, where applicable, the postclosure plan submitted under part 7001.0560, item B.~~

7045.0020 DEFINITIONS.

[For text of subps 1 to 20, see M.R.]

~~Subp. 20a. Drip pad. "Drip pad" means an engineered structure consisting of a curbed, free draining base, constructed of nonearthen materials and designed to convey preservative kick back or drippage from treated wood, precipitation, and surface water run on to an associated collection system at wood preserving plants.~~

[For text of subps 21 to 109, see M.R.]

7045.0120 EXEMPT WASTES.

The following wastes may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of this chapter:

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

P. secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided that:

[For text of subitems (1) to (3), see M.R.]

(4) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal;

Q. petroleum-contaminated media and debris that fail the test for the toxicity characteristic in part 7045.0131, subpart 7 (hazardous waste codes D018 to D043 only), and are subject to corrective action regulations under chapter 7150;

R. spent wood preserving solutions that have been reclaimed and reused for their original intended purpose, and wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood; or

S. used chlorofluorocarbon refrigerants from totally

Approved
by Revisor _____

enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

7045.0135 LISTS OF HAZARDOUS WASTES.

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

Subp. 2. **Hazardous wastes from nonspecific sources.** Hazardous wastes from nonspecific sources are listed with the generic hazardous waste number and hazard code in items A to Y.

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

U. F027, discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component: (H);

V. F028, residues resulting from the incineration or thermal treatment of soil contaminated with hazardous waste Nos. F020, F021, F022, F023, F026, and F027: (T);

W. F032, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations, except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with part 7045.0145 and where the generator does not resume or initiate use of chlorophenolic formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not include wastewaters which have not come into contact with process contaminants. This listing does not include wastes from plants which have previously used chlorophenolic formulations and are included in

Approved
by Revisor _____

the F034 or F035 listings: (T);

X. F034, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not include wastewaters which have not come into contact with process contaminants: (T); and

Y. F035, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not apply to wastewaters which have not come into contact with process contaminants: (T).

[For text of subps 3 to 5, see M.R.]

7045.0139 BASIS FOR LISTING HAZARDOUS WASTES.

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

Subp. 2. **Constituents.** The constituents which are the basis for listing the wastes identified in part 7045.0135, subparts 2 and 3 are listed in items A and B.

A. Constituents of wastes identified in part 7045.0135, subpart 2, are listed in subitems (1) to (25).

[For text of subitems (1) to (20), see M.R.]

(21) F027: Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts;

(22) F028: Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine,

Approved by Revisor _____

and other salts;

(23) F032: Benz(a)anthracene; benzo(a)pyrene; dibenz(a,h)-anthracene; indeno(1,2,3-cd)pyrene; pentachlorophenol; arsenic; chromium; tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins; tetra-, penta-, hexa-, heptachlorodibenzofurans;

(24) F034: Benz(a)anthracene; benzo(k)fluoranthene; benzo(a)pyrene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene; naphthalene; arsenic; chromium; and

(25) F035: Arsenic; chromium; lead.

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

7045.0141 HAZARDOUS CONSTITUENTS.

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

Subp. 3. **"B" constituents.** Hazardous constituents beginning with the letter B are as follows:

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

L. Benzo(k)fluoranthene, 207-08-9, ____;

M. Benzo[a]pyrene, 50-32-8, U022;

N. p-Benzoquinone, 106-51-4, U197;

O. Benzotrichloride, 98-07-7, U023;

P. Benzyl chloride, 100-44-7, P028;

Q. Beryllium, 7440-41-7, P015;

R. Beryllium compounds, not otherwise specified in this list, _____, ____;

S. Bromoacetone, 598-31-2, P017;

T. Bromoform, 75-25-2, U225;

U. 4-Bromophenyl phenyl ether, 101-55-3, U030;

V. Brucine, 357-57-3, P018; and

W. Butyl benzyl phthalate, 85-68-7, ____.

[For text of subps 4 to 8, see M.R.]

Subp. 9. **"H" constituents.** Hazardous constituents beginning with the letter H are as follows:

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

E. Heptachlorodibenzofurans, _____, ____;

F. Heptachlorodibenzo-p-dioxins, _____, ____;

Approved by Revisor _____

G. Hexachlorobenzene, 118-74-1, U127;

H. Hexachlorobutadiene, 87-68-3, U128;

I. Hexachlorocyclopentadiene, 77-47-4, U130;

J. Hexachlorodibenzo-p-dioxins, _____, ____;

K. Hexachlorodibenzofurans, _____, ____;

L. Hexachloroethane, 67-72-1, U131;

M. Hexachlorophene, 70-30-4, U132;

N. Hexachloropropene, 1888-71-7, U243;

O. Hexaethyltetraphosphate, 757-58-4, P062;

P. Hydrazine, 302-01-2, U133;

Q. Hydrogen cyanide, 74-90-8, P063;

R. Hydrogen fluoride, 7664-39-3, U134; and

S. Hydrogen sulfide, 7783-06-4, U135.

[For text of subps 10 to 23, see M.R.]

7045.0145 DELETION OF CERTAIN HAZARDOUS WASTE CODES FOLLOWING EQUIPMENT CLEANING AND REPLACEMENT AT WOOD PRESERVING PLANTS.

Subpart 1. **Scope.** Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of subparts 2 and 3. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the characteristics of hazardous waste.

Subp. 2. **Process equipment cleaning and replacement.** Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams. Cleaning and replacement of process equipment must be performed in a manner which minimizes or eliminates the escape of hazardous waste or waste constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the groundwater, surface water, or atmosphere. Generators must either:

A. prepare and follow an equipment cleaning plan and

Approved
by Revisor _____

clean equipment in accordance with this item by:

(1) preparing and signing a written equipment cleaning plan that describes the equipment to be cleaned, how the equipment will be cleaned, the solvent chosen to be used in the cleaning, how solvent rinses will be tested, and how cleaning residues will be disposed;

(2) removing all visible residues from process equipment and rinsing process equipment with an appropriate solvent until dioxins and dibenzofurans in the final solvent rinse are found to be at or below the lower method calibration limit (MCL) found in SW-846, Method 8290, Table 1; and

(3) managing all residues from the cleaning process as F032 waste;

B. prepare and sign a written equipment replacement plan that describes the equipment to be replaced, how the equipment will be replaced, and how the equipment will be disposed of as F032 waste; or

C. document that previous equipment cleaning and/or replacement was performed in accordance with this part and occurred after cessation of use of chlorophenolic formulations.

Subp. 3. **Record keeping.** The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

A. the name and address of the facility;

B. formulations previously used and the date on which their use ceased in each process at the plant;

C. formulations currently used in each process at the plant;

D. the equipment cleaning or replacement plan;

E. the name and address of any persons who conducted the cleaning and replacement;

F. the dates on which cleaning and replacement were accomplished;

G. the dates of sampling and testing;

H. a description of the sample handling and preparation techniques, including techniques used for

Approved by Revisor _____

extraction, containerization, preservation, and chain-of-custody for the samples;

I. a description of the tests performed, the dates the tests were performed, and the results of the tests;

J. the name and model numbers of the instruments used in performing the tests;

K. quality assurance/quality control (QA/QC) documentation; and

L. the following statement signed by the generator or the generator's authorized representative: "I certify under penalty of law that all process equipment required to be cleaned or replaced under Minnesota Rules, part 7045.0145, was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment."

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. **When allowed without a permit.** A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

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

B. the waste is placed ~~either:~~

~~(1)~~ in containers which meet the standards of part 7045.0270, subpart 4, and are managed in accordance with part 7045.0626;

~~(2)~~ or in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12; ~~or~~

~~(3) on drip pads provided the generator complies with the requirements of part 7045.0644 and maintains at the facility a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days and maintains documentation of each waste removal, including the quantity of waste removed from the drip pad and sump or~~

Approved
by Revisor _____

collection-system-and-the-date-and-time-of-removal;

[For text of items C to I, see M.R.]

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

7045.0528 TANK SYSTEMS.

Subpart 1. **Scope.** This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as part 7045.0450, and items A, and B, and C provide otherwise.

[For text of items A and B, see M.R.]

C. Tank systems, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in part 7045.0020 and regulated under part 7045.0546, must meet the requirements of this part.

[For text of subps 2 to 11, see M.R.]

7045.0546 DRIP PADS.

Subpart 1. **Scope.** The requirements of this part apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run on to an associated collection system. Drip pads that are used to manage wastes designated as F032 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before December 6, 1990, or the owner or operator has a design and entered into binding financial or other agreements for construction before December 6, 1990. Drip pads that are used to manage wastes designated as F034 or F035 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before May 4, 1992, or the owner or operator has a design and entered into binding financial or other agreements for construction before May 4, 1992. All other drip pads are considered new drip pads. The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run on nor run off is generated is not subject to regulation under subpart 3, item E or F, as appropriate.

Subp. 2. **Assessment of existing drip pad integrity.**

Approved
by Revisor _____

~~A.--For each existing drip pad as defined in subpart 1, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of subpart 3, item B. The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of subpart 3 are complete. The evaluation must justify and document the extent to which the drip pad meets each of the design and operating standards of subpart 3, except the standards for liners and leak detection systems, specified in subpart 3, item B, and must document the age of the drip pad to the extent possible, to document compliance with item B.~~

~~B.--The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of subpart 3, item B, and submit the plan to the commissioner before the initiation of any repairs, upgrades, or modifications. The written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of subpart 3 and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent, qualified, registered, professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:~~

~~(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed by February 6, 1994, or when the drip pad has reached 15 years of age, whichever comes later.~~

~~(2) For existing drip pads for which the age cannot be documented at facilities seven or less years old, all upgrades, repairs, and modifications must be made by February 6, 2000. If the age of the facility is greater than seven years,~~

Approved
by Revisor _____

all upgrades, repairs, and modifications must be completed by the time the facility reaches 15 years of age or by February 6, 1994, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of subpart 3 after the date upon which all upgrades, repairs, and modifications must be completed as established under subitems (1) and (2), the owner or operator may petition the commissioner for an extension of the deadline as specified in subitem (1) or (2). The commissioner shall grant the petition for extension based on a finding that the drip pad meets all of the requirements of subpart 3, except those for liners and leak detection systems specified in subpart 3, item B, and that it will continue to be protective of human health and the environment.

C. Upon completion of all repairs and modifications, the owner or operator must submit to the commissioner the as built drawings for the drip pad together with a certification by an independent, qualified, registered, professional engineer attesting that the drip pad conforms to the drawings.

D. If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of subpart 3, item M, or close the drip pad according to subpart 5.

Subp. 3. Design and operating requirements.

A. Drip pads must:

(1) be constructed of nonearthen materials, excluding wood and nonstructurally supported asphalt;

(2) be sloped to free drain treated wood drippage, rain, and other wastes, or solutions of drippage and water or other wastes to the associated collection system;

(3) have a curb or berm around the perimeter;

(4) in the case of existing drip pads only, be impermeable, for example concrete drip pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is

Approved by Revisor _____

capable of containing the drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, for example variable and moving loads such as vehicle traffic and movement of wood.

B. A new drip pad, or an existing drip pad after the deadline established in subpart 2, must have:

(1) a synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil, groundwater, or surface water during the active life of the facility. The liner must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation, including stresses from vehicular traffic on the drip pad. The liner must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. The liner must be installed to cover all surrounding earth that could come in contact with the waste or leakage, and

(2) a leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be constructed of materials that are

Approved
by Revisor _____

chemically-resistant-to-the-waste-managed-in-the-drip-pad-and the-leakage-that-might-be-generated,-and-of-sufficient-strength and-thickness-to-prevent-collapse-under-the-pressures-exerted-by overlaying-materials-and-by-any-equipment-used-at-the-drip-pad. The-leakage-detection-system-must-be-constructed-of-materials that-are-designed-and-operated-to-function-without-clogging through-the-scheduled-closure-of-the-drip-pad,-and-designed-so that-it-will-detect-the-failure-of-the-drip-pad-or-the-presence of-a-release-of-hazardous-waste-or-accumulated-liquid-at-the earliest-practicable-time.

C.--Drip-pads-must-be-maintained-so-that-they-remain free-of-cracks,-gaps,-corrosion,-or-other-deterioration-that could-cause-hazardous-waste-to-be-released-from-the-drip-pad. If-deterioration-or-leakage-is-detected-at-the-drip-pad,-the owner-or-operator-must-comply-with-the-provisions-for-remedial action-under-item-M.

D.--The-drip-pad-and-associated-collection-system-must be-designed-and-operated-to-convey,-drain,-and-collect-liquid resulting-from-drippage-or-precipitation-in-order-to-prevent run-off.

E.--Unless-protected-by-a-structure,-as-described-in item-B,-subitem-(2),-the-owner-or-operator-must-design, construct,-operate,-and-maintain-a-run-on-control-system-capable of-preventing-flow-onto-the-drip-pad-during-peak-discharge-from at-least-a-24-hour,-25-year-storm,-unless-the-system-has sufficient-excess-capacity-to-contain-any-run-on-that-might enter-the-system.

F.--Unless-protected-by-a-structure-or-cover,-as described-in-item-B,-subitem-(2),-the-owner-or-operator-must design,-construct,-operate,-and-maintain-a-run-off-management system-to-collect-and-control-at-least-the-water-volume resulting-from-a-24-hour,-25-year-storm.

G.--The-drip-pad-must-be-evaluated-to-determine-that it-meets-the-requirements-of-items-A-to-F,-and-the-owner-or operator-must-obtain-a-statement-from-an-independent,-qualified, registered,-professional-engineer-certifying-that-the-drip-pad

Approved by Revisor _____

design meets the requirements of this part.

H. Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

I. The drip pad surface must be cleaned thoroughly at least once every seven days so that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including, but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

J. Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel and equipment.

K. After being removed from the treatment vessel, treated wood from pressure and nonpressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the drip pad following treatment in accordance with this requirement.

L. Collection and holding units associated with run on and run off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

M. Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the procedures in subitems (1) to (3).

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste, for example upon detection of leakage in the leak detection system, the owner or operator must enter a record of the discovery in the

Approved
by Revisor _____

facility-operating-log, immediately remove the portion of the drip-pad affected from service, determine what steps must be taken to repair the drip-pad and clean up any leakage from below the drip-pad, and establish a schedule for accomplishing the repairs. Within 24 hours of the discovery of the condition, the owner or operator must notify the commissioner of the condition and, within ten working days, provide written notice to the commissioner with a description of the steps that will be taken to repair the drip-pad and clean up any leakage and the schedule for accomplishing the work.

(2) The commissioner shall review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the commissioner in writing and provide a certification, signed by an independent, qualified, registered, professional engineer, that the repairs and clean up have been completed according to the written plan submitted under subitem (1).

N. Should a permit be necessary, the commissioner shall specify in the permit the design and operating practices that are necessary to ensure that the requirements of this subpart are satisfied.

O. The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

Subp. 4. Inspections.

A. During construction or installation, liners and cover systems, for example membranes, sheets, or coatings, must be inspected for uniformity, damage, and imperfections, for example holes, cracks, thin spots, or foreign materials.

