

**Attachment #1—Minnesota Pollution Control Agency  
Detailed Statement of Need and Reasonableness**

**Proposed Amendments to Minnesota Rules Governing Hazardous Waste,  
Chapters 7001 and 7045**

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1                   **Pollution Control Agency Proposed Permanent Rules Relating to**  
2                   **Hazardous Waste, Chapters 7001 and 7045**

3  
4 The **[bracketed, bolded, shaded]** discussion following each proposed rule change in the  
5 following extract describes the rationale for the proposed changes. This extract of the  
6 certified rule may contain errors associated with translation/editing. The certified rule is  
7 the official form of the proposed rule.  
8

9                   **7001.0150 TERMS AND CONDITIONS OF PERMITS.**

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

11                   Subp. 2. **Special conditions.** Each draft and final permit must contain conditions  
12 necessary for the permittee to achieve compliance with applicable Minnesota or federal  
13 statutes or rules, including each of the applicable requirements in parts 7045.0450 to  
14 7045.0642 7045.0651 and ~~7045.1300 to 7045.1380~~ 7045.1390, and any conditions that  
15 the agency determines to be necessary to protect human health and the environment. If  
16 applicable to the circumstances, the conditions must include:

17 **[In subpart 2, the MPCA corrects a citation to a range of rules that changed as parts**  
18 **were added. The MPCA also provides the replacement citation for a repealed range**  
19 **of rules.]//**

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

21                   Subp. 3. **General conditions.** Unless specifically exempted by statute or rule, each  
22 draft and final permit must include the following general conditions and the agency shall  
23 incorporate these conditions into all permits either expressly or by specific reference to  
24 this part:

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

26                   P. Compliance with ~~an~~ a RCRA permit during its term constitutes compliance, for  
27 purposes of enforcement, with subtitle C of RCRA except for those requirements not  
28 included in the permit which:

29 **[In item P, the MPCA corrects grammar.]//**

30                   (1) become effective by statute;

31                   (2) are adopted under ~~parts 7045.1300 to 7045.1380~~ part 7045.1390, restricting  
32 the placement of hazardous wastes in or on the land; ~~or~~

33 **[In subitem (2), the MPCA provides the replacement citation for a repealed range of**  
34 **rules.]//**

35                   (3) are adopted under parts 7045.0450 to 7045.0551 regarding leak detection  
36 systems for new and replacement surface impoundment, waste pile, and landfill units,  
37 and lateral expansions of surface impoundment, waste pile, and landfill units. The leak  
38 detection system requirements include double liners, construction quality assurance  
39 programs, monitoring, action leakage rates, and response action plans, and will be  
40 implemented through the procedures of part 7001.0730, minor permit modifications; or

41 **[In subitem (3), the MPCA corrects a citation to a range of rules that changed as parts**  
42 **were added.]//**

43                   (4) are adopted under parts 7045.0645, 7045.0647, and 7045.0648, limiting air  
44 emissions.

1 [In subitem (4), the MPCA adopts a reference to amendments being adopted in this  
2 rulemaking that correspond to the federally required amendments to RCRA  
3 regulations titled, “Consolidated Organic Air Emission Standards for Tanks, Surface  
4 Impoundments, and Containers,” with the EPA assigned RCRA Revision Checklist  
5 #154-1, item 34 (abbreviated hereafter in the following format: [required/optional]  
6 RCRA Amendment 154-1.34). Adopting this amendment makes this rule provision  
7 equivalent to Title 40, Code of Federal Regulations, section 270.4(a)(4) (abbreviated  
8 hereafter in the following format: = 40 CFR 270.4(a)(4)). Hereafter, where the  
9 MPCA relies on the EPA’s amendment rationale to establish the reasonableness of  
10 an amendment, the MPCA cites the supporting background discussion in the Federal  
11 Register (FR). The reasonableness of this specific amendment is supported at Volume  
12 59, FR, pages 62896-62953 (abbreviated as 59 FR 62896), on December 6, 1994.]//  
13

#### 14 **7001.0501 UNDERGROUND INJECTION.**

15 References to underground injection of waste throughout this chapter are subject to  
16 Minnesota statutes and rules prohibiting the discharge of waste or pollutants to the  
17 saturated or unsaturated zones.

18 [In new part 7001.0501, the MPCA clarifies that, despite references to underground  
19 injection of waste found in chapter 7045 or incorporated federal regulations,  
20 underground injection is also subject to other Minnesota Statutes and Rules that  
21 prohibit underground injection of waste or pollutants. For example, part 7060.0100  
22 prohibits the discharge of sewage, industrial waste, or other waste to the saturated  
23 zone (groundwater) or unsaturated zone (soil above the water table). The purpose of  
24 such a restriction, as stated in part 7060.0100, is to preserve and protect underground  
25 waters by preventing pollution. Thus, it is reasonable to include in the hazardous  
26 waste rules a clarification that reference to underground injection in chapter 7045 is  
27 not only subject to hazardous waste rules but also to other statutes and rules  
28 governing underground discharges of waste or pollutants.]//  
29

#### 30 **7001.0520 PERMIT REQUIREMENTS.**

31 *[For text of subps 1 to 3, see M.R.]*

32 Subp. 4. **Termination of eligibility for permit by rule.** The eligibility of an owner or  
33 operator of an elementary neutralization unit, a pretreatment unit, a wastewater treatment  
34 unit, or a combustion waste facility to be permitted under this part is subject to  
35 termination by the agency after notice and opportunity for a contested case hearing or a  
36 public informational meeting if the agency makes any of the findings set forth in items A  
37 to D. An owner or operator whose eligibility to be permitted under this part has been  
38 terminated shall apply for and obtain an individual permit under these parts. The  
39 following findings constitute justification for the commissioner to commence  
40 proceedings to terminate eligibility:

41 *[For text of items A to C, see M.R.]*

42 D. that under the circumstances, in order to protect human health or the  
43 environment, the permitted facility should be subject to the requirements of parts  
44 ~~7045.0452 to 7045.0544~~ 7045.0450 to 7045.0551.

1 **[In item D, the MPCA corrects a citation to a range of rules that changed as parts**  
2 **were added.]//**

3 Subp. 5. **Closure by removal.** Owners or operators of surface impoundments, land  
4 treatment units, and waste piles closing by removal or decontamination under parts  
5 7045.0552 to ~~7045.0642~~ 7045.0651 must obtain a postclosure permit unless they can  
6 demonstrate to the agency that the closure met the requirements for closure by removal or  
7 decontamination in part 7045.0532, subpart 7; 7045.0534, subpart 7; or 7045.0536,  
8 subpart 8. The demonstration may be made in the following ways:

9 **[In subp. 5, the MPCA corrects a citation to a range of rules that changed as parts**  
10 **were added.]//**

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

12 *[For text of subps 6 and 7, see M.R.]*

#### 14 **7001.0550 CONTENTS OF PART A OF APPLICATION.**

15 Part A of the application must contain the following information:

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

17  
18 E. a list of the waste designated under parts 7045.0102 to ~~7045.0143~~ 7045.0155 as  
19 hazardous to be treated, stored, or disposed of by the applicant and an estimate of the  
20 quantity of each hazardous waste to be treated, stored, or disposed of annually by the  
21 applicant;

22 **[In item E, the MPCA corrects a citation to a range of rules that changed as parts**  
23 **were added.]//**

24 *[For text of items F to J, see M.R.]*

#### 26 **7001.0560 GENERAL INFORMATION REQUIREMENTS FOR PART B** 27 **OF APPLICATION.**

28 Part B of the application must contain the following information:

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

30 B. Chemical and physical analyses of the hazardous wastes to be handled at the  
31 facility. At a minimum, these analyses must contain all the information that ~~is necessary~~  
32 must be known to treat, store, or dispose of the wastes properly in accordance with parts  
33 7045.0450 to 7045.0551.