Approved by Revisor _____

~~Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of subpart 3 by an independent, qualified, registered, professional engineer. The certification must be maintained at the facility as a part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.~~

~~B. While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of:~~

~~(1) deterioration, malfunctions, or improper operation of run on and run off control systems;~~

~~(2) the presence of leakage in and proper functioning of the leak detection system; and~~

~~(3) deterioration or cracking of the drip pad surface.~~

~~Subp. 5. Closure.~~

~~A. At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as pad liners, contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.~~

~~B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in item A, the owner or operator finds that not all contaminated subsoils can practically be removed or decontaminated, the owner or operator must close the facility and perform postclosure care in accordance with closure and postclosure care requirements of part 7045.0538, subpart 7, that apply to landfills. For permitted units, the requirement to have a permit continues throughout the postclosure period. In addition, for the purpose of closure, postclosure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in parts 7045.0486 to 7045.0524.~~

Approved
by Revisor _____

~~C.--The-owner-or-operator-of-an-existing-drip-pad,-as defined-in-subpart-1,-that-does-not-comply-with-the-liner requirements-of-subpart-3,-item-B,-subitem-(1),-must-include-in the-closure-plan-for-the-drip-pad-under-part-7045.0486,-subparts 3-to-6,-both-a-plan-for-complying-with-item-A-and-a-contingent plan-for-complying-with-item-B-in-case-not-all-contaminated subsoils-can-be-practicably-removed-at-closure.--The-owner-or operator-must-also-prepare-a-contingent-postclosure-plan-under part-7045.0490,-subpart-3,-for-complying-with-item-B-in-case-not all-contaminated-subsoils-can-be-practicably-removed-at closure.--The-cost-estimates-calculated-under-part-7045.0486, subparts-3-to-6,-and-part-7045.0506,-for-closure-and-postclosure care-of-a-drip-pad-subject-to-this-item-must-include-the-cost-of complying-with-the-contingent-closure-plan-and-the-contingent postclosure-plan,-but-are-not-required-to-include-the-cost-of expected-closure-under-item-A.~~

~~Subp.-6.--Design-and-installation-of-new-drip-pads.--Owners and-operators-of-drip-pads-must-ensure-that-the-drip-pads-are designed,-installed,-and-operated-in-accordance-with-all-of-the applicable-requirements-of-subparts-3-to-5.~~

7045.0628 TANK SYSTEMS.

Subpart 1. **Scope.** This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as items A, and B~~,-and-C,~~ and part 7045.0552 provide otherwise.

[For text of items A and B, see M.R.]

~~C.--Tank-systems,-sumps,-and-other-such-collection devices-or-systems-used-in-conjunction-with-drip-pads,-as defined-in-part-7045.0020-and-regulated-under-part-7045.0546, must-meet-the-requirements-of-this-part.~~

[For text of subps 2 to 12, see M.R.]

~~7045.0644-DRIP-PADS.~~

~~Subpart-1.--Scope.--The-requirements-of-this-part-apply-to owners-and-operators-of-facilities-that-use-new-or-existing-drip pads-to-convey-treated-wood-drippage,-precipitation,-and/or~~

Approved by Revisor _____

surface-water-run-on-to-an-associated-collection-system.--Drip pads-that-are-used-to-manage-wastes-designated-as-F032-wastes-in part-7045.0135,-subpart-2,-are-considered-existing-drip-pads-if they-were-either-constructed-before-December-6,-1990,-or-the owner-or-operator-has-a-design-and-entered-into-binding financial-or-other-agreements-for-construction-before-December 6,-1990.--Drip-pads-that-are-used-to-manage-wastes-designated-as F034-or-F035-wastes-in-part-7045.0135,-subpart-2,-are-considered existing-drip-pads-if-they-were-either-constructed-before-May-4, 1992,-or-the-owner-or-operator-has-a-design-and-entered-into binding-financial-or-other-agreements-for-construction-before May-4,-1992.--All-other-drip-pads-are-considered-new-drip-pads. The-owner-or-operator-of-any-drip-pad-that-is-inside-or-under-a structure-that-provides-protection-from-precipitation-so-that neither-run-on-nor-run-off-is-generated-is-not-subject-to regulation-under-subpart-4,-item-E-or-F,-as-appropriate.

Subp.-2.--**Assessment-of-existing-drip-pad-integrity.**

A.--For-each-existing-drip-pad-as-defined-in-subpart 1,-the-owner-or-operator-must-evaluate-the-drip-pad-and determine-that-it-meets-the-requirements-of-this-subpart,-except the-requirements-for-liners-and-leak-detection-systems-of subpart-4,-item-B.--The-owner-or-operator-must-obtain-and-keep on-file-at-the-facility-a-written-assessment-of-the-drip-pad, reviewed-and-certified-by-an-independent,-qualified,-registered, professional-engineer-that-attests-to-the-results-of-the evaluation.--The-assessment-must-be-reviewed,-updated,-and recertified-annually-until-all-upgrades,-repairs,-or modifications-necessary-to-achieve-compliance-with-all-of-the standards-of-subpart-4-are-complete.--The-evaluation-must justify-and-document-the-extent-to-which-the-drip-pad-meets-each of-the-design-and-operating-standards-of-subpart-4,-except-the standards-for-liners-and-leak-detection-systems,-specified-in subpart-4,-item-B,-and-must-document-the-age-of-the-drip-pad-to the-extent-possible,-to-document-compliance-with-item-B.

B.--The-owner-or-operator-must-develop-a-written-plan for-upgrading,-repairing,-and-modifying-the-drip-pad-to-meet-the

Approved by Revisor _____

requirements of subpart 4, item B, and submit the plan to the commissioner before the initiation of any repairs, upgrades, or modifications. The written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of subpart 4 and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent, qualified, registered, professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed by February 6, 1994, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented at facilities seven or less years old, all upgrades, repairs, and modifications must be made by February 6, 2000. If the age of the facility is greater than seven years, all upgrades, repairs, and modifications must be completed by the time the facility reaches 15 years of age or by February 6, 1994, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet the requirements of subpart 4 after the date upon which all upgrades, repairs, and modifications must be completed as established under subitems (1) and (2), the owner or operator may petition the commissioner for an extension of the deadline as specified in subitem (1) or (2). The commissioner will grant the petition for extension based on a finding that the drip pad meets the requirements of subpart 4, except those for liners and leak detection systems specified in subpart 4, item B, and that it will continue to be protective of human health and the environment.

C. Upon completion of repairs and modifications, the owner or operator must submit to the commissioner the as built drawings for the drip pad together with a certification by an independent, qualified, registered, professional engineer attesting that the drip pad conforms to the drawings.

Approved
by Revisor _____

~~D.--If-the-drip-pad-is-found-to-be-leaking-or-unfit for-use,-the-owner-or-operator-must-comply-with-the-provisions of-subpart-4,-item-M,-or-close-the-drip-pad-according-to-subpart 6.~~

~~Subp.-3.--Design-and-installation-of-new-drip-pads.--Owners and-operators-of-new-drip-pads-must-ensure-that-the-pads-are designed,-installed,-and-operated-in-accordance-with-the applicable-requirements-of-subparts-4-to-6.~~

~~Subp.-4.--Design-and-operating-requirements.~~

~~A.--Drip-pads-must:~~

~~(1)-be-constructed-of-nonearthen-materials, excluding-wood-and-nonstructurally-supported-asphalt;~~

~~(2)-be-sloped-to-free-drain-treated-wood drippage,-rain,-and-other-wastes,-or-solutions-of-drippage-and water-or-other-wastes-to-the-associated-collection-system;~~

~~(3)-have-a-curb-or-berm-around-the-perimeter;~~

~~(4)-in-the-case-of-existing-drip-pads-only,-be impermeable.--For-example,-concrete-pads-must-be-sealed,-coated, or-covered-with-an-impermeable-material-such-that-the-entire surface-where-drippage-occurs-or-may-run-across-is-capable-of containing-the-drippage-and-mixtures-of-drippage-and precipitation,-materials,-or-other-wastes-while-being-routed-to an-associated-collection-system;-and~~

~~(5)-be-of-sufficient-structural-strength-and thickness-to-prevent-failure-due-to-physical-contact,-climatic conditions,-the-stress-of-installation,-and-the-stress-of-daily operations,-including-variable-and-moving-loads-such-as-vehicle traffic-and-movement-of-wood.~~

~~B.--A-new-drip-pad-or-existing-drip-pad,-after-the deadline-established-in-subpart-2,-item-B,-must-have:~~

~~(1)-a-synthetic-liner-installed-below-the-drip pad-that-is-designed,-constructed,-and-installed-to-prevent leakage-from-the-drip-pad-into-the-adjacent-subsurface-soil-or groundwater-or-surface-water-at-any-time-during-the-active-life, including-the-closure-period,-of-the-drip-pad.--The-liner-must be-constructed-of-materials-that-will-prevent-waste-from-being~~

Approved
by Revisor _____

absorbed into the liner and to prevent releases into the adjacent subsurface soil groundwater, or surface water during the active life, including the closure period, of the facility. The liner must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation, including stresses from vehicular traffic on the drip pad. The liner must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. The liner must be installed to cover the surrounding earth that could come in contact with the waste or leakage, and

(2) a leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be constructed of materials that are chemically resistant to the waste managed in the drip pad and the leakage that might be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad. The leakage detection system must be constructed of materials that are designed and operated to function without clogging through the scheduled closure of the drip pad, and designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

C. Drip pads must be maintained so that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad. If deterioration or leakage is detected at the drip pad, the owner or operator must comply with the provisions for remedial action under item M.

Approved by Revisor _____

~~D.--The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.~~

~~E.--Unless protected by a structure or cover, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.~~

~~F.--Unless protected by a structure or cover, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.~~

~~G.--The drip pad must be evaluated to determine that it meets the requirements of items A to F and the owner or operator must obtain a statement from an independent, qualified, registered, professional engineer certifying that the drip pad design meets the requirements of this part.~~

~~H.--Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.~~

~~I.--The drip pad surface must be cleaned thoroughly at least once every seven days so that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including, but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning.--The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.~~

~~J.--Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel and equipment.~~

Approved
by Revisor _____

~~K.--After-being-removed-from-the-treatment-vessel,~~
~~treated-wood-from-pressure-and-nonpressure-processes-must-be~~
~~held-on-the-drip-pad-until-drippage-has-ceased.--The-owner-or~~
~~operator-must-maintain-records-sufficient-to-document-that-all~~
~~treated-wood-is-held-on-the-drip-pad-following-treatment-in~~
~~accordance-with-this-requirement.~~

~~L.--Collection-and-holding-units-associated-with~~
~~run-on-and-run-off-control-systems-must-be-emptied-or-otherwise~~
~~managed-as-soon-as-possible-after-storms-to-maintain-design~~
~~capacity-of-the-system.~~

~~M.--Throughout-the-active-life-of-the-drip-pad-and-as~~
~~specified-in-the-permit,-if-the-owner-or-operator-detects-a~~
~~condition-that-may-have-caused-or-has-caused-a-release-of~~
~~hazardous-waste,-the-condition-must-be-repaired-within-a~~
~~reasonably-prompt-period-of-time-following-discovery,-in~~
~~accordance-with-the-procedures-in-subitems-(1)-to-(3).~~

~~(1)-Upon-detection-of-a-condition-that-may-have~~
~~caused-or-has-caused-a-release-of-hazardous-waste,-for-example~~
~~upon-detection-of-leakage-in-the-leak-detection-system,-the~~
~~owner-or-operator-must-enter-a-record-of-the-discovery-in-the~~
~~facility-operating-log,-immediately-remove-the-portion-of-the~~
~~drip-pad-affected-from-service,-determine-what-steps-must-be~~
~~taken-to-repair-the-drip-pad-and-clean-up-any-leakage-from-below~~
~~the-drip-pad,-and-establish-a-schedule-for-accomplishing-the~~
~~repairs.--Within-24-hours-of-the-discovery-of-the-condition,-the~~
~~owner-or-operator-must-notify-the-commissioner-of-the-condition~~
~~and,-within-ten-working-days,-provide-written-notice-to-the~~
~~commissioner-with-a-description-of-the-steps-that-will-be-taken~~
~~to-repair-the-drip-pad-and-clean-up-any-leakage-and-the-schedule~~
~~for-accomplishing-the-work.~~

~~(2)-The-commissioner-shall-review-the-information~~
~~submitted,-make-a-determination-regarding-whether-the-drip-pad~~
~~must-be-removed-from-service-completely-or-partially-until~~
~~repairs-and-clean-up-are-complete,-and-notify-the-owner-or~~
~~operator-of-the-determination-and-the-underlying-rationale-in~~
~~writing.~~

Approved
by Revisor _____

~~(3) Upon completing repairs and clean-up, the owner or operator must notify the commissioner in writing and provide a certification, signed by an independent, qualified, registered, professional engineer, that the repairs and clean-up have been completed according to the written plan submitted under subitem (1).~~

~~N. The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.~~

~~Subp. 5. Inspections.~~

~~A. During construction or installation, liners and cover systems, for example membranes, sheets, or coatings, must be inspected for uniformity, damage, and imperfections, for example holes, cracks, thin spots, or foreign materials. Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of subpart 4 by an independent, qualified, registered, professional engineer. The certification must be maintained at the facility as a part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.~~

~~B. While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of:~~

~~(1) deterioration, malfunctions, or improper operation of run on and run off control systems;~~

~~(2) the presence of leakage in and proper functioning of the leak detection system; and~~

~~(3) deterioration or cracking of the drip pad surface.~~

~~Subp. 6. Closure.~~

~~A. At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as pad liners, contaminated subsoils, and~~

Approved
by Revisor _____

~~structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.~~

~~B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in item A, the owner or operator finds that not all contaminated subsoils can practically be removed or decontaminated, the owner or operator must close the facility and perform postclosure care in accordance with closure and postclosure care requirements of part 7045.0538, subpart 7, that apply to landfills. For permitted units, the requirement to have a permit continues throughout the postclosure period.~~

~~C. The owner or operator of an existing drip pad, as defined in part 7045.0546, subpart 1, that does not comply with the liner requirements of part 7045.0546, subpart 3, item B, subitem (1), must include in the closure plan for the drip pad under part 7045.0486, subparts 3 to 6, both a plan for complying with item A and a contingent plan for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The owner or operator must also prepare a contingent postclosure plan under part 7045.0490, subpart 3, for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The cost estimates calculated under part 7045.0486, subparts 3 to 6, and part 7045.0506, for closure and postclosure care of a drip pad subject to this item must include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under item A.~~

~~INSTRUCTION TO REVISOR. The references to parts 7045.0450 to 7045.0544 and 7045.0552 to 7045.0642 shall be changed to 7045.0450 to 7045.0546 and 7045.0552 to 7045.0644 wherever they appear in Minnesota Rules.~~

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

July 7 1992

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

BY [signature]
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUL 8 1992

Joan Anderson Growe
Secretary of State

8:55 AM
PRB

10. Notice of Order Withdrawing Rule Amendments (16 SR 2442, May 11, 1992).
10.1 Copies of Comments from Public. (3 comments) km
11. Affidavit of Receiving No Requests for Notice of Submission of Rule Amendments Adopted Without a Public Hearing to the Attorney General (May 18, 1992).

12. Declaration of Counsel.

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

Sincerely,

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

GDS:jao

Enclosure

STATE OF MINNESOTA

Office of the Attorney General

TO : GLENN SKUTA
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul

DATE : July 8, 1992

FROM : MARY JO MURRAY
Special Assistant
Attorney General

PHONE : 296-3258

SUBJECT : In the Matter of the Adopted Rule Relating to Wood Preserving Operation Wastes

The above-referenced rule has been approved as to its legality by the Attorney General on July 7, 1992.

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.

Enclosures
cc: Keith Moheban
William Brown, Chief Judge
MaryAnn Hruby

MJM:jj.Rules.ay2

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing Waste Management at Wood Treating Operations and the Exemption of Recycled Chlorofuorocarbons from Hazardous Waste Regulation, Minn. Rules Chs. 7001 and 7045

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 D. Skuta, being duly sworn says:

1. That he is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing (16 SR 1531 - 1543, December 23, 1992) 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 D. Skuta

Subscribed and sworn to before me
this 18 day of May, 1992.

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 Proposed Rule Amendments Governing Waste Management at Wood Treating Operations and the Exemption of Recycled Chlorofluorocarbons from Hazardous Waste Regulation, Minn. Rules chs. 7001 and 7045

DECLARATION OF COUNSEL

I, Keith Moheban, 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 Minn. Rules ch. 2010 have been followed.

Dated: 6-22-92

KEITH MOHEBAN
Special Assistant
Attorney General

MOHEBAN.AQ7

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-sixth day of November, 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. 7001.0623, 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0546, 7045.0628 and 7045.0644, 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.

BE IT FURTHER RESOLVED, that the Commissioner is hereby granted the authority to approve and adopt the attached rule amendments if any changes to the rules to be adopted, as a result of comments received on the proposed rules, do not result in a substantial change from the proposed rules.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26 day of November, 1991.