34 **[In item B, the MPCA revises language slightly to improve clarity and corrects a**  
35 **citation to a range of rules that changed as parts were added.]//**

36 *[For text of items C and D, see M.R.]*

37 E. A copy of the general inspection schedule required by part 7045.0452, subpart 5,  
38 item B, including, if applicable, the information in parts 7045.0526, subpart 5; 7045.0528,  
39 subpart 7; 7045.0532, subpart 5; 7045.0534, subparts 5 and 6; 7045.0536, subpart 4;  
40 7045.0538, subpart 5; 7045.0539, subpart 3; and 7045.0542, subpart 7; and the process  
41 vent and equipment leak standards in Code of Federal Regulations, title 40, sections  
42 264.1033, 264.1052, 264.1053, ~~and~~ 264.1058, as amended, and sections 264.1084,  
43 264.1085, 264.1086, and 264.1088, as incorporated in part 7045.0540.

1 [In item E, the MPCA adopts cross references to federal regulations relating to  
2 Organic Air Emissions that are being adopted in part 7045.0540 and which are based  
3 on required RCRA Amendments 154.51 and 154-1.35: “Consolidated Organic Air  
4 Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR  
5 270.14(b)(5), and justified at 59 FR 62896-62953, December 6, 1994; as amended by  
6 61 FR 59932-59997, November 25, 1996; and required RCRA Amendment 163.40:  
7 “Organic Air Emission Standards for Tanks, Surface Impoundments, and  
8 Containers; Clarification and Technical Amendment” = 40 CFR 270.14(b)(5), and  
9 justified at 62 FR 64636-64671, December 8, 1997.]/]

10 *[For text of items F to U, see M.R.]*

11 V. For land disposal facilities, if a case-by-case extension has been approved under  
12 ~~part 7045.0075, subpart 8~~ by the United States Environmental Protection Agency, under  
13 Code of Federal Regulations, title 40, section 268.5, or a petition has been granted under  
14 part 7045.0075, subpart 9, a copy of the notice of approval for the extension or petition is  
15 required.

16 [In item V, the MPCA revises language to clarify an existing requirement relating to  
17 the granting of case-by-case extensions for land disposal facilities. Only EPA has the  
18 authority to issue case-by-case extensions for land disposal facilities because this  
19 aspect of the RCRA program is not delegable to the states. In this rulemaking, the  
20 MPCA has removed specific references to part 7045.0075, subpart 8, (which formerly  
21 directed the reader to the federal requirements) and replaced them with direct  
22 citations to the appropriate federal citation. This is a clarifying change that does not  
23 alter the effect of the existing rules.]/]

## 25 7001.0570 PART B INFORMATION REQUIREMENTS FOR FACILITIES 26 THAT STORE CONTAINERS OF HAZARDOUS WASTE.

27 Except as otherwise provided in part 7045.0526, subpart 1, if the applicant proposes to  
28 store containers of hazardous waste, the applicant shall furnish the following information  
29 in addition to the information required by part 7001.0560:

30 *[For text of items A to F, see M.R.]*

### 31 G. Information on air emission controls as required in part 7001.0635.

32 [In item G, the MPCA adopts cross references to federal regulations relating to  
33 organic air emissions that are being adopted in this rulemaking in part 7045.0540 and  
34 which are based on required RCRA Amendment 154-1.36: “Consolidated Organic  
35 Air Emission Standards for Tanks, Surface Impoundments, and Containers” = 40  
36 CFR 270.15(e); as supported by 59 FR 62896-62953, December 6, 1994. In this  
37 rulemaking the MPCA is also revising the adopted federal phrase “emission control  
38 equipment” to read “emission controls” because this phrase is already used in existing  
39 part 7001.0635, and because this phrase is more descriptive of the content of the rule  
40 because the rule also applies to non-equipment types of air emission controls.]/]



1 **7001.0580 PART B INFORMATION REQUIREMENTS FOR STORAGE**  
2 **OR TREATMENT TANKS.**

3 Except as otherwise provided in part 7045.0528, subpart 1, if the applicant proposes to  
4 use tanks to store or treat hazardous waste, the applicant shall furnish the following  
5 information, in writing, in addition to the information required by part 7001.0560:

6 *[For text of items A to H, see M.R.]*

7 I. description of controls and practices to prevent spills and overflows, as required  
8 under part 7045.0528, subpart 6, item B; ~~and~~

9 J. for tank systems in which ignitable, reactive, or incompatible wastes are to be  
10 stored or treated, a description of how operating procedures and tank system and facility  
11 design will achieve compliance with the requirements of part 7045.0528, subparts 10 and  
12 11 ; ~~and~~

13 K. information on air emission controls as required in part 7001.0635.

14 **[The reasonableness of this change is discussed in part 7001.0570, item G above.]//**  
15

16 **7001.0590 PART B INFORMATION REQUIREMENTS FOR SURFACE**  
17 **IMPOUNDMENTS.**

18 Except as otherwise provided in part 7045.0532, subpart 1, if the applicant proposes to  
19 store, treat, or dispose of hazardous waste in surface impoundment facilities, the  
20 applicant shall submit detailed plans and specifications accompanied by an engineering  
21 report which collectively includes the following information in addition to the  
22 information required by part 7001.0560:

23 *[For text of items A to J, see M.R.]*

24 K. A waste management plan for hazardous waste F028 and treatment residues and  
25 soil contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028  
26 listed under part 7045.0135, subpart 2 1a, item B, describing how the surface  
27 impoundment is or will be designed, constructed, operated, and maintained to meet the  
28 requirements of part 7045.0532, subpart 10. This plan must address the following items  
29 as specified in part 7045.0532, subpart 10:

30 **[In item K, the MPCA replaces a citation to a repealed subpart with the correct,**  
31 **revised citation.]//**

32 *[For text of subitems (1) to (4), see M.R.]*

33 *[For text of items L and M, see M.R.]*

34 N. Information on air emission controls as required in part 7001.0635.

35 **[The reasonableness of this change is discussed in part 7001.0570, item G above.]//**  
36

37 **7001.0600 PART B INFORMATION REQUIREMENTS FOR WASTE**  
38 **PILES.**

39 Except as otherwise provided by part 7045.0534, subpart 1, if the applicant proposes  
40 to store or treat hazardous waste in waste piles, the applicant shall furnish the information  
41 required by items A to M in addition to the information required by part 7001.0560:

42 *[For text of items A to K, see M.R.]*  
43

1 L. A waste management plan for hazardous waste F028 and treatment residues and  
2 soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and  
3 F028 listed under part 7045.0135, subpart 2 1a, item B, describing how a waste pile that  
4 is not enclosed is or will be designed, constructed, operated, and maintained to meet the  
5 requirements of part 7045.0534, subpart 10. This submission must address the following  
6 items as specified in part 7045.0534, subpart 10:

7 **[In item L, the MPCA replaces a citation to a repealed subpart with the correct**  
8 **citation.]//**

9 *[For text of subitems (1) to (4), see M.R.]*

10 *[For text of item M, see M.R.]*

11  
12 **7001.0610 PART B INFORMATION REQUIREMENTS FOR LAND**  
13 **TREATMENT.**

14 Except as otherwise provided by part 7045.0536, subpart 1, if the applicant proposes  
15 to use land treatment to dispose of hazardous waste, the applicant shall furnish the  
16 information designated in items A to I in addition to the information required by part  
17 7001.0560:

18 *[For text of items A to H, see M.R.]*

19  
20 I. A waste management plan for hazardous waste F028 and treatment residues and  
21 soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and  
22 F028 listed under part 7045.0135, subpart 2 1a, item B, describing how a land treatment  
23 facility is or will be designed, constructed, operated, and maintained to meet the  
24 requirements of part 7045.0536, subpart 11. This plan must address the following items  
25 as specified in part 7045.0536, subpart 11:

26 **[In item I, the MPCA replaces a citation to a repealed subpart with the correct**  
27 **revised citation.]//**

28 *[For text of subitems (1) to (4), see M.R.]*

29  
30 **7001.0620 PART B INFORMATION REQUIREMENTS FOR LANDFILLS.**

31 Except as otherwise provided by part 7045.0538, subpart 1, if the applicant proposes  
32 to dispose of hazardous waste in a landfill, the applicant shall furnish the information  
33 designated in items A to L in addition to the information required by part 7001.0560:

34 *[For text of items A to I, see M.R.]*

35 J. A waste management plan for hazardous waste F028 and treatment residues and  
36 soils contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and  
37 F028 listed under part 7045.0135, subpart 2 1a, item B, describing how a landfill is or  
38 will be designed, constructed, operated, and maintained to meet the requirements of part  
39 7045.0538, subpart 13. This plan must address the following items as specified in part  
40 7045.0538, subpart 13:

41 **[In item J, the MPCA replaces a citation to a repealed subpart with the correct**  
42 **citation.]//**

43 *[For text of subitems (1) to (4), see M.R.]*

44 *[For text of items K and L, see M.R.]*

1

2 **7001.0630 PART B INFORMATION AND SPECIAL PROCEDURAL**  
3 **REQUIREMENTS FOR THERMAL TREATMENT FACILITIES.**

4 Except as provided in part 7045.0542, subpart 1, if the applicant proposes to treat or  
5 dispose of hazardous waste by using thermal treatment, the applicant shall fulfill the  
6 requirements of item A, B, or C in addition to the information requirements of part  
7 7001.0560, and the commissioner shall fulfill the requirements of item D:

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

9 C. The applicant shall perform an analysis of each waste or mixture of waste to be  
10 treated by using the analytical techniques set forth in the Environmental Protection  
11 Agency document SW\_846, as ~~referenced~~ incorporated in part 7045.0065, or by using  
12 techniques found by the commissioner to be equivalent to them. The applicant shall  
13 submit all of the following information:

14 **[In item C, the MPCA adopts language (a hyphen) to make the reference to SW-846**  
15 **identical to the way the document is cited in the corresponding federal regulations.**  
16 **This change relates to required RCRA amendment 126: “Testing and Monitoring**  
17 **Activities” = 40 CFR 270.19(c)(1)(iii); the EPA’s rationale appears in 58 FR 46040-**  
18 **46051, August 31, 1993. In addition, the MPCA changes the terminology from**  
19 **‘referenced’ to ‘incorporated’ to reflect changes made to part 7045.0065. For an**  
20 **explanation of why the terminology has changed, see part 7045.0065.]//**

21 (1) The results of each waste analysis performed, including:

22 *[For text of units (a) to (d), see M.R.]*

23 (e) an approximate quantification of the hazardous constituents identified in  
24 the waste, within the precision specified by Environmental Protection Agency document  
25 SW\_846, as incorporated in part 7045.0065;

26 **[In unit (e), the MPCA adopts language (a hyphen) to make the reference to SW-846**  
27 **identical to the corresponding federal regulations. This change relates to required**  
28 **RCRA Amendment 126: “Testing and Monitoring Activities” = 40 CFR**  
29 **270.19(c)(1)(iv); as supported at 58 FR 46040-46051, August 31, 1993; as amended at**  
30 **59 FR 47980-47982, September 19, 1994. The MPCA is also adding a reference to the**  
31 **rule that incorporates the reference documents.]//**

32 *[For text of units (f) and (g), see M.R.]*

33 *[For text of subitems (2) to (8), see M.R.]*

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

35

36 **7001.0635 SPECIFIC PART B INFORMATION REQUIREMENTS FOR**  
37 **AIR EMISSION CONTROLS FOR TANKS, SURFACE IMPOUNDMENTS,**  
38 **AND CONTAINERS.**

39 Except as otherwise provided in part 7045.0450, owners and operators of tanks,  
40 surface impoundments, or containers that use air emission controls in accordance with the  
41 requirements of part 7045.0540 must provide the additional information described in  
42 items A to G.

43 **[In this part, the MPCA adopts a requirement that a permit applicant must submit**  
44 **specific information regarding air emission controls. This requirement corresponds to**

1 federal language and is based on required RCRA Amendments 154.52 and 154-1.39:  
2 “Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments,  
3 and Containers” = 40 CFR 270.27(a); this is justified at 59 FR 62896-62953,  
4 December 6, 1994; as amended by 61 FR 59932-59997, November 25, 1996. The  
5 MPCA chooses to reject the federal use of “shall” in favor of the term “must” which is  
6 a convention of Minnesota rulemaking.]/]

7 A. Documentation for each floating roof cover installed on a tank subject to Code  
8 of Federal Regulations, title 40, section 264.1084(d)(1) or (d)(2), as incorporated in part  
9 7045.0540, that includes information prepared by the owner or operator or provided by  
10 the cover manufacturer or vendor describing the cover design, and certification by the  
11 owner or operator that the cover meets the applicable design specifications under Code of  
12 Federal Regulations, title 40, section 264.1084(e)(1) or (f)(1), as incorporated in part  
13 7045.0540.

14 [In item A, the MPCA adopts a requirement that a permit applicant must submit  
15 specific information regarding air emission controls. This language is based on  
16 required RCRA Amendments 154.52 and 154-1.39: “Consolidated Organic Air  
17 Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR  
18 270.27(a); as supported at 59 FR 62896-62953, December 6, 1994; as amended by 61  
19 FR 59932-59997, November 25, 1996. In this rulemaking the MPCA is also adding a  
20 reference to the incorporated federal language and related conditions.]/]

21 B. Identification of each container area subject to the requirements of part  
22 7045.0540 and certification by the owner or operator that the requirements of this part are  
23 met.