Charles W. Williams
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Wood Preserving Operation Wastes

Rules as Proposed

7001.0623 PART B INFORMATION REQUIREMENTS FOR DRIP PADS.

Except as otherwise provided in part 7045.0450, subpart 1, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

A. a list of hazardous wastes placed or to be placed on each drip pad; and

B. detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated, and maintained to meet the requirements of part 7045.0546, subpart 3, including the as-built drawings and specifications. This submission must address the following items as specified in part 7045.0546, subpart 2:

(1) the design characteristics of the drip pad;

(2) the liner system;

(3) the leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous wastes or accumulated liquid at the earliest practicable time;

(4) practices designed to maintain drip pads;

(5) the associated collection system;

(6) control of run-on to the drip pad;

(7) control of run-off from the drip pad;

(8) the interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

Approved by Revisor

(9) procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials including, but limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning;

(10) provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;

(11) operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(12) procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased, including record keeping practices;

(13) provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(14) if treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;

(15) a description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of part 7045.0546, subpart 3. This information should be included in the inspection plan submitted under part 7001.0560, item E;

(16) a certification signed by an independent, qualified, registered professional engineer, stating that the drip pad design meets the requirements of part 7045.0546, subpart 3, items A to F; and

(17) a description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under part 7045.0546, subpart 4, item A. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans

Approved
by Revisor _____

and an engineering report describing how part 7045.0538, subpart 7, will be complied with. This information should be included in the closure plan and, where applicable, the postclosure plan submitted under part 7001.0560, item L.

7045.0020 DEFINITIONS.

[For text of subps 1 to 20, see M.R.]

Subp. 20a. **Drip pad.** "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

[For text of subps 21 to 109, see M.R.]

7045.0120 EXEMPT WASTES.

The following wastes may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of this chapter:

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

P. secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided that:

[For text of subitems (1) to (3), see M.R.]

(4) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal; ~~or~~

Q. petroleum-contaminated media and debris that fail the test for the toxicity characteristic in part 7045.0131, subpart 7 (hazardous waste codes D018 to D043 only), and are subject to corrective action regulations under chapter 7150~~.~~;

R. spent wood preserving solutions that have been reclaimed and reused for their original intended purpose, and wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood; or

S. used chlorofluorocarbon refrigerants from totally

Approved by Revisor _____

enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

7045.0135 LISTS OF HAZARDOUS WASTES.

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

Subp. 2. **Hazardous wastes from nonspecific sources.** Hazardous wastes from nonspecific sources are listed with the generic hazardous waste number and hazard code in items A to ~~V~~ Y.

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

U. F027, discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component: (H); ~~and~~

V. F028, residues resulting from the incineration or thermal treatment of soil contaminated with hazardous waste Nos. F020, F021, F022, F023, F026, and F027: (T)~~.~~;

W. F032, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations, except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with part 7045.0145 and where the generator does not resume or initiate use of chlorophenolic formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not include wastewaters which have not come into contact with process contaminants. This listing does not include wastes from plants which have previously used chlorophenolic formulations and are included in

Approved by Revisor _____

the F034 or F035 listings: (T);

X. F034, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not include wastewaters which have not come into contact with process contaminants: (T); and

Y. F035, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not apply to wastewaters which have not come into contact with process contaminants: (T).

[For text of subps 3 to 5, see M.R.]

7045.0139 BASIS FOR LISTING HAZARDOUS WASTES.

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

Subp. 2. **Constituents.** The constituents which are the basis for listing the wastes identified in part 7045.0135, subparts 2 and 3 are listed in items A and B.

A. Constituents of wastes identified in part 7045.0135, subpart 2, are listed in subitems (1) to ~~(22)~~ (25).

[For text of subitems (1) to (20), see M.R.]

(21) F027: Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts; ~~and~~

(22) F028: Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine,

Approved by Revisor _____

and other salts~~.~~;

(23) F032: Benz(a)anthracene; benzo(a)pyrene; dibenz(a,h)-anthracene; indeno(1,2,3-cd)pyrene; pentachlorophenol; arsenic; chromium; tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins; tetra-, penta-, hexa-, heptachlorodibenzofurans;

(24) F034: Benz(a)anthracene; benzo(k)fluoranthene; benzo(a)pyrene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene; naphthalene; arsenic; chromium; and

(25) F035: Arsenic; chromium; lead.

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

7045.0141 HAZARDOUS CONSTITUENTS.

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

Subp. 3. **"B" constituents.** Hazardous constituents beginning with the letter B are as follows:

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

L. Benzo(k)fluoranthene, 207-08-9, ____;

M. Benzo[a]pyrene, 50-32-8, U022;

~~M.~~ N. p-Benzoquinone, 106-51-4, U197;

~~N.~~ O. Benzotrichloride, 98-07-7, U023;

~~O.~~ P. Benzyl chloride, 100-44-7, P028;

~~P.~~ Q. Beryllium, 7440-41-7, P015;

~~Q.~~ R. Beryllium compounds, not otherwise specified in this list, _____, ____;

~~R.~~ S. Bromoacetone, 598-31-2, P017;

~~S.~~ T. Bromoform, 75-25-2, U225;

~~T.~~ U. 4-Bromophenyl phenyl ether, 101-55-3, U030;

~~U.~~ V. Brucine, 357-57-3, P018; and

~~V.~~ W. Butyl benzyl phthalate, 85-68-7, ____.

[For text of subps 4 to 8, see M.R.]

Subp. 9. **"H" constituents.** Hazardous constituents beginning with the letter H are as follows:

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

E. Heptachlorodibenzofurans, _____, ____;

F. Heptachlorodibenzo-p-dioxins, _____, ____;

Approved by Revisor _____

G. Hexachlorobenzene, 118-74-1, U127;

~~F.~~ H. Hexachlorobutadiene, 87-68-3, U128;

~~G.~~ I. Hexachlorocyclopentadiene, 77-47-4, U130;

~~H.~~ J. Hexachlorodibenzo-p-dioxins, _____, ____;

~~I.~~ K. Hexachlorodibenzofurans, _____, ____;

~~J.~~ L. Hexachloroethane, 67-72-1, U131;

~~K.~~ M. Hexachlorophene, 70-30-4, U132;

~~L.~~ N. Hexachloropropene, 1888-71-7, U243;

~~M.~~ O. Hexaethyltetraphosphate, 757-58-4, P062;

~~N.~~ P. Hydrazine, 302-01-2, U133;

~~O.~~ Q. Hydrogen cyanide, 74-90-8, P063;

~~P.~~ R. Hydrogen fluoride, 7664-39-3, U134; and

~~Q.~~ S. Hydrogen sulfide, 7783-06-4, U135.

[For text of subps 10 to 23, see M.R.]

7045.0145 DELETION OF CERTAIN HAZARDOUS WASTE CODES FOLLOWING EQUIPMENT CLEANING AND REPLACEMENT AT WOOD PRESERVING PLANTS.

Subpart 1. **Scope.** Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of subparts 2 and 3. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the characteristics of hazardous waste.

Subp. 2. **Process equipment cleaning and replacement.** Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams. Cleaning and replacement of process equipment must be performed in a manner which minimizes or eliminates the escape of hazardous waste or waste constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the groundwater, surface water, or atmosphere. Generators must either:

A. prepare and follow an equipment cleaning plan and

Approved by Revisor _____

clean equipment in accordance with this item by:

(1) preparing and signing a written equipment cleaning plan that describes the equipment to be cleaned, how the equipment will be cleaned, the solvent chosen to be used in the cleaning, how solvent rinses will be tested, and how cleaning residues will be disposed;

(2) removing all residues from process equipment and rinsing process equipment with an appropriate solvent until dioxins and dibenzofurans in the final solvent rinse are found to be at or below the lower method calibration limit (MCL) found in SW-846, Method 8290, Table 1; and

(3) managing all residues from the cleaning process as F032 waste;

B. prepare and sign a written equipment replacement plan that describes the equipment to be replaced, how the equipment will be replaced, and how the equipment will be disposed of as F032 waste; or

C. document that previous equipment cleaning and/or replacement was performed in accordance with this part and occurred after cessation of use of chlorophenolic formulations.

Subp. 3. **Record keeping.** The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

A. the name and address of the facility;

B. formulations previously used and the date on which their use ceased in each process at the plant;

C. formulations currently used in each process at the plant;

D. the equipment cleaning or replacement plan;

E. the name and address of any persons who conducted the cleaning and replacement;

F. the dates on which cleaning and replacement were accomplished;

G. the dates of sampling and testing;

H. a description of the sample handling and preparation techniques, including techniques used for

Approved by Revisor _____

extraction, containerization, preservation, and chain-of-custody for the samples;

I. a description of the tests performed, the dates the tests were performed, and the results of the tests;

J. the name and model numbers of the instruments used in performing the tests;

K. quality assurance/quality control (QA/QC) documentation; and

L. the following statement signed by the generator or the generator's authorized representative: "I certify under penalty of law that all process equipment required to be cleaned or replaced under Minnesota Rules, part 7045.0145, was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment."

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. **When allowed without a permit.** A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

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

B. the waste is placed either:

(1) in containers which meet the standards of part 7045.0270, subpart 4, and are managed in accordance with part 7045.0626; ~~or~~

(2) in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12; or

(3) on drip pads provided the generator complies with the requirements of part 7045.0644 and maintains at the facility a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days and maintains documentation of each waste removal, including the quantity of waste removed from the drip pad and sump or

Approved by Revisor _____

collection system and the date and time of removal;

[For text of items C to I, see M.R.]

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

7045.0528 TANK SYSTEMS.

Subpart 1. **Scope.** This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as part 7045.0450, and items A ~~and~~, B, and C provide otherwise.

[For text of items A and B, see M.R.]

C. Tank systems, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in part 7045.0020 and regulated under part 7045.0546, must meet the requirements of this part.

[For text of subps 2 to 11, see M.R.]

7045.0546 DRIP PADS.

Subpart 1. **Scope.** The requirements of this part apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Drip pads that are used to manage wastes designated as F032 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before December 6, 1990, or the owner or operator has a design and entered into binding financial or other agreements for construction before December 6, 1990. Drip pads that are used to manage wastes designated as F034 or F035 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before May 4, 1992, or the owner or operator has a design and entered into binding financial or other agreements for construction before May 4, 1992. All other drip pads are considered new drip pads. The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-on nor run-off is generated is not subject to regulation under subpart 3, item E or F, as appropriate.

Subp. 2. **Assessment of existing drip pad integrity.**

Approved
by Revisor _____

A. For each existing drip pad as defined in subpart 1, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of subpart 3, item B. The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of subpart 3 are complete. The evaluation must justify and document the extent to which the drip pad meets each of the design and operating standards of subpart 3, except the standards for liners and leak detection systems, specified in subpart 3, item B, and must document the age of the drip pad to the extent possible, to document compliance with item B.

B. The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of subpart 3, item B, and submit the plan to the commissioner before the initiation of any repairs, upgrades, or modifications. The written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of subpart 3 and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent, qualified, registered, professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed by February 6, 1994, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented at facilities seven or less years old, all upgrades, repairs, and modifications must be made by February 6, 2000. If the age of the facility is greater than seven years,

Approved by Revisor _____

all upgrades, repairs, and modifications must be completed by the time the facility reaches 15 years of age or by February 6, 1994, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of subpart 3 after the date upon which all upgrades, repairs, and modifications must be completed as established under subitems (1) and (2), the owner or operator may petition the commissioner for an extension of the deadline as specified in subitem (1) or (2). The commissioner shall grant the petition for extension based on a finding that the drip pad meets all of the requirements of subpart 3, except those for liners and leak detection systems specified in subpart 3, item B, and that it will continue to be protective of human health and the environment.

C. Upon completion of all repairs and modifications, the owner or operator must submit to the commissioner the as-built drawings for the drip pad together with a certification by an independent, qualified, registered, professional engineer attesting that the drip pad conforms to the drawings.

D. If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of subpart 3, item M, or close the drip pad according to subpart 5.

Subp. 3. **Design and operating requirements.**

A. Drip pads must:

(1) be constructed of nonearthen materials, excluding wood and nonstructurally supported asphalt;

(2) be sloped to free-drain treated wood drippage, rain, and other wastes, or solutions of drippage and water or other wastes to the associated collection system;

(3) have a curb or berm around the perimeter;

(4) in the case of existing drip pads only, be impermeable, for example concrete drip pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is

Approved by Revisor _____

capable of containing the drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, for example variable and moving loads such as vehicle traffic and movement of wood.

B. A new drip pad, or an existing drip pad after the deadline established in subpart 2, must have:

(1) a synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil, groundwater, or surface water during the active life of the facility. The liner must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces; physical contact with the waste or drip pad leakage to which they are exposed; climatic conditions; the stress of installation; and the stress of daily operation, including stresses from vehicular traffic on the drip pad. The liner must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. The liner must be installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) a leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be constructed of materials that are

Approved by Revisor _____

chemically resistant to the waste managed in the drip pad and the leakage that might be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad. The leakage detection system must be constructed of materials that are designed and operated to function without clogging through the scheduled closure of the drip pad, and designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

C. Drip pads must be maintained so that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad. If deterioration or leakage is detected at the drip pad, the owner or operator must comply with the provisions for remedial action under item M.

D. The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

E. Unless protected by a structure, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.

F. Unless protected by a structure or cover, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

G. The drip pad must be evaluated to determine that it meets the requirements of items A to F, and the owner or operator must obtain a statement from an independent, qualified, registered, professional engineer certifying that the drip pad

Approved by Revisor _____

design meets the requirements of this part.

H. Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

I. The drip pad surface must be cleaned thoroughly at least once every seven days so that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including, but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

J. Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel and equipment.

K. After being removed from the treatment vessel, treated wood from pressure and nonpressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the drip pad following treatment in accordance with this requirement.

L. Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

M. Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the procedures in subitems (1) to (3).

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste, for example upon detection of leakage in the leak detection system, the owner or operator must enter a record of the discovery in the

Approved by Revisor _____

facility operating log, immediately remove the portion of the drip pad affected from service, determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs. Within 24 hours of the discovery of the condition, the owner or operator must notify the commissioner of the condition and, within ten working days, provide written notice to the commissioner with a description of the steps that will be taken to repair the drip pad and clean up any leakage and the schedule for accomplishing the work.

(2) The commissioner shall review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the commissioner in writing and provide a certification, signed by an independent, qualified, registered, professional engineer, that the repairs and clean up have been completed according to the written plan submitted under subitem (1).

N. Should a permit be necessary, the commissioner shall specify in the permit the design and operating practices that are necessary to ensure that the requirements of this subpart are satisfied.

O. The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

Subp. 4. **Inspections.**

A. During construction or installation, liners and cover systems, for example membranes, sheets, or coatings, must be inspected for uniformity, damage, and imperfections, for example holes, cracks, thin spots, or foreign materials.

Approved by Revisor _____

Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of subpart 3 by an independent, qualified, registered, professional engineer. The certification must be maintained at the facility as a part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

B. While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of:

(1) deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) the presence of leakage in and proper functioning of the leak detection system; and

(3) deterioration or cracking of the drip pad surface.

Subp. 5. **Closure.**

A. At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as pad liners, contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in item A, the owner or operator finds that not all contaminated subsoils can practically be removed or decontaminated, the owner or operator must close the facility and perform postclosure care in accordance with closure and postclosure care requirements of part 7045.0538, subpart 7, that apply to landfills. For permitted units, the requirement to have a permit continues throughout the postclosure period. In addition, for the purpose of closure, postclosure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in parts 7045.0486 to 7045.0524.

Approved by Revisor _____

C. The owner or operator of an existing drip pad, as defined in subpart 1, that does not comply with the liner requirements of subpart 3, item B, subitem (1), must include in the closure plan for the drip pad under part 7045.0486, subparts 3 to 6, both a plan for complying with item A and a contingent plan for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The owner or operator must also prepare a contingent postclosure plan under part 7045.0490, subpart 3, for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The cost estimates calculated under part 7045.0486, subparts 3 to 6, and part 7045.0506, for closure and postclosure care of a drip pad subject to this item must include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under item A.

Subp. 6. **Design and installation of new drip pads.** Owners and operators of drip pads must ensure that the drip pads are designed, installed, and operated in accordance with all of the applicable requirements of subparts 3 to 5.

7045.0628 TANK SYSTEMS.

Subpart 1. **Scope.** This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as items A ~~and~~, B, and C, and part 7045.0552 provide otherwise.

[For text of items A and B, see M.R.]

C. Tank systems, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in part 7045.0020 and regulated under part 7045.0546, must meet the requirements of this part.

[For text of subps 2 to 12, see M.R.]

7045.0644 DRIP PADS.

Subpart 1. **Scope.** The requirements of this part apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or

Approved by Revisor _____

surface water run-on to an associated collection system. Drip pads that are used to manage wastes designated as F032 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before December 6, 1990, or the owner or operator has a design and entered into binding financial or other agreements for construction before December 6, 1990. Drip pads that are used to manage wastes designated as F034 or F035 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before May 4, 1992, or the owner or operator has a design and entered into binding financial or other agreements for construction before May 4, 1992. All other drip pads are considered new drip pads. The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-on nor run-off is generated is not subject to regulation under subpart 4, item E or F, as appropriate.

Subp. 2. **Assessment of existing drip pad integrity.**

A. For each existing drip pad as defined in subpart 1, the owner or operator must evaluate the drip pad and determine that it meets the requirements of this subpart, except the requirements for liners and leak detection systems of subpart 4, item B. The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified, registered, professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of subpart 4 are complete. The evaluation must justify and document the extent to which the drip pad meets each of the design and operating standards of subpart 4, except the standards for liners and leak detection systems, specified in subpart 4, item B, and must document the age of the drip pad to the extent possible, to document compliance with item B.

B. The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the

Approved by Revisor _____

requirements of subpart 4, item B, and submit the plan to the commissioner before the initiation of any repairs, upgrades, or modifications. The written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of subpart 4 and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent, qualified, registered, professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed by February 6, 1994, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented at facilities seven or less years old, all upgrades, repairs, and modifications must be made by February 6, 2000. If the age of the facility is greater than seven years, all upgrades, repairs, and modifications must be completed by the time the facility reaches 15 years of age or by February 6, 1994, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet the requirements of subpart 4 after the date upon which all upgrades, repairs, and modifications must be completed as established under subitems (1) and (2), the owner or operator may petition the commissioner for an extension of the deadline as specified in subitem (1) or (2). The commissioner will grant the petition for extension based on a finding that the drip pad meets the requirements of subpart 4, except those for liners and leak detection systems specified in subpart 4, item B, and that it will continue to be protective of human health and the environment.

C. Upon completion of repairs and modifications, the owner or operator must submit to the commissioner the as-built drawings for the drip pad together with a certification by an independent, qualified, registered, professional engineer attesting that the drip pad conforms to the drawings.

Approved
by Revisor _____

D. If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of subpart 4, item M, or close the drip pad according to subpart 6.

Subp. 3. **Design and installation of new drip pads.** Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with the applicable requirements of subparts 4 to 6.

Subp. 4. **Design and operating requirements.**

A. Drip pads must:

(1) be constructed of nonearthen materials, excluding wood and nonstructurally supported asphalt;

(2) be sloped to free-drain treated wood drippage, rain, and other wastes, or solutions of drippage and water or other wastes to the associated collection system;

(3) have a curb or berm around the perimeter;

(4) in the case of existing drip pads only, be impermeable. For example, concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing the drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, including variable and moving loads such as vehicle traffic and movement of wood.

B. A new drip pad or existing drip pad, after the deadline established in subpart 2, item B, must have:

(1) a synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the drip pad. The liner must be constructed of materials that will prevent waste from being

Approved by Revisor _____

absorbed into the liner and to prevent releases into the adjacent subsurface soil groundwater, or surface water during the active life, including the closure period, of the facility. The liner must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces; physical contact with the waste or drip pad leakage to which they are exposed; climatic conditions; the stress of installation; and the stress of daily operation, including stresses from vehicular traffic on the drip pad. The liner must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. The liner must be installed to cover the surrounding earth that could come in contact with the waste or leakage; and

(2) a leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be constructed of materials that are chemically resistant to the waste managed in the drip pad and the leakage that might be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad. The leakage detection system must be constructed of materials that are designed and operated to function without clogging through the scheduled closure of the drip pad, and designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

C. Drip pads must be maintained so that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad. If deterioration or leakage is detected at the drip pad, the owner or operator must comply with the provisions for remedial action under item M.

Approved by Revisor _____

D. The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

E. Unless protected by a structure or cover, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.

F. Unless protected by a structure or cover, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

G. The drip pad must be evaluated to determine that it meets the requirements of items A to F and the owner or operator must obtain a statement from an independent, qualified, registered, professional engineer certifying that the drip pad design meets the requirements of this part.

H. Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

I. The drip pad surface must be cleaned thoroughly at least once every seven days so that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including, but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

J. Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel and equipment.

Approved by Revisor _____

K. After being removed from the treatment vessel, treated wood from pressure and nonpressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the drip pad following treatment in accordance with this requirement.

L. Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

M. Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the procedures in subitems (1) to (3).

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste, for example upon detection of leakage in the leak detection system, the owner or operator must enter a record of the discovery in the facility operating log, immediately remove the portion of the drip pad affected from service, determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs. Within 24 hours of the discovery of the condition, the owner or operator must notify the commissioner of the condition and, within ten working days, provide written notice to the commissioner with a description of the steps that will be taken to repair the drip pad and clean up any leakage and the schedule for accomplishing the work.

(2) The commissioner shall review the information submitted, make a determination regarding whether the drip pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

Approved
by Revisor _____

(3) Upon completing repairs and clean up, the owner or operator must notify the commissioner in writing and provide a certification, signed by an independent, qualified, registered, professional engineer, that the repairs and clean up have been completed according to the written plan submitted under subitem (1).

N. The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

Subp. 5. **Inspections.**

A. During construction or installation, liners and cover systems, for example membranes, sheets, or coatings, must be inspected for uniformity, damage, and imperfections, for example holes, cracks, thin spots, or foreign materials. Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of subpart 4 by an independent, qualified, registered, professional engineer. The certification must be maintained at the facility as a part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

B. While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of:

(1) deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) the presence of leakage in and proper functioning of the leak detection system; and

(3) deterioration or cracking of the drip pad surface.

Subp. 6. **Closure.**

A. At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as pad liners, contaminated subsoils, and

Approved by Revisor _____

structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in item A, the owner or operator finds that not all contaminated subsoils can practically be removed or decontaminated, the owner or operator must close the facility and perform postclosure care in accordance with closure and postclosure care requirements of part 7045.0538, subpart 7, that apply to landfills. For permitted units, the requirement to have a permit continues throughout the postclosure period.

C. The owner or operator of an existing drip pad, as defined in part 7045.0546, subpart 1, that does not comply with the liner requirements of part 7045.0546, subpart 3, item B, subitem (1), must include in the closure plan for the drip pad under part 7045.0486, subparts 3 to 6, both a plan for complying with item A and a contingent plan for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The owner or operator must also prepare a contingent postclosure plan under part 7045.0490, subpart 3, for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The cost estimates calculated under part 7045.0486, subparts 3 to 6, and part 7045.0506, for closure and postclosure care of a drip pad subject to this item must include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under item A.

INSTRUCTION TO REVISOR. The references to parts 7045.0450 to 7045.0544 and 7045.0552 to 7045.0642 shall be changed to 7045.0450 to 7045.0546 and 7045.0552 to 7045.0644 wherever they appear in Minnesota Rules.

Approved by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Wood Preserving Operation Wastes

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapters 7001 and 7045

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

Stat Authority 116.07 subd 4
Pursuant to provisions of chapter 14 and the provisions hereof the pollution Control agency may adopt amend and rescind rules and standards. . .

end of comment period Jan. 27, 1991

May 11, 1992 - State Register withdrew 4 pts of some rules (to wait for final Fed rules which would impact these state rules)

These are OK + can be approved NJM

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments Governing the Management of Wastes at Wood Preserving Operations and the Exemption of Chlorofluorocarbons (CFCs) Which Are to be Recycled from the Hazardous Waste Rules, Minn. Rules Chs. 7001 and 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 January 27, 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).

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

(6)

Glenn Skuta
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-3898
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.

(1) The proposed rule amendments pertaining to the management of hazardous waste, if adopted, incorporate federal regulations into state rules. The proposed rule amendments list particular wood preserving wastes as hazardous waste and specify the requirements which owners and operators of wood preserving operations must follow in managing wood preservation wastes. The proposed rule

amendments also exclude chlorofluorocarbons (CFCs) which are reclaimed for further use from hazardous waste regulation. This provision is intended to provide regulatory relief for individuals who are providing the environmentally beneficial service of CFC recycling. 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 regarding the management of wood treating wastes are equivalent to the federal rules which they incorporate, and thus do not impose any additional regulations on small businesses. The proposed rule amendments regarding the recycling of CFCs 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: December 4, 1991

Ann Glumac
for Charles W. Williams
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments of Rules Governing Waste Management at Wood Treating Operations and the Exemption of Recycled Chlorofluorocarbons from Hazardous Waste Regulation, Minn. Rules Pts. 7001.0623, 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644

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 D. 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 20th day of December, 1991.

That on the 20th day of December, 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 D. Skuta

Subscribed and sworn to before me
this 30th day of December, 1991.

Jodi D. Rasmussen
Notary Public

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

D. at least 900 clock hours at an institution that measures academic progress in clock hours.

[For text of subp 2, see M.R.]

Subp. 2a. **Certificate program.** After June 30, 1992, "certificate program" means a program that is:

A. offered by an eligible school as defined in part 4830.0300, subpart 1;

B. at least 12 quarter credits or the equivalent, or 300 clock hours for clock hour schools; and

C. at least eight weeks long.

[For text of subp 3, see M.R.]

Subp. 3a. **Designated rural area.** "Designated rural area" means the area outside the cities of Duluth, Mankato, Moorhead, Rochester, St. Cloud, and outside the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

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

Subp. 5. **Eligible student.** "Eligible student" means a student who meets, at a minimum, all of the following requirements:

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

E. is in good standing and making satisfactory academic progress, as ~~determined by the school~~ defined in *Minnesota Statutes*, section 136A.101, subdivision 10;

[For text of items F and G, see M.R.]

[For text of subps 6 to 8, see M.R.]

Subp. 8a. **Full-time.** "Full-time" means the enrollment level defined in *Minnesota Statutes*, section 136A.101, subdivision 7a, except that for purposes of work-study grants administered under parts 4830.2000 to 4830.2600, "full-time" means enrollment in a minimum of 12 credits per quarter or semester, or the equivalent.

[For text of subp 9, see M.R.]

Subp. 10. **Minnesota resident.** "Minnesota resident" means:

[For text of items A and B, see M.R.]

C. a student who graduated from a Minnesota high school, unless the student is a resident of a bordering state while attending a Minnesota high school; or

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

[For text of subps 10a to 12, see M.R.]

Pollution Control Agency

Proposed Permanent Rules Relating to Wood Preserving Operation Wastes

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 January 27, 1992 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).

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.

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 55155-3898 (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 list particular wood preserving wastes as hazardous waste and specify the requirements which owners and operators of wood preserving operations must follow in managing wood preservation wastes. The proposed rule amendments also exclude chlorofluorocarbons (CFCs) which are reclaimed for further use from hazardous waste regulation. This provision is intended to provide regulatory relief for individuals who are providing the environmentally beneficial service of CFC recycling. 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 Statute* § 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 regarding the management of wood treating wastes are equivalent to the federal rules which they incorporate, and thus do not impose any additional regulations on small businesses. The proposed rule amendments regarding the recycling of CFCs 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 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

7001.0623 PART B INFORMATION REQUIREMENTS FOR DRIP PADS.

Except as otherwise provided in part 7045.0450, subpart 1, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

A. a list of hazardous wastes placed or to be placed on each drip pad; and

B. detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated, and maintained to meet the requirements of part 7045.0546, subpart 3, including the as-built drawings and specifications. This submission must address the following items as specified in part 7045.0546, subpart 2:

(1) the design characteristics of the drip pad;

(2) the liner system;

(3) the leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous wastes or accumulated liquid at the earliest practicable time;

(4) practices designed to maintain drip pads;

(5) the associated collection system;

(6) control of run-on to the drip pad;

(7) control of run-off from the drip pad;

(8) the interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(9) procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials including, but limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning;

(10) provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;

(11) operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(12) procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased, including record keeping practices;

(13) provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(14) if treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;

(15) a description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of part 7045.0546, subpart 3. This information should be included in the inspection plan submitted under part 7001.0560, item E;

(16) a certification signed by an independent, qualified, registered professional engineer, stating that the drip pad design meets the requirements of part 7045.0546, subpart 3, items A to F; and

(17) a description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under part 7045.0546, subpart 4, item A. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how part 7045.0538, subpart 7, will be complied with. This information should be included in the closure plan and, where applicable, the postclosure plan submitted under part 7001.0560, item L.

7045.0020 DEFINITIONS.

[For text of subps 1 to 20, see M.R.]

Subp. 20a. **Drip pad.** "Drip pad" means an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

[For text of subps 21 to 109, see M.R.]

7045.0120 EXEMPT WASTES.

The following wastes may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of this chapter:

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

P. secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided that:

[For text of subitems (1) to (3), see M.R.]

(4) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal; ~~or~~

Q. petroleum-contaminated media and debris that fail the test for the toxicity characteristic in part 7045.0131, subpart 7 (hazardous waste codes D018 to D043 only), and are subject to corrective action regulations under chapter 7150~~.~~;

R. spent wood preserving solutions that have been reclaimed and reused for their original intended purpose, and wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood; or

S. used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

7045.0135 LISTS OF HAZARDOUS WASTES.

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

Subp. 2. **Hazardous wastes from nonspecific sources.** Hazardous wastes from nonspecific sources are listed with the generic hazardous waste number and hazard code in items A to ~~V~~ Y.

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

U. F027, discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component: (H); ~~and~~

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.

V. F028, residues resulting from the incineration or thermal treatment of soil contaminated with hazardous waste Nos. F020, F021, F022, F023, F026, and F027: (T)~~.~~;

W. F032, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations, except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with part 7045.0145 and where the generator does not resume or initiate use of chlorophenolic formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not include wastewaters which have not come into contact with process contaminants. This listing does not include wastes from plants which have previously used chlorophenolic formulations and are included in the F034 or F035 listings: (T);

X. F034, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not include wastewaters which have not come into contact with process contaminants: (T); and

Y. F035, wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. This listing does not apply to wastewaters which have not come into contact with process contaminants: (T).

[For text of subps 3 to 5, see M.R.]

7045.0139 BASIS FOR LISTING HAZARDOUS WASTES.

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

Subp. 2. **Constituents.** The constituents which are the basis for listing the wastes identified in part 7045.0135, subparts 2 and 3 are listed in items A and B.

A. Constituents of wastes identified in part 7045.0135, subpart 2, are listed in subitems (1) to ~~(22)~~ (25).

[For text of subitems (1) to (20), see M.R.]

(21) F027: Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts; ~~and~~

(22) F028: Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts~~.~~;

(23) F032: Benz(a)anthracene; benzo(a)pyrene; dibenz(a,h)-anthracene; indeno(1,2,3-cd)pyrene; pentachlorophenol; arsenic; chromium; tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins; tetra-, penta-, hexa-, heptachlorodibenzofurans;

(24) F034: Benz(a)anthracene; benzo(k)fluoranthene; benzo(a)pyrene; dibenz(a,h)anthracene; indeno(1,2,3-cd)pyrene; naphthalene; arsenic; chromium; and

(25) F035: Arsenic; chromium; lead.

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

7045.0141 HAZARDOUS CONSTITUENTS.

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

Subp. 3. **"B" constituents.** Hazardous constituents beginning with the letter B are as follows:

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

L. Benzo(k)fluoranthene, 207-08-9, _____;

M. Benzo[a]pyrene, 50-32-8, U022;

~~M.~~ N. p-Benzoquinone, 106-51-4, U197;

~~N.~~ O. Benzotrichloride, 98-07-7, U023;

~~O.~~ P. Benzyl chloride, 100-44-7, P028;

~~P.~~ Q. Beryllium, 7440-41-7, P015;

~~Q.~~ R. Beryllium compounds, not otherwise specified in this list, _____, _____;

~~R.~~ S. Bromoacetone, 598-31-2, P017;

~~S.~~ T. Bromoform, 75-25-2, U225;

~~T.~~ U. 4-Bromophenyl phenyl ether, 101-55-3, U030;

~~U.~~ V. Brucine, 357-57-3, P018; and

~~V.~~ W. Butyl benzyl phthalate, 85-68-7, _____.