24 [In item B, the MPCA adopts a requirement that a permit applicant must submit  
25 specific information regarding air emission controls. This language is based on  
26 required RCRA Amendments 154.52 and 154-1.39: “Consolidated Organic Air  
27 Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR  
28 270.27(a); as supported at 59 FR 62896-62953, December 6, 1994; as amended by 61  
29 FR 59932-59997, November 25, 1996.]/]

30 C. Documentation for each enclosure used to control air pollutant emissions from  
31 tanks or containers in accordance with the requirements of Code of Federal Regulations,  
32 title 40, section 264.1084(d)(5) or 264.1086(e)(1)(ii), as incorporated in part 7045.0540,  
33 that includes records for the most recent set of calculations and measurements performed  
34 by the owner or operator to verify that the enclosure meets the criteria of a permanent  
35 total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent  
36 or Temporary Total Enclosure" under Code of Federal Regulations, title 40, section  
37 52.741, Appendix B, as amended.

38 [In item C, the MPCA adopts a requirement that a permit applicant must submit  
39 specific information regarding air emission controls. This language is based on  
40 required RCRA Amendments 154.52 and 154-1.39: “Consolidated Organic Air  
41 Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR  
42 270.27(a); as supported at 59 FR 62896-62953, December 6, 1994; as amended by 61  
43 FR 59932-59997, November 25, 1996. In this rulemaking the MPCA is also adding a  
44 reference to the incorporated federal language and related conditions.]/]

45 D. Documentation for each floating membrane cover installed on a surface  
46 impoundment in accordance with the requirements of Code of Federal Regulations, title

1 40, section 264.1085(c), as incorporated in part 7045.0540, that includes information  
2 prepared by the owner or operator or provided by the cover manufacturer or vendor  
3 describing the cover design, and certification by the owner or operator that the cover  
4 meets the specifications under Code of Federal Regulations, title 40, section  
5 264.1085(c)(1), as incorporated in part 7045.0540.

6 **[In item D, the MPCA adopts a requirement that a permit applicant must submit**  
7 **specific information regarding air emission controls. This language is based on**  
8 **required RCRA Amendments 154.52 and 154-1.39: “Consolidated Organic Air**  
9 **Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR**  
10 **270.27(a); as supported at 59 FR 62896-62953, December 6, 1994; as amended by 61**  
11 **FR 59932-59997, November 25, 1996. In this rulemaking the MPCA is also adding a**  
12 **reference to the incorporated federal language and related conditions.]/**

13 E. Documentation for each closed-vent system and control device installed in  
14 accordance with the requirements of Code of Federal Regulations, title 40, section  
15 264.1087, as incorporated in part 7045.0540, that includes design and performance  
16 information as specified in Code of Federal Regulations, title 40, section 270.24(c) and  
17 (d), as amended.

18 **[In item E, the MPCA adopts a requirement that a permit applicant must submit**  
19 **specific information regarding air emission controls. This language is based on**  
20 **required RCRA Amendments 154.52 and 154-1.39: “Consolidated Organic Air**  
21 **Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR**  
22 **270.27(a); as supported at 59 FR 62896-62953; December 6, 1994; as amended by 61**  
23 **FR 59932-59997, November 25, 1996. In this rulemaking the MPCA is also adding a**  
24 **reference to the federal language being incorporated at part 7045.0540.]/**

25 F. An emission monitoring plan for both Code of Federal Regulations, title 40, part  
26 60, Appendix A, Method 21, as amended, and control device monitoring methods. This  
27 plan shall include the following information: monitoring points, monitoring methods for  
28 control devices, monitoring frequency, procedures for documenting exceedances, and  
29 procedures for mitigating noncompliances.

30 **[In item F, the MPCA adopts a requirement that a permit applicant must submit**  
31 **specific information regarding air emission controls. This language is based on**  
32 **required RCRA Amendments 154.52 and 154-1.39: “Consolidated Organic Air**  
33 **Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR**  
34 **270.27(a)(6); as supported at 59 FR 62896-62953, December 6, 1994; as amended by**  
35 **61 FR 59932-59997, November 25, 1996.]/**

36 G. The schedule of implementation required under Code of Federal Regulations,  
37 title 40, section 265.1082, as incorporated in part 7045.0645, when an owner or operator  
38 of a facility subject to part 7045.0645 cannot comply with part 7045.0540 by the date of  
39 permit issuance.

40 **[In item G, the MPCA adopts a requirement that a permit applicant must submit**  
41 **specific information regarding air emission controls. This language is based on**  
42 **required RCRA Amendments 154.52 and 154-1.39: “Consolidated Organic Air**  
43 **Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR**  
44 **270.27(a)(6); as supported at 59 FR 62896-62953, December 6, 1994; as amended by**  
45 **61 FR 59932-59997, November 25, 1996. The MPCA also has added a reference to the**  
46 **federal language being adopted at part 7045.0645.]/**

1

2 **7001.0650 INTERIM STATUS.**

3 Subpart 1. **Qualifying for interim status.** Except as provided in subpart 2, during the  
4 period after the submission of Part A of a hazardous waste facility permit application to  
5 the Environmental Protection Agency or to the commissioner and before a final  
6 determination by the agency on the permit application, the owner or operator of an  
7 existing hazardous waste facility or a facility in existence on the effective date of  
8 statutory or regulatory amendments under the Resource Conservation and Recovery Act  
9 that render the facility subject to the requirement to have a hazardous waste facility  
10 permit shall be considered to be in compliance with the requirement to obtain a permit if  
11 the commissioner finds that the Environmental Protection Agency has granted the owner  
12 or operator interim status or if the commissioner finds:

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

14 B. that the owner or operator is in compliance with parts 7045.0552 to ~~7045.0642~~  
15 7045.0651;

16 **[In item B, the MPCA corrects a citation to a range of rules that changed as parts**  
17 **were added.]//**

18 *[For text of items C and D, see M.R.]*

19 *[For text of subps 2 and 3, see M.R.]*

20 Subp. 4. **Prohibitions.** During the interim status period, an owner or operator shall  
21 not:

22 *[For text of items A to C, see M.R.]*

23 D. alter a hazardous waste facility in a manner that amounts to a reconstruction of  
24 the facility. For the purpose of this part, reconstruction occurs when the capital  
25 investment in the modification of the facility exceeds 50 percent of the capital cost of a  
26 comparable new hazardous waste facility. Reconstruction does not include changes made  
27 solely for the purpose of complying with the requirements of part 7045.0628, subpart 4,  
28 for tanks and ancillary equipment, or to treat or store in containers ~~or~~, tanks, or  
29 containment buildings hazardous wastes subject to the land disposal restrictions under  
30 ~~parts 7045.1300 to 7045.1380~~ part 7045.1390 or RCRA section 3004, if the changes are  
31 made solely to comply with ~~parts 7045.1300 to 7045.1380~~ part 7045.1390 or RCRA  
32 section 3004.

33 **[Subpart 4 prohibits certain activities at unpermitted facilities regulated under**  
34 **interim status. In item D, the MPCA prohibits reconstruction of a facility without**  
35 **obtaining a permit and then identifies certain activities that do not constitute**  
36 **reconstruction. The amendments being made to item D establish the fact that**  
37 **reconstruction does not include changes made to comply with two of the rules being**  
38 **added in this rulemaking. The first reference being added is to the containment**  
39 **building requirements that are being adopted in this rulemaking in part 7045.0650.**  
40 **This change is based on a change identified in required RCRA Amendment 109:**  
41 **“Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris” = 40**  
42 **CFR 270.42(e)(3)(ii)(B); as supported at 57 FR 37194-37282, August 18, 1992.**  
43 **Because of organizational differences between the State and federal permit**  
44 **regulations, there is no direct federal counterpart to this subpart of the State rules.**  
45 **The federal counterpart to subpart 4 is found at 270.72(b)(6). Although the MPCA**

1 believes that the addition of this reference to the containment building standards is a  
2 reasonable way to address the concerns regarding reconstruction, the reference does  
3 not directly correlate to that specific federal regulation. The second amendment to  
4 item D provides the replacement citation for a range of rules governing land disposal  
5 that is being repealed and amended in this rulemaking.】//

6 Subp. 5. **Changes during interim status.** Except as provided in item F, an owner or  
7 operator who has interim status may conduct the activities prescribed in items A to F.

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

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

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

16 (2) the addition or change is necessary for the owner or operator to comply with  
17 federal, Minnesota, or local requirements, including the interim status standards in parts  
18 7045.0552 to ~~7045.0642~~ 7045.0651.

19 **[In subitem (2), the MPCA corrects a citation to a range of rules that changed as  
20 additional parts were added.】//**

21 *[For text of items D and E, see M.R.]*

22 F. Except as specifically allowed under this item, changes listed under items A to E  
23 may not be made if they amount to reconstruction of the hazardous waste management  
24 facility. Reconstruction occurs when the capital investment in the changes to the facility  
25 exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste  
26 management facility. If all other requirements are met, the following changes may be  
27 made even if they amount to reconstruction:

28 *[For text of subitems (1) to (5), see M.R.]*

29 (6) changes to treat or store, in tanks ~~or~~ containers, or containment buildings,  
30 hazardous wastes subject to land disposal restrictions imposed by ~~parts 7045.1300 to~~  
31 ~~7045.1380~~ part 7045.1390 or RCRA section 3004, provided that ~~the such~~ changes are  
32 made solely for the purpose of complying with ~~parts 7045.1300 to 7045.1380~~ part  
33 7045.1390 or RCRA section 3004.

34 **[In subitem (6), the MPCA is providing a reference to the containment building  
35 requirements that are being adopted in this rulemaking in part 7045.0650. This  
36 language is based on required RCRA Amendment 109: “Land Disposal Restrictions  
37 for Newly Listed Wastes and Hazardous Debris” = 40 CFR 270.72(b)(6); as supported  
38 at 57 FR 37194-37282, August 18, 1992. The MPCA also provides the replacement  
39 citation for a repealed range of rules.】//**

40 Subp. 6. **Compliance with interim status standards.** During the interim status period  
41 the owner or operator shall comply with the interim status standards in parts 7045.0552 to  
42 ~~7045.0642~~ 7045.0651.

43 **[In subpart 6, the MPCA corrects a citation to a range of rules that changed as  
44 additional parts were added.】//**

45 Subp. 7. **Termination of interim status.** Interim status terminates automatically when  
46 the agency has taken final administrative action on the permit application or when

1 terminated by Code of Federal Regulations, title 40, section 270.73(c) to (g), as amended.  
2 The following constitute justification for the commissioner to commence proceedings to  
3 terminate interim status:

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

5 B. the commissioner finds that the owner or operator is in violation of any of the  
6 requirements of parts 7045.0552 to ~~7045.0642~~ 7045.0651.

7 **[In item B, the MPCA corrects a citation to a range of rules that changed as**  
8 **additional parts were added.]//**

## 10 7001.0690 EMERGENCY PERMITS.

11 *[For text of subps 1 to 5, see M.R.]*

12 Subp. 6. **Requirements.** The emergency permit must incorporate, to the extent  
13 possible under the circumstances, all applicable requirements of parts 7001.0500 to  
14 7001.0730, ~~7045.0452 to 7045.0544~~ 7045.0450 to 7045.0551, 7045.0652, and 7045.0655.

15 **[In subpart 6, the MPCA corrects a citation to a range of rules that changed as**  
16 **additional parts were added.]//**

17 *[For text of subps 7 and 8, see M.R.]*

## 19 7001.0700 HAZARDOUS WASTE THERMAL TREATMENT FACILITY 20 PERMITS.

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

22 Subp. 3. **Trial burn plan.** An applicant shall submit to the commissioner a trial burn  
23 plan with Part B of the permit application. The trial burn plan must include the following  
24 information:

25 A. the results of an analysis of each waste or mixture of wastes to be burned, that  
26 uses the analytical techniques set forth in the United States Environmental Protection  
27 Agency document SW-846 as ~~referenced~~ incorporated in part 7045.0065 or that uses  
28 analytical techniques found by the commissioner to be equivalent to them. This analysis  
29 must include:

30 **[In item A, the MPCA adopts a clarification to more specifically identify the fact that**  
31 **the document SW-846 is incorporated as part of the rules and is not simply**  
32 **referenced. For an explanation for this terminology change, see part 7045.0065.]//**

33 *[For text of subitems (1) to (4), see M.R.]*

34 (5) an approximate quantification of the hazardous constituents identified in the  
35 waste, within the precision specified by Environmental Protection Agency ~~document~~  
36 publication SW-846, as incorporated in part 7045.0065;

37 **[In subitem (5), the MPCA adopts language (a hyphen) to make the reference to SW-**  
38 **846 identical to the corresponding federal regulations. This change relates to**  
39 **required RCRA Amendment 126: "Testing and Monitoring Activities" = 40 CFR**  
40 **270.62(b)(2)(i)(D); as supported at 58 FR 46040-46051, August 31, 1993. The MPCA**  
41 **is also amending the existing language to more accurately reflect the nature of the**  
42 **document and where it is found in the rules.]//**

43 *[For text of items B to I, see M.R.]*

44 *[For text of subps 4 to 11, see M.R.]*



1

2 **7001.0710 LAND TREATMENT DEMONSTRATION PERMITS.**

3 Subpart 1. **Letters of approval.** A person who desires to conduct controlled  
4 laboratory demonstrations of hazardous waste land treatment for the purpose of collecting  
5 preliminary data shall request a letter of approval from the agency.

6 The agency shall issue a letter of approval if the demonstration will be conducted  
7 under supervised conditions in a closed system capable of providing adequate protection  
8 to human health and the environment, and if the data obtained will not be used as the only  
9 basis for the issuance of a facility permit. The letter of approval must specify the general  
10 conditions for conducting demonstrations, the duration of approval, and the specific  
11 waste types.

12 The letter of approval may only provide approval for controlled laboratory  
13 demonstrations of hazardous waste treatment and does not provide exemptions from the  
14 hazardous waste management and disposal requirements of chapter 7045. Materials  
15 resulting from the demonstration that meet the criteria of parts 7045.0102 to ~~7045.0143~~  
16 7045.0155 must be managed as hazardous waste.