[For text of subps 4 to 8, see M.R.]

Subp. 9. **"H" constituents.** Hazardous constituents beginning with the letter H are as follows:

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

E. Heptachlorodibenzofurans, _____, _____;

F. Heptachlorodibenzo-p-dioxins, _____, _____;

G. Hexachlorobenzene, 118-74-1, U127;

~~F.~~ H. Hexachlorobutadiene, 87-68-3, U128;

~~G.~~ I. Hexachlorocyclopentadiene, 77-47-4, U130;

~~H.~~ J. Hexachlorodibenzo-p-dioxins, _____, _____;

~~I.~~ K. Hexachlorodibenzofurans, _____, _____;

~~J.~~ L. Hexachloroethane, 67-72-1, U131;

~~K.~~ M. Hexachlorophene, 70-30-4, U132;

~~L.~~ N. Hexachloropropene, 1888-71-7, U243;

~~M.~~ O. Hexaethyltetraphosphate, 757-58-4, P062;

~~N.~~ P. Hydrazine, 302-01-2, U133;

~~O.~~ Q. Hydrogen cyanide, 74-90-8, P063;

~~P.~~ R. Hydrogen fluoride, 7664-39-3, U134; and

~~Q.~~ S. Hydrogen sulfide, 7783-06-4, U135.

[For text of subps 10 to 23, see M.R.]

7045.0145 DELETION OF CERTAIN HAZARDOUS WASTE CODES FOLLOWING EQUIPMENT CLEANING AND REPLACEMENT AT WOOD PRESERVING PLANTS.

Subpart 1. **Scope.** Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of subparts 2 and 3. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the characteristics of hazardous waste.

Subp. 2. **Process equipment cleaning and replacement.** Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams. Cleaning and replacement of process equipment must be performed in a manner which minimizes or eliminates the escape of hazardous waste or waste constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the groundwater, surface water, or atmosphere. Generators must either:

A. prepare and follow an equipment cleaning plan and clean equipment in accordance with this item by:

(1) preparing and signing a written equipment cleaning plan that describes the equipment to be cleaned, how the equipment will be cleaned, the solvent chosen to be used in the cleaning, how solvent rinses will be tested, and how cleaning residues will be disposed;

(2) removing all residues from process equipment and rinsing process equipment with an appropriate solvent until dioxins and dibenzofurans in the final solvent rinse are found to be at or below the lower method calibration limit (MCL) found in SW-846, Method 8290, Table 1; and

(3) managing all residues from the cleaning process as F032 waste;

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.

B. prepare and sign a written equipment replacement plan that describes the equipment to be replaced, how the equipment will be replaced, and how the equipment will be disposed of as F032 waste; or

C. document that previous equipment cleaning and/or replacement was performed in accordance with this part and occurred after cessation of use of chlorophenolic formulations.

Subp. 3. **Record keeping.** The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

A. the name and address of the facility;

B. formulations previously used and the date on which their use ceased in each process at the plant;

C. formulations currently used in each process at the plant;

D. the equipment cleaning or replacement plan;

E. the name and address of any persons who conducted the cleaning and replacement;

F. the dates on which cleaning and replacement were accomplished;

G. the dates of sampling and testing;

H. a description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody for the samples;

I. a description of the tests performed, the dates the tests were performed, and the results of the tests;

J. the name and model numbers of the instruments used in performing the tests;

K. quality assurance/quality control (QA/QC) documentation; and

L. the following statement signed by the generator or the generator's authorized representative: "I certify under penalty of law that all process equipment required to be cleaned or replaced under *Minnesota Rules*, part 7045.0145, was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment."

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. **When allowed without a permit.** A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

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

B. the waste is placed either:

(1) in containers which meet the standards of part 7045.0270, subpart 4, and are managed in accordance with part 7045.0626; ~~or~~

(2) in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12; or

(3) on drip pads provided the generator complies with the requirements of part 7045.0644 and maintains at the facility a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days and maintains documentation of each waste removal, including the quantity of waste removed from the drip pad and sump or collection system and the date and time of removal;

[For text of items C to I, see M.R.]

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

7045.0528 TANK SYSTEMS.

Subpart 1. **Scope.** This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as part 7045.0450, and items A ~~and~~, B, and C provide otherwise.

[For text of items A and B, see M.R.]

C. Tank systems, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in part 7045.0020 and regulated under part 7045.0546, must meet the requirements of this part.

[For text of subps 2 to 11, see M.R.]

7045.0546 DRIP PADS.

Subpart 1. **Scope.** The requirements of this part apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Drip pads that are used

to manage wastes designated as F032 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before December 6, 1990, or the owner or operator has a design and entered into binding financial or other agreements for construction before December 6, 1990. Drip pads that are used to manage wastes designated as F034 or F035 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before May 4, 1992, or the owner or operator has a design and entered into binding financial or other agreements for construction before May 4, 1992. All other drip pads are considered new drip pads. The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-on nor run-off is generated is not subject to regulation under subpart 3, item E or F, as appropriate.

Subp. 2. **Assessment of existing drip pad integrity.**

A. For each existing drip pad as defined in subpart 1, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of subpart 3, item B. The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of subpart 3 are complete. The evaluation must justify and document the extent to which the drip pad meets each of the design and operating standards of subpart 3, except the standards for liners and leak detection systems, specified in subpart 3, item B, and must document the age of the drip pad to the extent possible, to document compliance with item B.

B. The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of subpart 3, item B, and submit the plan to the commissioner before the initiation of any repairs, upgrades, or modifications. The written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of subpart 3 and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent, qualified, registered, professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed by February 6, 1994, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented at facilities seven or less years old, all upgrades, repairs, and modifications must be made by February 6, 2000. If the age of the facility is greater than seven years, all upgrades, repairs, and modifications must be completed by the time the facility reaches 15 years of age or by February 6, 1994, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of subpart 3 after the date upon which all upgrades, repairs, and modifications must be completed as established under subitems (1) and (2), the owner or operator may petition the commissioner for an extension of the deadline as specified in subitem (1) or (2). The commissioner shall grant the petition for extension based on a finding that the drip pad meets all of the requirements of subpart 3, except those for liners and leak detection systems specified in subpart 3, item B, and that it will continue to be protective of human health and the environment.

C. Upon completion of all repairs and modifications, the owner or operator must submit to the commissioner the as-built drawings for the drip pad together with a certification by an independent, qualified, registered, professional engineer attesting that the drip pad conforms to the drawings.

D. If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of subpart 3, item M, or close the drip pad according to subpart 5.

Subp. 3. **Design and operating requirements.**

A. Drip pads must:

(1) be constructed of nonearthen materials, excluding wood and nonstructurally supported asphalt;

(2) be sloped to free-drain treated wood drippage, rain, and other wastes, or solutions of drippage and water or other wastes to the associated collection system;

(3) have a curb or berm around the perimeter;

(4) in the case of existing drip pads only, be impermeable, for example concrete drip pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing the drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

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.

(5) be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, for example variable and moving loads such as vehicle traffic and movement of wood.

B. A new drip pad, or an existing drip pad after the deadline established in subpart 2, must have:

(1) a synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil, groundwater, or surface water during the active life of the facility. The liner must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces; physical contact with the waste or drip pad leakage to which they are exposed; climatic conditions; the stress of installation; and the stress of daily operation, including stresses from vehicular traffic on the drip pad. The liner must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. The liner must be installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) a leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be constructed of materials that are chemically resistant to the waste managed in the drip pad and the leakage that might be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad. The leakage detection system must be constructed of materials that are designed and operated to function without clogging through the scheduled closure of the drip pad, and designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

C. Drip pads must be maintained so that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad. If deterioration or leakage is detected at the drip pad, the owner or operator must comply with the provisions for remedial action under item M.

D. The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

E. Unless protected by a structure, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.

F. Unless protected by a structure or cover, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

G. The drip pad must be evaluated to determine that it meets the requirements of items A to F, and the owner or operator must obtain a statement from an independent, qualified, registered, professional engineer certifying that the drip pad design meets the requirements of this part.

H. Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

I. The drip pad surface must be cleaned thoroughly at least once every seven days so that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including, but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

J. Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel and equipment.

K. After being removed from the treatment vessel, treated wood from pressure and nonpressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the drip pad following treatment in accordance with this requirement.

L. Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

M. Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the procedures in subitems (1) to (3).

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste, for example upon

detection of leakage in the leak detection system, the owner or operator must enter a record of the discovery in the facility operating log, immediately remove the portion of the drip pad affected from service, determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs. Within 24 hours of the discovery of the condition, the owner or operator must notify the commissioner of the condition and, within ten working days, provide written notice to the commissioner with a description of the steps that will be taken to repair the drip pad and clean up any leakage and the schedule for accomplishing the work.

(2) The commissioner shall review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the commissioner in writing and provide a certification, signed by an independent, qualified, registered, professional engineer, that the repairs and clean up have been completed according to the written plan submitted under subitem (1).

N. Should a permit be necessary, the commissioner shall specify in the permit the design and operating practices that are necessary to ensure that the requirements of this subpart are satisfied.

O. The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

Subp. 4. **Inspections.**

A. During construction or installation, liners and cover systems, for example membranes, sheets, or coatings, must be inspected for uniformity, damage, and imperfections, for example holes, cracks, thin spots, or foreign materials. Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of subpart 3 by an independent, qualified, registered, professional engineer. The certification must be maintained at the facility as a part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

B. While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of:

(1) deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) the presence of leakage in and proper functioning of the leak detection system; and

(3) deterioration or cracking of the drip pad surface.

Subp. 5. **Closure.**

A. At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as pad liners, contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in item A, the owner or operator finds that not all contaminated subsoils can practically be removed or decontaminated, the owner or operator must close the facility and perform postclosure care in accordance with closure and postclosure care requirements of part 7045.0538, subpart 7, that apply to landfills. For permitted units, the requirement to have a permit continues throughout the postclosure period. In addition, for the purpose of closure, postclosure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in parts 7045.0486 to 7045.0524.

C. The owner or operator of an existing drip pad, as defined in subpart 1, that does not comply with the liner requirements of subpart 3, item B, subitem (1), must include in the closure plan for the drip pad under part 7045.0486, subparts 3 to 6, both a plan for complying with item A and a contingent plan for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The owner or operator must also prepare a contingent postclosure plan under part 7045.0490, subpart 3, for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The cost estimates calculated under part 7045.0486, subparts 3 to 6, and part 7045.0506, for closure and postclosure care of a drip pad subject to this item must include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under item A.

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.

Subp. 6. **Design and installation of new drip pads.** Owners and operators of drip pads must ensure that the drip pads are designed, installed, and operated in accordance with all of the applicable requirements of subparts 3 to 5.

7045.0628 TANK SYSTEMS.

Subpart 1. **Scope.** This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as items A ~~and~~, B, and C, and part 7045.0552 provide otherwise.

[For text of items A and B, see M.R.]

C. Tank systems, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in part 7045.0020 and regulated under part 7045.0546, must meet the requirements of this part.

[For text of subps 2 to 12, see M.R.]

7045.0644 DRIP PADS.

Subpart 1. **Scope.** The requirements of this part apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Drip pads that are used to manage wastes designated as F032 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before December 6, 1990, or the owner or operator has a design and entered into binding financial or other agreements for construction before December 6, 1990. Drip pads that are used to manage wastes designated as F034 or F035 wastes in part 7045.0135, subpart 2, are considered existing drip pads if they were either constructed before May 4, 1992, or the owner or operator has a design and entered into binding financial or other agreements for construction before May 4, 1992. All other drip pads are considered new drip pads. The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-on nor run-off is generated is not subject to regulation under subpart 4, item E or F, as appropriate.

Subp. 2. **Assessment of existing drip pad integrity.**

A. For each existing drip pad as defined in subpart 1, the owner or operator must evaluate the drip pad and determine that it meets the requirements of this subpart, except the requirements for liners and leak detection systems of subpart 4, item B. The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified, registered, professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of subpart 4 are complete. The evaluation must justify and document the extent to which the drip pad meets each of the design and operating standards of subpart 4, except the standards for liners and leak detection systems, specified in subpart 4, item B, and must document the age of the drip pad to the extent possible, to document compliance with item B.

B. The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of subpart 4, item B, and submit the plan to the commissioner before the initiation of any repairs, upgrades, or modifications. The written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of subpart 4 and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent, qualified, registered, professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed by February 6, 1994, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented at facilities seven or less years old, all upgrades, repairs, and modifications must be made by February 6, 2000. If the age of the facility is greater than seven years, all upgrades, repairs, and modifications must be completed by the time the facility reaches 15 years of age or by February 6, 1994, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet the requirements of subpart 4 after the date upon which all upgrades, repairs, and modifications must be completed as established under subitems (1) and (2), the owner or operator may petition the commissioner for an extension of the deadline as specified in subitem (1) or (2). The commissioner will grant the petition for extension based on a finding that the drip pad meets the requirements of subpart 4, except those for liners and leak detection systems specified in subpart 4, item B, and that it will continue to be protective of human health and the environment.

C. Upon completion of repairs and modifications, the owner or operator must submit to the commissioner the as-built drawings for the drip pad together with a certification by an independent, qualified, registered, professional engineer attesting that the drip pad conforms to the drawings.

D. If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of subpart 4, item M, or close the drip pad according to subpart 6.

Subp. 3. **Design and installation of new drip pads.** Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with the applicable requirements of subparts 4 to 6.

Subp. 4. **Design and operating requirements.**

A. Drip pads must:

(1) be constructed of nonearthen materials, excluding wood and nonstructurally supported asphalt;

(2) be sloped to free-drain treated wood drippage, rain, and other wastes, or solutions of drippage and water or other wastes to the associated collection system;

(3) have a curb or berm around the perimeter;

(4) in the case of existing drip pads only, be impermeable. For example, concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing the drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, including variable and moving loads such as vehicle traffic and movement of wood.

B. A new drip pad or existing drip pad, after the deadline established in subpart 2, item B, must have:

(1) a synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil groundwater, or surface water during the active life, including the closure period, of the facility. The liner must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces; physical contact with the waste or drip pad leakage to which they are exposed; climatic conditions; the stress of installation; and the stress of daily operation, including stresses from vehicular traffic on the drip pad. The liner must be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift. The liner must be installed to cover the surrounding earth that could come in contact with the waste or leakage; and

(2) a leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be constructed of materials that are chemically resistant to the waste managed in the drip pad and the leakage that might be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad. The leakage detection system must be constructed of materials that are designed and operated to function without clogging through the scheduled closure of the drip pad, and designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

C. Drip pads must be maintained so that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad. If deterioration or leakage is detected at the drip pad, the owner or operator must comply with the provisions for remedial action under item M.

D. The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

E. Unless protected by a structure or cover, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system.

F. Unless protected by a structure or cover, as described in item B, subitem (2), the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

G. The drip pad must be evaluated to determine that it meets the requirements of items A to F and the owner or operator must obtain a statement from an independent, qualified, registered, professional engineer certifying that the drip pad design meets the requirements of this part.

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.

H. Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

I. The drip pad surface must be cleaned thoroughly at least once every seven days so that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including, but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

J. Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel and equipment.

K. After being removed from the treatment vessel, treated wood from pressure and nonpressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the drip pad following treatment in accordance with this requirement.

L. Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

M. Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the procedures in subitems (1) to (3).

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste, for example upon detection of leakage in the leak detection system, the owner or operator must enter a record of the discovery in the facility operating log, immediately remove the portion of the drip pad affected from service, determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs. Within 24 hours of the discovery of the condition, the owner or operator must notify the commissioner of the condition and, within ten working days, provide written notice to the commissioner with a description of the steps that will be taken to repair the drip pad and clean up any leakage and the schedule for accomplishing the work.

(2) The commissioner shall review the information submitted, make a determination regarding whether the drip pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing repairs and clean up, the owner or operator must notify the commissioner in writing and provide a certification, signed by an independent, qualified, registered, professional engineer, that the repairs and clean up have been completed according to the written plan submitted under subitem (1).

N. The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

Subp. 5. **Inspections.**

A. During construction or installation, liners and cover systems, for example membranes, sheets, or coatings, must be inspected for uniformity, damage, and imperfections, for example holes, cracks, thin spots, or foreign materials. Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of subpart 4 by an independent, qualified, registered, professional engineer. The certification must be maintained at the facility as a part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

B. While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of:

(1) deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) the presence of leakage in and proper functioning of the leak detection system; and

(3) deterioration or cracking of the drip pad surface.

Subp. 6. **Closure.**

A. At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components such as pad liners, contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in item A, the owner or operator finds that not all contaminated subsoils can practically be removed or decontaminated, the owner or operator must close the facility and perform postclosure care in accordance with closure and postclosure care requirements of part 7045.0538, subpart 7, that apply to landfills. For permitted units, the requirement to have a permit continues throughout the postclosure period.

C. The owner or operator of an existing drip pad, as defined in part 7045.0546, subpart 1, that does not comply with the liner requirements of part 7045.0546, subpart 3, item B, subitem (1), must include in the closure plan for the drip pad under part 7045.0486, subparts 3 to 6, both a plan for complying with item A and a contingent plan for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The owner or operator must also prepare a contingent postclosure plan under part 7045.0490, subpart 3, for complying with item B in case not all contaminated subsoils can be practicably removed at closure. The cost estimates calculated under part 7045.0486, subparts 3 to 6, and part 7045.0506, for closure and postclosure care of a drip pad subject to this item must include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under item A.

INSTRUCTION TO REVISOR. The references to parts 7045.0450 to 7045.0544 and 7045.0552 to 7045.0642 shall be changed to 7045.0450 to 7045.0546 and 7045.0552 to 7045.0644 wherever they appear in *Minnesota Rules.*

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 Animal Health

Adopted Permanent Rules Relating to Poultry

The rules proposed and published at *State Register*, Volume 15, Number 47, pages 2466-2472, May 20, 1991 (15 SR 2466), and Volume 16, Number 17, pages 1025-1026, October 21, 1991 (16 SR 1025), are adopted as proposed.

Board of Education

Adopted Permanent Rules Relating to Special Education Entrance and Exit Criteria and Related Changes

The rules proposed and published at *State Register*, Volume 15, Number 45, pages 2374-2400, May 6, 1991 (15 SR 2374), are adopted with the following modifications:

Rules as Adopted

3525.0200 DEFINITIONS FOR SPECIAL EDUCATION.

Subp. 9b. **Program support assistant or pupil support assistant.** "Program support assistant" or "pupil support assistant" means a district employee who is engaged in direct interaction with one or more pupils for instructional activities, physical or behavior management, or integration purposes under the direction of a regular education or special education teacher. A program or pupil support assistant shall only provide services to a pupil under the direction of a regular education or special education teacher or related services provider. The services must be:

B. to supplement instructional activities or to provide extended practice in instances in which the support assistant has had training from a special education teacher or related services staff and continues to receive ongoing direction and support from a special education teacher.

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

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, 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-eighth day of April, 1992, 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 at wood preserving operations and the exemption of reclaimed chlorofluorocarbons from hazardous waste regulation, Minn. Rules pts. 7045.0120, 7045.0135, 7045.0139, 7045.0141, and 7045.0145, 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 28 day of April, 1992.

CHARLES W. WILLIAMS, Commissioner
Minnesota Pollution Control Agency

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing Waste Management at Wood Treating Operations and the Exemption of Reclaimed Chlorofluorocarbons from Hazardous Waste Regulation, Minn. Rules Pts. 7001.0623, 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the 28th day of April, 1992. 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. (1) Notice of the MPCA's intent to adopt the above-entitled rule amendments without a public hearing was published in the State Register on December 23, 1991 (16 SR 1531 - 1543) 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 December 20, 1991.

(2) 2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public. A copy of the Statement of Need and Reasonableness was sent to the Legislative Commission to Review Administrative Rules as required by the 1990 amendments to the Administrative Procedure Act, Minn. Stat. Ch. 14.

(4) 3. All persons were given the opportunity to submit comments on the rule amendments after notice of proposed rulemaking. The comment period, as set out in the notice, expired on January 27, 1992.

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

(7) 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 three written comment letters during the comment period. All comments represented the opinions of wood treating facility operators. The MPCA finds that modifications to the proposed rule amendments are justified by the record in this proceeding as follows:

a. After the initiation of this rulemaking, the U.S. Environmental Protection Agency proposed amendments to the federal regulations which were the basis for the proposed state rule amendments. Some commenters suggested that the MPCA suspend rulemaking until these proposed federal amendments are finalized, since the new proposed federal amendments would affect the proposed rule amendments. The MPCA finds this to be a reasonable course of action and thus is withdrawing the portions of the proposed rule amendments which will be affected by the proposed federal amendments, namely, the drip pad standards. This modification will lessen the requirements of the proposed rule amendments and thus does not constitute a substantial change.

Minn. Rules pt. 7001.0623 is removed from the proposed rule amendments, indicated as follows:

~~7001.0623 PART B INFORMATION REQUIREMENTS FOR DRIP PADS.~~

~~Except as otherwise...under part 7001.0560, item L.~~

Minn. Rules pt. 7045.0020, subp. 20a is removed from the proposed rule amendments, indicated as follows:

7045.0020 DEFINITIONS.

~~Subp. 20a. Drip pad. "Drip pad" means...wood preserving plants.~~

Minn. Rules pt. 7045.0292, is modified to read:

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. When allowed without a permit. A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

B. the waste is placed ~~either:~~

~~(1)~~ in containers which meet the standards of part 7045.0270, subpart 4, and are managed in accordance with part 7045.0626; ~~(2)~~ or in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12; ~~or~~
~~(3) on drip pads...time of removal;~~

Minn. Rules pt. 7045.0528 is modified to read:

7045.0528 TANK SYSTEMS.

Subpart 1. Scope. This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as part 7045.0450, and items A~~,~~ and B~~, and C~~ provide otherwise.

~~C. Tank systems, sumps,...of this part.~~

Minn. Rules pt. 7045.0546 is removed from the proposed rule amendments, indicated as follows:

~~7045.0546 DRIP PADS.~~

~~Subpart 1. Scope. The requirements of...of subparts 3 to 6.~~

Minn. Rules pt. 7045.0628 is modified to read:

7045.0628 TANK SYSTEMS.

Subpart 1. Scope. This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as part 7045.0552, and items A~~,~~ and B~~, and C~~ provide otherwise.

~~C. Tank systems, sumps,...of this part.~~

Minn. Rules pt. 7045.0644 is removed from the proposed rule amendments, indicated as follows:

~~7045.0644 DRIP PADS.~~

~~Subpart 1. Scope. The requirements of...under item A.~~

b. In drafting the proposed rule amendments, the word "visible" was inadvertently omitted from Minn. Rules pt. 7045.0145, subp. 2, item A, subitem 2. The word "visible" is added to this subitem as originally intended. This modification does not constitute a substantial change since it serves to provide clarification.

Minn. Rules pt. 7045.0145, subpart 2, item A, subitem 2 is modified to read:

7045.0145 DELETION OF CERTAIN HAZARDOUS WASTE CODES FOLLOWING EQUIPMENT CLEANING AND REPLACEMENT AT WOOD PRESERVING PLANTS.

Subp. 2. Process equipment cleaning and replacement.

A. prepare and follow an equipment cleaning plan and clean equipment in accordance with this item by:
(2) removing all visible residues from process...Table 1; and

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

(4)

8. The above-captioned rule amendments, together with the modifications made by the MPCA in Finding No. 6 above, 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.

4. The modifications to the proposed rule amendments are supported by the record and do not result in a substantial change in the proposed rule amendments.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7045.0120, 7045.0135, 7045.0139, 7045.0141, and 7045.0145, governing the management of wastes at wood treating operations and the exemption of reclaimed chlorofluorocarbons from hazardous waste regulation are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1990).

Charles W. Williams, Commissioner
Minnesota Pollution Control Agency

Date: 4/28/92

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing Waste Management at Wood Treating Operations and the Exemption of Reclaimed Chlorofluorocarbons from Hazardous Waste Regulation, Minn. Rules Pts. 7001.0623, 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the 28th day of April, 1992. After affording all interested persons the opportunity to present written and oral data, statements, and arguments to the MPCA, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files, and proceedings herein, the MPCA, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the MPCA's intent to adopt the above-entitled rule amendments without a public hearing was published in the State Register on December 23, 1991 (16 SR 1531 - 1543) 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 December 20, 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. A copy of the Statement of Need and Reasonableness was sent to the Legislative Commission to Review Administrative Rules as required by the 1990 amendments to the Administrative Procedure Act, Minn. Stat. Ch. 14.

3. All persons were given the opportunity to submit comments on the rule amendments after notice of proposed rulemaking. The comment period, as set out in the notice, expired on January 27, 1992.

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 three written comment letters during the comment period. All comments represented the opinions of wood treating facility operators. The MPCA finds that modifications to the proposed rule amendments are justified by the record in this proceeding as follows:

a. After the initiation of this rulemaking, the U.S. Environmental Protection Agency proposed amendments to the federal regulations which were the basis for the proposed state rule amendments. Some commenters suggested that the MPCA suspend rulemaking until these proposed federal amendments are finalized, since the new proposed federal amendments would affect the proposed rule amendments. The MPCA finds this to be a reasonable course of action and thus is withdrawing the portions of the proposed rule amendments which will be affected by the proposed federal amendments, namely, the drip pad standards. This modification will lessen the requirements of the proposed rule amendments and thus does not constitute a substantial change.

Minn. Rules pt. 7001.0623 is removed from the proposed rule amendments, indicated as follows:

~~7001.0623 PART B INFORMATION REQUIREMENTS FOR DRIP PADS.~~

~~Except as otherwise...under part 7001.0560, item L.~~

Minn. Rules pt. 7045.0020, subp. 20a is removed from the proposed rule amendments, indicated as follows:

7045.0020 DEFINITIONS.

~~Subp. 20a. Drip pad. "Drip pad" means...wood preserving plants.~~

Minn. Rules pt. 7045.0292, is modified to read:

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. When allowed without a permit. A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

B. the waste is placed ~~either:~~

~~(1)~~ in containers which meet the standards of part 7045.0270, subpart 4, and are managed in accordance with part 7045.0626; ~~(2)~~ or in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12; ~~or~~
~~(3) on drip pads...time of removal;~~

Minn. Rules pt. 7045.0528 is modified to read:

7045.0528 TANK SYSTEMS.

Subpart 1. Scope. This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as part 7045.0450, and items A~~,~~ and B~~, and C~~ provide otherwise.

~~C. Tank systems, sumps,...of this part.~~

Minn. Rules pt. 7045.0546 is removed from the proposed rule amendments, indicated as follows:

~~7045.0546 DRIP PADS.~~

~~Subpart 1. Scope. The requirements of...of subparts 3 to 6.~~

Minn. Rules pt. 7045.0628 is modified to read:

7045.0628 TANK SYSTEMS.

Subpart 1. Scope. This part applies to owners and operators of facilities that use tank systems to treat or store hazardous waste, except as part 7045.0552, and items A~~,~~ and B~~, and C~~ provide otherwise.

~~C. Tank systems, sumps,...of this part.~~

Minn. Rules pt. 7045.0644 is removed from the proposed rule amendments, indicated as follows:

~~7045.0644 DRIP PADS.~~

~~Subpart 1. Scope. The requirements of...under item A.~~

b. In drafting the proposed rule amendments, the word "visible" was inadvertently omitted from Minn. Rules pt. 7045.0145, subp. 2, item A, subitem 2. The word "visible" is added to this subitem as originally intended. This modification does not constitute a substantial change since it serves to provide clarification.

Minn. Rules pt. 7045.0145, subpart 2, item A, subitem 2 is modified to read:

7045.0145 DELETION OF CERTAIN HAZARDOUS WASTE CODES FOLLOWING EQUIPMENT CLEANING AND REPLACEMENT AT WOOD PRESERVING PLANTS.

Subp. 2. Process equipment cleaning and replacement.

A. prepare and follow an equipment cleaning plan and clean equipment in accordance with this item by:
(2) removing all visible residues from process...Table 1; and

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

8. The above-captioned rule amendments, together with the modifications made by the MPCA in Finding No. 6 above, 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.

4. The modifications to the proposed rule amendments are supported by the record and do not result in a substantial change in the proposed rule amendments.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7045.0120, 7045.0135, 7045.0139, 7045.0141, and 7045.0145, governing the management of wastes at wood treating operations and the exemption of reclaimed chlorofluorocarbons from hazardous waste regulation are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1990).

Charles W. Williams, Commissioner
Minnesota Pollution Control Agency

Date: 4/28/92



ANDERSEN CORPORATION
100 FOURTH AVENUE NORTH
BAYPORT, MINNESOTA 55003-1096
612-439-5150

RECEIVED
JAN 24 1992
MPCA, HAZARDOUS
WASTE DIVISION

January 23, 1992

Mr. Glenn Skuta
Program Development Section
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-3898

Re: In the Matter of the Proposed Amendments Governing the Management of Waste at Wood Preserving Operations and the Exemption of Chlorofluorocarbons (CFCs) Which Are to be Recycled from the Hazardous Waste Rules, Minn. Rules Chs. 7001 and 7045.

Dear Mr. Skuta:

Andersen Corporation appreciates the opportunity to submit comments on the Minnesota Pollution Control Agency's (MPCA) proposed amendments regarding the management of waste from certain wood preserving operations. Andersen is potentially affected by these proposed rules only because it formerly used (prior to March 1986) a chlorophenolic wood preservative formulation in our wood window and door manufacturing operations.

By way of background, Andersen processes cut and milled wood parts in two treatment tanks containing a solvent-based wood preservative formulation. Wood to be treated is loaded onto elevator carriages which submerge the wood below the surface of the preservative formulation. Following a specified treatment period, the elevators lift the treated wood to a short distance (1-2 feet) above the preservative liquid. The elevators then tilt to an inclined position so that all drippage is conveyed back into the treatment tanks. After all drippage has ceased, the elevators reset to a horizontal position and the treated wood is removed for processing in other areas of the plant. Since drippage occurs directly over the treatment tanks, a drip pad is not required to convey preservative drippage from the treated wood to an associated collection system.

In light of Andersen's operations, we would like to address two specific issues regarding the proposed amendments. The first issue regards clarification of whether all wood preserving operations are required to have a drip pad. The second issue involves management requirements for incidental drippage from wood preserving processes.

1. Drip Pad Requirements. The proposed amendments will modify Subpart 1 of Minnesota Rules 7045.0292 to state that generators may accumulate hazardous waste on-site without a permit or interim status if the waste is placed either: 1) in a container, 2) in a tank, or 3) on a drip pad. We are concerned that this wording could be interpreted to require a drip pad for every wood preserving operation in Minnesota and, of particular importance, as part of Andersen's wood preserving operations.

As the above discussion indicates, by operating in a way that results in drippage occurring over the treatment tanks, Andersen effectively collects the excess drippage which is envisioned by the proposed rules to be collected by a drip pad. Because of the design and operational practices of our system, we believe that construction and operation of a drip pad is a redundant and unnecessary requirement for our wood preserving operations.

Therefore, Andersen requests that the MPCA modify the proposed amendments to clearly indicate that drip pads are not specifically required for all wood preserving operations and are expressly not required where drippage is actively collected in the treatment tanks as part of the wood preserving operations.

2. Management of Storage Area Drippage. As you are aware, on December 5, 1991 the U.S. Environmental Protection Agency (EPA) issued proposed amendments revising the wood preserving hazardous waste regulations. Part of these proposed amendments include requirements for management of incidental drippage which may occur in storage areas of wood preserving operations. EPA recognizes that infrequent and incidental drippage may occur after treated wood is removed from a drip pad or, in Andersen's situation, after removal following draining above the treatment tanks. EPA indicated in its final rulemaking that *de minimis* losses that could occur in a storage area would not require the storage area to be equipped with a drip pad. 55 Fed. Reg. 50456 (December 6, 1990).

   EPA further recognized that incidental drippage in a storage area would not constitute illegal disposal of hazardous waste providing that there is an immediate response to the drippage. Therefore, EPA has proposed that management requirements for drip pads are not applicable to the management of infrequent and incidental drippage in storage areas provided that: 1) the operator has a Contingency Plan, 2) the operator responds immediately to the discharge of infrequent and incidental drippage by cleaning up the drippage, documenting the cleanup, and retaining these documents for three years, and 3) disposing of the contaminated media as hazardous waste.