17 **[In subpart 1, the MPCA corrects a citation to a range of rules that changed as parts**  
18 **were added.]//**

19 *[For text of subps 2 to 6, see M.R.]*  
20

21 **7001.0730 MODIFICATION OF PERMITS; REVOCATION AND**  
22 **REISSUANCE OF PERMITS.**

23 *[For text of subps 1 to 3, see M.R.]*

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

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

29 L. to allow treatment of hazardous wastes not previously specified in the permit if  
30 the following conditions are met:

31 (1) the hazardous waste has been prohibited from one or more methods of land  
32 disposal under ~~parts 7045.1320 to 7045.1330~~ Code of Federal Regulations, title 40,  
33 sections 268.30 to 268.39, as incorporated in part 7045.1390, or RCRA section 3004;

34 **[In subitem (1), the MPCA replaces references to rules being repealed in this**  
35 **rulemaking with citations to the corresponding federal land disposal restrictions that**  
36 **are being incorporated in part 7045.1390.]//**

37 (2) treatment is in accordance with ~~part 7045.1310~~ Code of Federal Regulations,  
38 title 40, section 268.4, as incorporated in part 7045.1390, if applicable, and ~~part~~  
39 7045.1305 section 268.3, as incorporated in part 7045.1390, and applicable standards  
40 established under ~~parts 7045.1355 to 7045.1360 and part 7045.0075, subpart 10~~ Code of  
41 Federal Regulations, title 40, sections 268.41 to 268.49, and 268.5, as incorporated in part  
42 7045.1390, or, where no treatment standards have been established, treatment renders the  
43 waste no longer subject to the applicable prohibitions of ~~part 7045.1330~~ Code of Federal

1 Regulations, title 40, section 268.32, as incorporated in part 7045.1390, or RCRA section  
2 3004;

3 **[In subitem (2), first, the MPCA replaces several cites to rules that are being repealed**  
4 **in this rulemaking with new cites to the corresponding federal land disposal**  
5 **restrictions being incorporated by reference in this rulemaking. Also, the MPCA**  
6 **deletes a reference to part 7045.0075, subpart 10 because the MPCA no longer has a**  
7 **cross reference to the EPA petition process for alternative treatment standards. The**  
8 **EPA petition process is contained in 40 CFR 268.44 which is added above.]]**

9 *[For text of subitems (3) and (4), see M.R.]*

10 M. to allow permitted facilities to change their operations to treat or store  
11 hazardous wastes subject to land disposal restrictions imposed by ~~parts 7045.1300 to~~  
12 ~~7045.1380~~ part 7045.1390 or RCRA section 3004, provided the treatment or storage  
13 occurs in containers or tanks and the permittee:

14 **[In item M, the MPCA provides the replacement citation for a repealed range of**  
15 **rules.]]**

16 (1) requests a major permit modification under subparts 1 to 3;

17 (2) demonstrates in the request for a major permit modification that the  
18 treatment or storage is necessary to comply with the land disposal restrictions of ~~parts~~  
19 ~~7045.1300 to 7045.1380~~ part 7045.1390 or RCRA section 3004; and

20 **[In subitem (2), the MPCA provides the replacement citation for a repealed range of**  
21 **rules.]]**

22 (3) ensures that the treatment or storage units comply with the applicable  
23 standards of parts 7045.0552 to ~~7045.0642~~ 7045.0651 and ~~7045.1300 to 7045.1380~~  
24 7045.1390 pending final administrative disposition of the major modification request.

25 The authorization to make the changes conferred in this item terminates upon final  
26 administrative disposition of the permittee's major modification request under subparts 1  
27 to 3 or termination of the permit under part 7001.0180.

28 **[In subitem (3), the MPCA corrects a citation to a range of rules that changed as parts**  
29 **were added. The MPCA also provides the replacement citation for a repealed range**  
30 **of rules.]]**

31 *[For text of subps 5 and 6, see M.R.]*

### 33 **7045.0020 DEFINITIONS.**

34 *[For text of subps 1 to 9a, see M.R.]*

35 Subp. 9b. **Combustible liquid.** "Combustible liquid" has the meaning given in Code  
36 of Federal Regulations, title 49, section ~~173.115~~ 173.120, paragraph (b), as amended.

37 **[In subpart 9b, following advice from the Minnesota Department of Transportation,**  
38 **the MPCA provides a corrected citation to a transportation related regulation.]]**

39 *[For text of subps 9c to 11, see M.R.]*

40 Subp. 11a. **Containment building.** "Containment building" means a hazardous waste  
41 management unit that is used to store or treat hazardous waste under the provisions of  
42 parts 7045.0550 and 7045.0649.

43 **[In subpart 11a, the MPCA adopts a definition of a containment building that is**  
44 **equivalent to the definition in 40 CFR 260.10. A definition is needed because the**  
45 **MPCA is amending its rules in parts 7045.0550 and 7045.0650 to incorporate federal**

1 regulations on the storage of hazardous waste in containment buildings. It is  
2 reasonable to have the same definition that is in the federal regulations when the  
3 MPCA is adopting the same substantive standards as the EPA for containment  
4 buildings. This language is based on required RCRA Amendment 109.4: "Land  
5 Disposal Restrictions for Newly Listed Wastes and Hazardous Debris" = 40 CFR  
6 260.10; as supported at 57 FR 37194-37282, August 18, 1992.]/

7 *[For text of subps 12 to 22a, see M.R.]*

8 Subp. 22b. **Excluded scrap metal.** "Excluded scrap metal" means processed scrap  
9 metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

10 [In subpart 22b, the MPCA adopts a definition of excluded scrap metal. This  
11 definition corresponds to a federal definition found at 40 CFR 261.1(c)(9). Adopting  
12 this definition is not required to maintain program authorization from EPA, but the  
13 MPCA believes it is reasonable to adopt into the State rules to provide clarification of  
14 the regulation of this type of scrap and also to maintain consistency between the State  
15 and federal regulations. This language is based on optional RCRA Amendment  
16 157.4: "Land Disposal Restrictions Phase IV--Treatment Standards for Wood  
17 Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From  
18 RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste  
19 Provisions" = 40 CFR 261.1(c)(9); as supported at 62 FR 25998-26040, May 12,  
20 1997.]/

21 Subp. 22c. **Existing drip pad.** "Existing drip pad" means a drip pad that:

22 A. is or was used to manage hazardous waste with the waste code of F032 and was  
23 constructed, or for which the owner or operator had a design and had entered into binding  
24 financial or other agreements for construction, before December 6, 1990; or

25 B. is used to manage hazardous waste with the waste code of F034 or F035 and  
26 was constructed, or for which the owner or operator had a design and had entered into  
27 binding financial or other agreements for construction, before July 25, 1994.

28 [In subpart 22c, the MPCA revises rule numbering to accept added subparts.]/

29 Subp. ~~22e.~~ 22d. **Existing hazardous waste management facility or existing facility.**  
30 "Existing hazardous waste management facility" or "existing facility" means a facility  
31 which was in operation or for which construction commenced on or before November 19,  
32 1980. See subpart 10b for definition of "construction commenced."

33 [In subpart 22d, the MPCA revises rule numbering to accept added subparts.]/

34 *[For text of subps 23 to 24a, see M.R.]*

35 Subp. 24b. **Flammable liquid.** "Flammable liquid" has the meaning given in Code of  
36 Federal Regulations, title 49, section 473.115 173.120, as amended.