   Andersen believes that EPA's proposed amendments provide a responsible and practical method for managing the infrequent and incidental drippage which may occur as a result of wood preserving operations. Andersen therefore requests that the MPCA consider incorporating language similar to the EPA's proposed regulations which define specific criteria for managing infrequent and incidental drippage in storage areas associated with wood preserving operations.

I will be contacting you shortly to discuss the above comments on the proposed rules. If you have any questions, please give me a call at (612) 430-7456.

Sincerely,

ANDERSEN CORPORATION

Jeff R. Nelson
Chemical Safety and Health Coordinator

sjb
cc: Sang Albrecht - Washington County Public Health Department
Dick Fowler
Kirk Hogberg

Attachment 3

The MacGillis & Gibbs Company

P.O. Box 12576
New Brighton, MN 55112
(612) 636-6191

- Wood Preservation With CCA
- D-Blaze Fire Retardant
- Cedarwood Brown Tone
- Redwood Tone
- Extending Our Natural Resources

January 27, 1992

Mr. Glenn Skuta
MPCA
520 Lafayette Rd N
St Paul MN 55155-3898

VIA FACS

Dear Mr. Skuta:

I have reviewed your proposed permanent rules relating to Wood Preserving Operation Wastes. You mention in your cover letter that your amendments are equivalent in content to the federal regulations and do not included standards more restrictive. I would hope that the MPCA does not adopt your standards without taking into account proposed changes that Federal EPA still has under consideration. I do not believe your amendments have taken into account the proposed changes set forth in the Federal Register dated Thursday, December 5, 1991 entitled "40 CFR Parts 216, 264, 265 and 302 Wood Preserving: Identification and Listing of Hazardous Waste: Standards and Interims Status Standards for Owner and Operating of Hazardous Waste Treatment Storage and Disposal Facilities: Proposed Rule Making.

In this rule, the EPA propose the following changes:

1. Eliminate the cleaning of cylinders that in the past have used penta (F032) and are not now treating with it.

2. Narrow the scope for the Waste Water Listings to those waste waters that come in contact with the process contaminates.

3. Require clean-up of storage yard drippage, and contingency plans respond to incidental drippage in the storage yards.

4. Remove the requirement that new drip pads need to be sealed.

5. Revise the requirement that all drip pads be impermeable to reflect on the permeability of available data for coating sealers or covers.

The MacGillis & Gibbs Company

P.O. Box 12576
New Brighton, MN 55112
(612) 636-6191

- Wood Preservation With CCA
- D-Blaze Fire Retardant
- Cedarwood Brown Tone
- Redwood Tone
- Extending Our Natural Resources

Janauary 27, 1992

Mr. Glenn Skuta
MPCA
Page Two

6. Revise the requirements that the drip pads be cleaned weekly to a requirement that drip pads be cleaned in a manner and frequency such that the entire surface of the pad can be inspected weekly.

7. Revise the schedule for upgrading existing pads to allow 15 years for the incorporation of liners, leaky detection systems from the date the regulations adopted regardless of the real age of the drip pad.

These proposed changes which the EPA will probably incorporate into the final rule should be out sometime in March. I believe it is important that the State of Minnesota accommodate these changes and perhaps others that might occur in your rule.

I also feel that due to the weather conditions in Minnesota it would be almost impossible to be in compliance with the new rule in early March. A more reasonable schedule or deadline should be set up for making the necessary changes. I believe that warmer weather is necessary in order to do the things necessary for compliance. Please call me if you have any questions.

Sincerely,

A. J. Bumby
General Manager

POPHAM HAIK

SCHNOBRICH & KAUFMAN, LTD.

2400 ONE TABOR CENTER
1200 SEVENTEENTH STREET
DENVER, COLORADO 80202
TELEPHONE 303 993-1200
TELECOPIER 303-893-2194

MINNEAPOLIS, MINNESOTA

3300 PIPER JAFFRAY TOWER
222 SOUTH NINTH STREET
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE 612-333-4800
TELECOPIER 612-334-2713

4100 CENTRUST FINANCIAL CENTER
100 S. E. SECOND STREET
MIAMI, FLORIDA 33131
TELEPHONE 305-530-0050
TELECOPIER 305-530-0055

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005
TELEPHONE 202-962-8700
TELECOPIER 202-962-8799

G. ROBERT JOHNSON
DIRECT DIAL (612) 334-2527

January 27, 1992

Glenn Skuta
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

Re: Proposed Permanent Rules Relating to Wood Preserving Operation Wastes.

INTRODUCTION

On behalf of Bell Lumber & Pole Co. ("Bell Lumber"), Popham, Haik, Schnobrich & Kaufman, Ltd. offers these comments to the Proposed Permanent Rules Relating to Wood Preserving Operation Wastes, published in the Minnesota State Register (December 23, 1991, 16 S.R. 1531), and the impact of the Environmental Protection Agency's ("EPA") Notice of Proposed Rulemaking ("NPRM") on the Proposed Permanent Rules. The first part of these comments concerns the impact of the NPRM on the Proposed Permanent Rules and urges the State to suspend its rulemaking process until EPA has completely revised the federal rules. The second part of this comment concerns specific changes to the Proposed Permanent Rules that must be made in order that they are the same as current EPA rules in accordance with the MPCA Board authorization for rulemaking.

Bell Lumber manufacturers treated-wood products and employs various preservatives to protect wood from decay-causing organisms, at its plant in New Brighton, Minnesota. It has been at the forefront of the wood treating industry in designing new drip pads, and recently designed and constructed, with full knowledge and concurrence of MPCA staff, a state-of-the art drip pad at its Minnesota facility that has been used as a model by other wood treating companies throughout the country. Bell

Lumber offers this description of its operations because it believes that federal and state authorities should be aware of the emerging technology used in the construction of drip pads. Both the 1990 federal amendments and the Proposed Permanent Rules primarily conceive of drip pad construction under the old system of using concrete. Given the rapid change in technology in this area described below, it behooves the state to provide greater flexibility in its proposed rules for the construction of drip pads than currently exists.

Unlike the old drip pads that were constructed of concrete, Bell Lumber's new drip pad is constructed of galvanized steel. A steel plate is laid across the base of the steel treating cylinder and is joined and caulked to rail tracks that guide the tram cars into the cylinder. The steel plates are riveted and sodered together at the joints of each plate to prevent any leakage. Underneath the steel plates is a concrete block upon which the rail tracks rest. Hence, the tram cars holding the wood racks do not rest on the steel plates themselves. On either side of the concrete block are ports that provide locations for assessing whether any liquid has seeped under the steel and that provide access by which to place sumps or other leak collection devices.

These changes represent significant safety improvements over the old method of constructing drip pads. In particular, the use of 28 gauge galvanized steel plates as the drip pad itself greatly reduces any chance of wood preserving wastes leaking through the drip pad. Furthermore, the placement of rail tracks on the concrete rather than the drip pad lessens the possibility of cracks developing in the plates as the result of continuous weight on the pad.

Bell Lumber urges that the State draft language that would exempt an owner of a drip pad from the rigid construction requirements of proposed Minnesota Rule 7045.0546, subp. 3, provided that the drip pad is constructed so as to meet the requirements of subp. 3 by another design. The advantage to such an exemption is that it would allow properly constructed facilities to fit within the federal requirements but would also not be a disincentive to industry to develop <u>and</u> implement new construction methods that are as safe or safer than what currently exists. As the Proposed Permanent Rule is currently drafted, a drip pad that does not comply with the technical requirements of Subp. 3 is in violation even if practically speaking it is a safer drip pad than one that does fit the rules.

I. Impact of NPRM on State's Proposed Permanent Rules.

One of the expressly stated purposes of the Proposed

Permanent Rules is to incorporate the 1990 federal amendments into state rules in order to insure consistency with the federal amendments. The MPCA staff's Statement of Need and Reasonableness, for example, specifically cites "the need for consistency with federal hazardous waste regulations" as a reason for the MPCA Board to authorize the rulemaking.

Since the 1990 federal amendments were adopted, however, EPA has issued its NPRM to amend the regulations regarding wood treating operations. The amendments in the NPRM significantly alter the 1990 federal amendments and will affect industry's operations and regulatory obligations under federal law. EPA expects to adopt final rules regarding the NPRM sometime this spring. The Proposed Permanent Rules do not incorporate most of the significant changes proposed in the NPRM. Consequently, even if the State adopts the Proposed Permanent Rules they will not be consistent with federal law. Instead, MPCA will have to undergo a second round of rulemaking covering much of the very same issues that are currently in the Proposed Permanent Rules. According to MPCA staff, during the second round of rulemaking, MPCA will have to change some of the very rules that it promulgated only a few months earlier.

An alternative to this redundant two-step process is for MPCA to suspend its current set of proposed rules and to wait until EPA has adopted the final version of the federal amendments before incorporating them into state law. If necessary, MPCA has the authority to seek an extension from EPA for incorporating the 1990 federal amendments into state law. There are sound reasons for EPA granting such an extension and MPCA staff expects that it would be granted.

The advantages to seeking an extension are numerous. By holding only one rulemaking session, the state would ensure uniformity with the federal rules (an asserted goal of MPCA staff in its recommendation to the Board), save money and time because MPCA would only have to go through the entire process once, provide certainty and guidance to the regulated community, and potentially save industry from having to initiate expensive retrofitting of existing facilities years before it is necessary.

Given the significant differences in the NPRM and the Proposed Permanent Rules, it is vital for industry to know that there will be a consistency between the two rules. For the above reasons, Bell Lumber urges the State to suspend its rulemaking process until the federal amendments to the wood treating operations are adopted and then renotice and adopt all aspects of the federal program so that the desired consistency is realized.

II. Changes to the Proposed Permanent Rules.

Bell Lumber has specific comments on three of the Proposed Permanent Rules. The nature of these comments is that the proposed Minnesota rules do not incorporate the federal amendments in total, a stated goal of the MPCA staff, and there are sound reasons for the State to make changes that comport with the federal amendments. Given the MPCA's asserted objectives, Bell Lumber would like to point out certain differences.

1. Proposed Rule 7001.0623(B)

Proposed Minnesota Rule 7001.0623(B), unlike its corresponding federal regulation (40 C.F.R. § 270.26), does not permit an owner of a drip pad to seek an exemption to the requirements of releases from solid waste management units. It is not apparent why such an exemption is missing from the State rules or what deleterious effect such an exemption would have on safety or operation of solid waste management units. For those companies that can satisfy the requirements of 40 C.F.R. §270.26, however, the exemption obviates costly expenditures and time-consuming efforts. Given the benefit of such an exemption to qualified owners and the absence of any harm, Bell Lumber urges the MPCA to incorporate this portion of the federal amendments into the Proposed Permanent Rules.

2. Proposed Rule 7045.0145.

Proposed Minnesota Rule 7045.0145, requires that a generator must clean equipment by "removing all residues from process equipment and rinsing process equipment. . . ." In contrast, the federal amendments require a generator to "remove all visible residues from process equipment." [Emphasis added]. The proposed Minnesota rule requires a more stringent cleaning process than the federal amendment because both visible and non-visible residues must be removed. Given that particles of residue may be in amounts as small as one part per million and therefore invisible, the absence of the word "visible" from the Proposed Permanent Rule could require substantially more cleanup than is necessary.

To Bell Lumber's knowledge, there is no reason for the State to require a more stringent standard of cleaning than that found in the 1990 federal amendments. In fact, in conversations with MPCA officials, Bell Lumber has learned that MPCA did not intend to make this change and would correct it before the final rules were published. Consequently, Bell Lumber urges the MPCA to change the pertinent language in 7045.0145 to read as follows: Subp. 2(A)(2) "removing all visible residues . . . ."

3. Proposed Rule 7045.0292.

Proposed Minnesota Rule 7045.0292, does not include a provision exempting a generator from the "closure and post-closure" requirements and "financial requirement for interim status standard" that is found in the federal amendments. Like Bell Lumber's comments to the above two rules, there does not appear to be any reason for not incorporating this exemption into the State's rules, and, given the MPCA staff's desire to mirror federal requirements, we assume this to be an oversight.

We trust that these comments will be of assistance to the MPCA staff in finalizing the rule for final MPCA Board approval. To the extent you have any questions or desire clarification, please feel free to contact the undersigned.

Sincerely,

G. Robert Johnson

62:PLT

Withdrawn Rules

Pollution Control Agency

In the Matter of the Proposed Adoption of Rule Amendments Governing the Management of Waste at Wood Preserving Operations and the Exemption of Chlorofluorocarbons Which Are to be Reclaimed from the Hazardous Waste Rules

Notice of Order Withdrawing Proposed Rule Amendments

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency has issued an Order Withdrawing Proposed Rule Amendments for the proposed rule amendments regarding waste management at wood preserving facilities, *Minnesota Rules* pts. 7001.0623, 7045.0020, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644. These rule amendments appeared at 16 *State Register* 1531-1543, Monday, December 23, 1991. The proposed rule amendments to *Minnesota Rules* pts. 7045.0120, 7045.0135, 7045.0139, 7045.0141, and 7045.0145 are not withdrawn.

Persons having questions about this matter may contact Glenn Skuta at the Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota, 55155-3898, telephone (612) 297-8319.

Charles W. Williams
Commissioner

Commissioners' Orders

Department of Natural Resources

Commissioner's Order No. 2423: Regulations for the Taking and Possession of Freshwater Mussels (Clams); Superseding Commissioner's Order No. 2378

PURSUANT TO AUTHORITY vested in me by *Minnesota Statutes* §§ 97A.045, 97C.701, 97C.705, 97C.711 and other applicable law, I, Rodney W. Sando, Commissioner of Natural Resources, hereby prescribe the following regulations for the taking and possession of freshwater mussels (clams).

Section 1. HARVESTING FOR PERSONAL USE.

Any person possessing a valid resident or nonresident angling license or who are exempt from licensing may take and possess at any time during the open season not more than 24 live, whole or 48 shell halves of freshwater mussels (clams) for personal use only. Mussels may be harvested in waters of the state where fish may be taken by angling. Mussels must be harvested by hand picking only and may not be purchased or sold. The open season for personal use is from May 16 through the last day of February. Species listed in Sec. 9 may not be harvested.

Sec. 2. SEASON FOR COMMERCIAL HARVEST.

(a) The open season for taking mussels is from May 16 through August 31.

(b) Mussels may be harvested from sunrise to sunset only.

Sec. 3. PERMITS FOR COMMERCIAL HARVEST.

(a) *Permit required*. A person may not take or possess more than 24 live, whole or 48 shell halves of freshwater mussels without first obtaining a written permit to harvest mussels from the commissioner.

(b) *Permit issuance*. Commercial harvest permits will be issued subject to the following criteria:

(1) Application must be submitted to the local area or regional fisheries office on forms provided by the commissioner.

(2) Approved permits will be issued only to Minnesota residents who possess a valid Minnesota resident angling license or who are exempt from licensing.

(3) Application forms must be signed by the applicant. All requested information must be provided. Failure to properly and fully complete an application form will result in its rejection.

(c) *Permit duration*. Permits are valid for one season only, as defined in Sec. 2 of this order. Permits may be issued for periods of time shorter than one season, at the discretion of the commissioner.

(d) *Permit revocation*. In addition to the penalties set forth in Sec. 10, the commissioner may revoke any permit upon 48 hours' written notice to protect aquatic resources.

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing Waste Management at Wood Treating Operations and the Exemption of Recycled Chlorofluorocarbons from Hazardous Waste Regulation, Minn. Rules Pts. 7001.0623, 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644

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 proposed amendments pertain to the regulation of waste management at wood treating operations and the exemption of chlorofluorocarbons (CFCs) which are recycled.

The proposed amendments contain federal amendments which were promulgated by the U.S. Environmental Protection Agency (EPA) under the authority of both the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Wastes Amendments of 1984 (HSWA). Federal regulations promulgated under the authority of RCRA are not effective in Minnesota until they are incorporated into state rules. The federal regulations which list creosote (Hazardous Waste Code F034) and inorganic (Hazardous Waste Code F035) wood preservative wastes as hazardous under Minn. Rules pt. 7045.0135 were promulgated under RCRA. In contrast, federal regulations promulgated under the authority of HSWA are effective in Minnesota at the time they are effective federally. The federal regulation which lists chlorophenolic (Hazardous Waste Code F032) wood preserving wastes as hazardous under Minn. Rules pt. 7045.0135 was promulgated

under HSWA. The EPA will enforce this HSWA listing until the corresponding state proposed amendment is adopted and the Agency receives authorization from EPA to enforce it. The effective dates for the proposed amendments, which establish standards for drip pads to be used to manage these wood preserving wastes, are dependent upon the specific type of waste managed on drip pads by a facility. A facility managing F034 or F035 wastes, for which listings were promulgated under RCRA, do not have to comply with the drip pad standards until the proposed amendments become effective. However, facilities managing F032 wastes, for which listings were promulgated under HSWA, must meet federal compliance dates for the drip pad standards. The federal compliance dates for facilities managing F032 wastes are February 6, 1992, for the upgrade of existing pads, and May 6, 1992, for the installation of new pads (see Exhibit 4).

The Agency is required to adopt new 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 that are less stringent than current state rules. The proposed amendments, which exempt CFCs that are reclaimed from hazardous waste regulation, incorporate federal regulations that are less stringent than existing rules. Although not required to adopt these federal regulations, the Agency believes that doing so will improve the hazardous waste rules by allowing for flexibility in the rules that will encourage and facilitate environmentally beneficial management of CFCs.

The authority to adopt the proposed 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 methods to reduce 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 three bases: (A) the need for consistency with federal hazardous waste regulations; (B) the need to provide for flexibility within the hazardous waste rules in order to facilitate environmentally beneficial management of certain hazardous wastes; and (C) the need for environmental protection.

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 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 in this rulemaking are as stringent as the federal regulations which they contain.

Minnesota received final authorization from EPA for its hazardous waste program pursuant to RCRA effective February 11, 1985 (see 50 FR 3756, published on January 28, 1985). A state with final authorization administers its hazardous waste program in lieu of the EPA program for those regulations which were promulgated pursuant to RCRA. In order to maintain its authorization, the state must enact equivalent requirements within specific time frames when new, more stringent federal requirements are promulgated by EPA. The federal regulations incorporated by the proposed amendments regarding the management of wastes at wood treating operations were promulgated under RCRA and HSWA and are more stringent than current state rules. Therefore, the proposed amendments are needed in order for state rules to be consistent with federal regulations and in order for the Agency to maintain its authorization to administer the hazardous waste program.

B. Need to Provide for Flexibility Within the Hazardous Waste Rules in Order to Facilitate Environmentally Beneficial Management of Certain Hazardous Wastes.

The proposed amendments provide flexibility in the hazardous waste rules in order to help facilitate recycling of CFCs. The proposed amendments exempt CFCs from the hazardous waste rules, provided that the CFCs are reclaimed. Regulating CFCs under the hazardous waste rules would be economically costly to generators and would possibly encourage generators to vent CFCs to the atmosphere in lieu of proper management. Venting of CFCs has been determined to be a cause of ozone depletion. The proposed amendments, through exemption, provide an incentive for CFC recycling. Generators disposing of CFCs would have to pay the high costs of hazardous waste management, while generators recycling CFCs would avoid these costs. EPA is expected to ban the venting of CFCs in the near future under the authority of the Clean Air Act.

Since the proposed federal regulations regarding CFC recycling are less stringent than current state rules, the Agency is not required to adopt them. The Agency has decided to incorporate these less stringent federal requirements into state rules in order to facilitate recycling and prevent venting of CFCs. This exemption will help promote 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.

C. Need for Environmental Protection.

The types of wood preserving wastes and operations regulated by the proposed amendments pose a great threat to the environment. Approximately 54 wood treating facilities are on the Superfund National Priorities List and there are also wood treating operations on the state Superfund program's Permanent List of Priorities in Minnesota. Cases of environmental damage resulting from

these wastes and operations are sometimes severe and long-term (see Exhibit 6). The proposed amendments seek to correct and prevent these problems by adding several types of wood preserving wastes to the wastes that are addressed in the existing rules. The proposed amendments also mandate specific management standards for these wastes, including the use of drip pads at wood treating facilities in order to collect wastes and prevent them from coming into contact with environmental media such as soil and ground water. The proposed amendments are needed in order to provide the standards necessary to help protect human health and the environment from the potential hazards posed by wood preserving wastes and operations.

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 to 5 listed in Part VII of this document, which are hereby incorporated by reference. The proposed amendments to state rules due to these federal regulations are found in Minn. Rules pts. 7001.0623, 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644. The reasonableness of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules pt. 7001.0623, Part B Information Requirements for Drip Pads.

The amendments create a new type of hazardous waste management unit - the drip pad. The drip pad requirements have been designed to specifically address the normal operating conditions of wood treating operations which include the

holding of newly treated wood in a drippage area until all drippage has ceased. Drip pads are to be used in drippage areas in the collection and accumulation of the newly listed wood preservative wastes discussed in item D below. If owners of operations using drip pads do not meet the requirements of Minn. Rules pt. 7045.0292, subp. 1, item B, subitem (3) regarding the accumulation of hazardous waste (see discussion in item H below), or if they treat hazardous wastes on their drip pads, they must obtain a facility permit to operate their drip pad. This part contains the information which must be included in Part B of the applicant's permit application. The information which this part requires to be submitted includes the types of wastes to be managed on drip pads and the design, construction, operation, and maintenance of drip pads.

It is reasonable to require a permit for operations which will be storing hazardous wastes for an extended period of time or treating hazardous wastes on drip pads, because in doing so, they are increasing the potential for a release of hazardous waste to the environment. It is also reasonable that a permit containing the information specified in this part be required to more closely monitor the activities of facilities operating in this manner in order to assure protection of human health and the environment.

B. Minn. Rules pt. 7045.0020 Definitions.

Minn. Rules pt. 7045.0020 provides definitions for a number of terms in the hazardous waste rules. The proposed amendments add the term "drip pad" to this part. It is reasonable to include this definition in this part in light of the proposed amendments which establish the drip pad as a new hazardous waste management unit in order to clarify the meaning of this new term.

C. Minn. Rules pt. 7045.0120 Exempt Wastes.

The existing Minn. Rules pt. 7045.0120 lists classes of wastes which are excluded from hazardous waste regulation. The proposed amendments add two new

classes of waste to this part. Both exclusions are for recycled wastes. One class of excluded waste is wood preserving process wastes which are reclaimed and reused to treat wood. The other exclusion is that of used CFCs reclaimed for further use. In both cases, recycling of the wastes involved is preferred to disposal because recycling decreases the need for the production of more hazardous chemicals and is an environmentally protective method of managing these wastes. Recycling of these wastes is also less expensive than managing them as hazardous waste. By exempting these wastes when recycled, the proposed amendments encourage the lower cost and more environmentally beneficial alternative of recycling. The proposed amendments to this part are reasonable for these reasons.

D. Minn. Rules pt. 7045.0135 Lists of Hazardous Wastes.

The existing Minn. Rules pt. 7045.0135 contains the lists of substances which are classified as hazardous wastes. Wastes listed as hazardous are subject to full regulation under the hazardous waste rules. The proposed amendments add three classes of wood preserving wastes to these lists, including chlorophenolic (Hazardous Waste Code F032), creosote (Hazardous Waste Code F034), and inorganic (Hazardous Waste Code F035; containing arsenic and chromium) formulations. These classes include wastewaters, process residuals, preservative drippage, and spent formulations containing these types of wood preserving chemicals. The F032 listing carries over to wastes from operations which have ceased use of chlorophenolic preservatives, but which have not met the equipment cleaning standards of Minn. Rules pt. 7045.0145 (see discussion in item G below). The listing applies to this situation because EPA has determined that cross-contamination from past uses of chlorophenolics has occurred. It is reasonable to list these three classes of wastes as hazardous

because of the high degree of toxicity they display. Listing these wastes will protect human health and the environment by bringing them into the hazardous waste management system.

E. Minn. Rules pt. 7045.0139 Basis for Listing Hazardous Wastes.

The existing Minn. Rules pt. 7045.0139 lists the hazardous constituents which are the basis for listing wastes as hazardous in Minn. Rules pt. 7045.0135. The proposed amendments to this part list the constituents which are the basis for listing the new wastes which the proposed amendments add to Minn. Rules pt. 7045.0135. The proposed amendments to this part are reasonable because they support the proposed amendments to Minn. Rules pt. 7045.0135.

F. Minn. Rules pt. 7045.0141 Hazardous Constituents.

The existing Minn. Rules pt. 7045.0141 lists hazardous constituents of concern to human health and the environment. Wastes containing constituents listed in this part may be listed at the Agency's discretion, as laid out in Minn. Rules pt. 7045.0129. Chemicals of a toxic, carcinogenic, or otherwise hazardous nature are listed in this part. The proposed amendments add to this part three additional constituents which are found in wood preserving wastes. The proposed amendments add these chemicals to the list of constituents of concern because they have been determined by EPA to be probable human carcinogens and potentially highly toxic. For this reason, it is reasonable to add these constituents to the list to allow for them to be considered in the evaluation of wastes to determine whether or not wastes should be listed.

G. Minn. Rules pt. 7045.0145 Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement at Wood Preserving Plants.

The listing of F032 wastes in Minn. Rules pt. 7045.0135 (see discussion in item D above) includes wastes generated at operations which have discontinued use of chlorophenolic formulations, but which have not removed chlorophenolic

residues from process equipment. The listing is retained even though the use of chlorophenolics has ceased because residues from past treatments are known to cause cross-contamination of non-chlorophenolic wastes. The proposed amendments create this new rule part which contains standards for equipment cleaning at operations which in the past used chlorophenolic formulations. Wastes generated at facilities which meet the requirements of this part will no longer come under the F032 listing. The proposed amendments contained in this part are reasonable because they allow for flexibility in the rules while still protecting the environment. The standards of this part, combined with the listing for F032 wastes, place additional requirements on facilities in this situation for the sake of environmental protection, but also allow for a relaxation of regulation once equipment cleaning is completed and the possibility of cross-contamination is removed. The proposed amendments of this part are reasonable because they act as a safeguard while the possibility of cross-contamination exists, but are relaxed once this possibility is removed.

H. Minn. Rules pt. 7045.0292 Accumulation of Hazardous Waste.

The existing Minn. Rules pt. 7045.0292, subp. 1 contains the standards generators must follow for the accumulation of hazardous waste without having a permit to do so. The existing rules of this subpart address the accumulation of hazardous waste in containers and in tanks. In light of the proposed amendments contained in Minn. Rules pt. 7045.0644 regarding the use of drip pads as accumulation units (see item J below), it is reasonable to provide standards similar to those for containers and tanks for drip pads. The proposed amendments allow for accumulation of hazardous waste without a permit on drip pads provided that the drip pad standards of Minn. Rules pt. 7045.0644 are met and all wastes are removed from the pad once every 90 days. It is reasonable to allow for accumulation of hazardous wastes on drip pads without a permit for the

short period of time allowed by this part because short-term accumulation presents little risk to human health and the environment. As long as the drip pad standards of Minn. Rules pt. 7045.0644 are met and the waste removal time established by this subpart are respected, a full permit for the accumulation of hazardous waste is unnecessary.

I. Minn. Rules pts. 7045.0528 and 7045.0628 Tank Systems.

The proposed amendments create a new hazardous waste management unit - the drip pad. Drip pads are used to collect wood preserving process wastes. Drip pads are used to convey wood preservative drippage from newly treated wood into a collection device, such as a tank system. The existing Minn. Rules pts. 7045.0528 and 7045.0628 contain requirements for the use of tank systems. The proposed amendments to these parts state that tank systems used in conjunction with drip pads are subject to the requirements of these parts. It is reasonable that tank systems used in conjunction with drip pads be subject to the existing tank system requirements because they are of the same nature and used for a similar purpose as other tank systems.

J. Minn. Rules pts. 7045.0546 and 7045.0644 Drip Pads.

The proposed amendments contained in these parts create a new type of hazardous waste management unit - the drip pad. These parts contain the drip pad requirements. The drip pad requirements have been designed to specifically address the normal operating conditions of wood treating operations, which include the holding of newly treated wood in a drippage area until all drippage has ceased. These parts require operators of wood treating facilities that use formulations listed in Minn. Rules pt. 7045.0135 to use drip pads to collect drippage of excess formulations from newly treated wood. These parts also contain the requirements for drip pad design, construction, operation, and maintenance. It is reasonable to require the use of drip pads to collect

hazardous wood preservative drippage because these wastes pose a significant risk to human health and the environment. Drip pads will prevent these hazardous wastes from contacting environmental media. It is also reasonable to include specific design and operation standards for drip pads in order to assure that they will be adequately able to protect human health and the environment.

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.

The Agency is required to adopt the proposed amendments regarding the management of waste at wood treating operations in order to maintain its authorization to administer the hazardous waste program, as explained in Part I and II of this document. Since the proposed amendments may not be less stringent than the federal regulations which they contain, the Agency may not make the proposed amendments less stringent in order to accommodate all small businesses. The Agency does, however, have the freedom to regulate Very Small Quantity Generators of hazardous waste (VSQGs-those generating less than 100 kilograms/month), which may also be small businesses in some cases, less

stringently than larger generators, since the federal government does not regulate this class of generator. However, the Agency as a matter of policy regulates VSQGs in a similar way that it does larger generators because of the potential hazards of the wastes which VSQGs generate. Hazardous wastes are dangerous regardless of the size of the business generating them, and so all sizes of businesses must meet similar requirements with respect to the hazardous waste rules. The existing rules contain provisions which seek to lessen the regulatory burden on VSQGs to the extent possible without compromising environmental protection. These existing rules affect the implementation and effect of the proposed rules, lessening their burden on VSQGs. Although the proposed amendments will increase the cost of hazardous waste management for some small businesses, these costs are balanced by the protection of human health and the environment provided by the proposed amendments and the cost savings the proposed amendments will provide through the prevention of future cleanups of environmental contamination.

The proposed amendments regarding the exemption of recycled CFCs from the hazardous waste rules are designed to allow for flexibility in the rules and lessen the burden of the rules on all businesses. Thus, this part of the proposed rules will have a positive effect on all businesses to which they apply, including small businesses.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercising 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 regarding the management of hazardous wastes at wood preserving operations will result in additional costs for businesses which are affected by them. However, the Agency is required to adopt the proposed amendments in order to maintain its EPA authorization to administer the hazardous waste program, as explained in Parts I and II of this document. The Agency is required by EPA to make the proposed amendments at least as stringent as the federal amendments they adopt. Thus, the Agency may not lessen the requirements of the proposed rules in consideration of economic factors. The Agency does, as stated above in item IV, have the freedom to regulate VSQGs less stringently than larger generators, since the federal government does not regulate this class of generator. However, the Agency as a matter of policy regulates VSQGs in a similar way that it does larger generators because of the potential hazards of the wastes which VSQGs generate. Hazardous wastes are dangerous regardless of the size of the business generating them, and so all sizes of businesses must meet similar requirements with respect to the hazardous waste rules. The existing rules contain provisions which seek to lessen the regulatory burden on VSQGs to the extent possible without compromising environmental protection.

These existing rules affect the implementation and effect of the proposed rules, lessening their burden on VSQGs. Although the proposed amendments will increase the cost of hazardous waste management, these costs are balanced by the protection of human health and the environment provided by the proposed amendments and the cost savings the proposed amendments will provide through the

prevention of future cleanups of environmental contamination. The proposed amendments regarding the exemption from hazardous waste regulation for recycled CFCs reduce the economic burden of the hazardous waste rules on all businesses to which they apply. The proposed amendments are designed to allow for flexibility in the rules and are less stringent than current rules. They will have a beneficial economic effect on all businesses to which they apply by lessening the amount of costly hazardous waste regulation placed on those businesses. These proposed amendments will not cause 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. 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. 251, pages 53282-53330, December 30, 1988.
2	Federal Register, Vol. 55, No. 235, pages 50450-50490, December 6, 1990.
3	Federal Register, Vol. 56, No. 30, pages 5910-5915, February 13, 1991.
4	Federal Register, Vol. 56, No. 114, pages 27332-27336, June 13, 1991.
5	Federal Register, Vol. 56, No. 126, pages 30192-30198, July 1, 1991.
6	Minnesota Government Report, Vol. 14, No. 27, page 5, April 4, 1991.

November 13, 1991
Date

for Ann Glumac
Charles W. Williams
Commissioner