37 [In subpart 24b, following advice from the Minnesota Department of Transportation,  
38 the MPCA provides a corrected citation to transportation related regulations.]/

39 *[For text of subps 25 to 30, see M.R.]*

40 Subp. 31. **Generator.** "Generator" means any person, by site, whose act or process  
41 produces hazardous waste identified or listed in parts 7045.0102 to 7045.0143 7045.0155,  
42 or whose act first causes a hazardous waste to become subject to regulation. "Generator"  
43 means all size generators including large quantity generators, small quantity generators,  
44 and very small quantity generators, unless specifically stated otherwise.

45 [In subpart 31, the MPCA corrects a citation to a range of rules that changed as parts  
46 were added.]/

1 *[For text of subps 32 to 37, see M.R.]*

2 Subp. 37a. **Home scrap metal.** "Home scrap metal" means scrap metal as generated  
3 by steel mills, foundries, and refineries, such as turnings, cuttings, punchings, and borings.  
4 **[In subpart 37a, the MPCA adopts a federal definition of home scrap metal that**  
5 **corresponds to language found at 40 CFR 261.1(c)(11). Adopting this definition is not**  
6 **required in order to maintain program authorization from the EPA, but the MPCA**  
7 **believes that it is reasonable to adopt into the State rules to maintain consistency with**  
8 **these federal regulations. This language is based on optional RCRA Amendment**  
9 **157.4: "Land Disposal Restrictions Phase IV--Treatment Standards for Wood**  
10 **Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From**  
11 **RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste**  
12 **Provisions" = 40 CFR 261.1(c)(11); as supported at 62 FR 25998-26040, May 12,**  
13 **1997.]//**

14 Subp. 37b. **Household.** "Household" has the meaning given in Minnesota Statutes,  
15 section 115A.96, subdivision 1, paragraph (a).

16 Subp. ~~37b.~~ 37c. **Household battery.** "Household battery" means a disposable or  
17 rechargeable dry cell, generated by a household and commonly used as a power source  
18 for household products. "Household battery" includes nickel-cadmium, alkaline, mercuric  
19 oxide, silver oxide, zinc oxide, zinc-air, lithium, and zinc-carbon batteries, but excludes  
20 lead-acid batteries.

21 Subp. ~~37e.~~ 37d. **Household hazardous waste.** "Household hazardous waste" has the  
22 meaning given in Minnesota Statutes, section 115A.96, subdivision 1, paragraph (b).

23 Subp. ~~37d.~~ 37e. **Household hazardous waste collection site or collection site.**  
24 "Household hazardous waste collection site" or "collection site" as used in part  
25 7045.0310 has the meaning established under Minnesota Statutes, section 115A.96,  
26 subdivision 1, paragraph (c).

27 Subp. ~~37e.~~ 37f. **Household waste.** "Household waste" means any material including  
28 garbage, trash, and sanitary waste in septic tanks derived from households, including  
29 single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew  
30 quarters, campgrounds, picnic grounds, and day-use recreation areas.

31 **[In subparts 37b to 37f, the MPCA revises rule numbering to accept added**  
32 **subparts.]//**

33 *[For text of subps 38 to 45, see M.R.]*

34 Subp. 45a. *[See repealer.]*

35 **[In subpart 45a, the MPCA is repealing the definition of "inorganic solid debris"**  
36 **because this term is no longer used in chapter 7045. This term may have been used in**  
37 **a rule that was previously repealed. Because this term is not used in the current rules,**  
38 **it is reasonable to remove it from the definitions. This change is consistent with**  
39 **required RCRA Amendment 109: "Land Disposal Restrictions for Newly Listed**  
40 **Wastes and Hazardous Debris" = 40 CFR 268.2(h); as supported at 57 FR 37194-**  
41 **37282, August 18, 1992.]//**

42 *[For text of subps 45b to 64a, see M.R.]*

43 Subp. 65. **Partial closure.** "Partial closure" means the closure of a hazardous waste  
44 management unit in accordance with the applicable closure requirements of parts  
45 7045.0450 to ~~7045.0642~~ 7045.0651 at a facility that contains other active hazardous  
46 waste management units. For example, partial closure may include the closure of a tank,

1 including its associated piping and containment systems, a landfill cell, surface  
2 impoundment, waste pile, or other hazardous waste management unit, while other units  
3 of the same facility continue to operate.

4 **[In subpart 65, the MPCA corrects citations to ranges of rules that changed as parts  
5 were added.]//**

6 *[For text of subps 66 to 69, see M.R.]*

7 Subp. 70. **Pile.** "Pile" means any noncontainerized accumulation of solid, nonflowing  
8 hazardous waste that is used for treatment or storage and that is not a containment  
9 building.

10 **[In subpart 70, the MPCA adds a reference to "containment buildings" to this  
11 existing definition in order to maintain equivalency with the corresponding federal  
12 regulation found at 40 CFR 260.10. This change is based on required RCRA  
13 Amendment 109.4: "Land Disposal Restrictions for Newly Listed Wastes and  
14 Hazardous Debris" = 40 CFR 260.10; as supported at 57 FR 37194-37282, August 18,  
15 1992.]//**

16 *[For text of subps 70a to 71, see M.R.]*

17 Subp. 71a. **Polychlorinated biphenyls, PCB, or PCB's.** "Polychlorinated biphenyls,"  
18 "PCB," or "PCB's" are ~~halogenated organic compounds defined~~ have the meaning given  
19 "PCB" in accordance with Code of Federal Regulations, title 40, section 761.3, as  
20 amended Minnesota Statutes, section 116.36, subdivision 4.

21 **[In subpart 71a, the MPCA revises this definition to include the abbreviation "PCB"  
22 and to clarify that "PCB," "PCB's" and "Polychlorinated Biphenyls" mean "PCB" as  
23 defined in Minnesota Statutes section 116.36, subdivision 4, in lieu of the previously  
24 referenced definition from the federal Toxic Substance Control Act regulations. Since  
25 the term PCB is already defined in the Minnesota Statutes that govern the  
26 management of PCB's as hazardous wastes, it is reasonable to use the same  
27 Minnesota definition for purposes of Minnesota's hazardous waste rules that govern  
28 the management of PCB's. The MPCA removes the phrase, "halogenated organic  
29 compounds" as superfluous to the statutory definition. The style used by the Office of  
30 the Revisor of Statutes is that plurals of abbreviations or acronyms are made by  
31 adding an apostrophe followed by a lower case "s" (e.g., PCB's is plural of PCB in  
32 State rules).]//**

33 Subp. 72. **Pretreatment unit.** "Pretreatment unit" means a device which:

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

35 B. receives and treats or stores an influent wastewater which is a hazardous waste  
36 as defined in parts 7045.0102 to ~~7045.0143~~ 7045.0155; or generates and accumulates a  
37 wastewater treatment sludge which is a hazardous waste as defined in parts 7045.0102 to  
38 ~~7045.0143~~ 7045.0155; or treats or stores a wastewater treatment sludge which is a  
39 hazardous waste as defined in parts 7045.0102 to ~~7045.0143~~ 7045.0155; and

40 **[In item B, the MPCA corrects 3 citations to ranges of rules that changed as parts  
41 were added.]//**

42 C. meets the definition of "tank" as defined in subpart 90.

43 *[For text of subp 72a, see M.R.]*

44 **Subp. 72b. Processed scrap metal.** "Processed scrap metal" means scrap metal that  
45 has been manually or physically altered to either separate it into distinct materials to  
46 enhance economic value or to improve the handling of materials. Processed scrap metal

1 includes, but is not limited to, scrap metal that has been baled, shredded, sheared,  
2 chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted) and fines,  
3 drosses, and related materials that have been agglomerated. Shredded circuit boards being  
4 sent for recycling are not processed scrap metal. When recycled, shredded circuit boards  
5 are governed by part 7045.0125, subpart 4, item P.

6 **[In subpart 72b, the MPCA adopts a definition of processed scrap metal that**  
7 **corresponds to 40 CFR 261.1(c)(10). Adopting this definition is not required to**  
8 **maintain program authorization from EPA, but the MPCA believes that it is**  
9 **reasonable to adopt into the State rules to provide clarification of the regulation of**  
10 **this type of scrap metal and also to maintain consistency between the State and**  
11 **federal regulations. This change is based on optional RCRA Amendment 157.4:**  
12 **“Land Disposal Restrictions Phase IV--Treatment Standards for Wood Preserving**  
13 **Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for**  
14 **Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions” = 40**  
15 **CFR 261.1(c)(10); as supported at 62 FR 25998-26040, May 12, 1997. The adopted**  
16 **definition is slightly modified from the equivalent federal regulation because the**  
17 **MPCA does not use the same approach as the federal regulations to define “solid**  
18 **waste.” As a result, the MPCA does not adopt the portion of the federal definition**  
19 **that removes “processed scrap metal” from the definition of solid waste. In**  
20 **Minnesota, this material remains a hazardous waste that is excluded only if**  
21 **recycled.】//**

22 Subp. 72c. **Prompt scrap metal.** "Prompt scrap metal" means scrap metal as  
23 generated by the metal working or fabrication industries and includes such scrap metal as  
24 turnings, cuttings, punchings, and borings. Prompt scrap metal is also known as industrial  
25 or new scrap metal.

26 **[In subpart 72c, the MPCA adopts a definition of “prompt scrap metal that**  
27 **corresponds to the federal definition at 40 CFR 261.1(c)(12). The MPCA is not**  
28 **required to adopt this definition to maintain program equivalence, but the MPCA**  
29 **believes it is a reasonable addition to the State rules to more clearly address the**  
30 **regulation of this type of scrap and to maintain consistency with federal regulations.**  
31 **This change is based on optional RCRA Amendment 157.4: “Land Disposal**  
32 **Restrictions Phase IV--Treatment Standards for Wood Preserving Wastes,**  
33 **Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain**  
34 **Processed Materials; and Miscellaneous Hazardous Waste Provisions” = 40 CFR**  
35 **261.1(c)(12); 62 FR 25998-26040; May 12, 1997.】//**

36 *[For text of subps 73 to 84, see M.R.]*

37 Subp. 84a. **Sorbent or sorb.** "Sorbent" means a material that is used to soak up free  
38 liquids by either adsorption or absorption, or both. "Sorb" means to either adsorb or  
39 absorb, or both.

40 **[In subpart 84a, the MPCA adopts a definition of “sorbent or sorb” that is referred to**  
41 **in the requirements that apply to hazardous waste liquids. This definition is the same**  
42 **as the federal definition in 40 CFR 260.10. This change is based on required RCRA**  
43 **Amendment 118.2: “Liquids in Landfills II” = 40 CFR 260.10; as supported at 57 FR**  
44 **54452-54461, November 18, 1992.】//**

45 Subp. 84b. **Speculative accumulation.** "Speculative accumulation" means  
46 accumulation of a hazardous waste before it is recycled. Speculative accumulation does

1 not include accumulation of a waste if there is a feasible method of recycling for the  
2 waste and at least 75 percent by volume or weight of the waste is recycled during a  
3 calendar year. The 75 percent requirement applies to each waste of the same type that is  
4 recycled in the same way.

5 Subp. ~~84b.~~ 84c. **Spent material.** "Spent material" means a material that has been used  
6 and as a result of contamination can no longer serve the purpose for which it was  
7 produced without processing.

8 **[In subparts 84b and 84c, the MPCA revises rule numbering to accept added**  
9 **subparts.]//**

10 *[For text of subps 85 to 98a, see M.R.]*

11 Subp. 98b. **Underlying hazardous constituent.** "Underlying hazardous constituent"  
12 means any constituent listed in Code of Federal Regulations, title 40, section 268.48,  
13 Table UTS - Universal Treatment Standards, as incorporated in part 7045.1390, except  
14 fluoride, selenium, sulfides, vanadium, and zinc, which can reasonably be expected to be  
15 present at the point of generation of the hazardous waste at a concentration above the  
16 constituent-specific UTS treatment standards.

17 **[In subpart 98b, the MPCA adopts the federal definition of "underlying hazardous**  
18 **constituent" found at 40 CFR 268.2(i). The EPA requires the MPCA to adopt this**  
19 **definition in order to maintain program equivalence. The federal definition was the**  
20 **result of the following several amendments to the federal regulations:**

- 21 • **required RCRA Amendment 124.2: "Land Disposal Restrictions for Ignitable**  
22 **and Corrosive Characteristic Wastes Whose Treatment Standards Were**  
23 **Vacated" = 40 CFR 268.2(i); as supported at 58 FR 29860-29887, May 24,**  
24 **1993;**
- 25 • **required RCRA Amendment 137.4: "Universal Treatment Standards and**  
26 **Treatment Standards for Organic Toxicity Characteristic Wastes and Newly**  
27 **Listed Wastes" = 40 CFR 268.2(i); as supported at 59 FR 47982-48110,**  
28 **September 19, 1994, as amended at 60 FR 242-302, January 3, 1995;**
- 29 • **required RCRA Amendment 151: "Land Disposal Restrictions Phase III-**  
30 **Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners" = 40**  
31 **CFR 268.2(i); as supported at 61 FR 15566-15660, April 8, 1996; as amended**  
32 **at 61 FR 15660-15668, April 8, 1996; 61 FR 19117, April 30, 1996; 61 FR**  
33 **33680-33690, June 28, 1996; 61 FR 36419-36421, July 10, 1996; 61 FR 43924-**  
34 **43931, August 26, 1996; and 62 FR 7502-7600, February 19, 1997; and**
- 35 • **required RCRA Amendment 167A: "Land Disposal Restrictions Phase IV-**  
36 **Treatment Standards for Metal Wastes and Mineral Processing Wastes" = 40**  
37 **CFR 268.2(i); as supported at 63 FR 28556-28753, May 26, 1998.]//**

38 Subp. ~~98c.~~ 98c. **Unfit for use tank system.** "Unfit for use tank system" means a tank  
39 system that has been determined through an integrity assessment or other inspection to be  
40 no longer capable of storing or treating hazardous waste without posing a threat of release  
41 of hazardous waste to the environment.

42 Subp. ~~98e.~~ 98d. **Universal waste.** "Universal waste" has the meaning given at Code of  
43 Federal Regulations, title 40, section 273.9.

44 Subp. ~~98d.~~ 98e. **Universal waste handler.** "Universal waste handler" has the meaning  
45 given at Code of Federal Regulations, title 40, section 273.9.

1 Subp. ~~98e.~~ 98f. **Universal waste transporter.** "Universal waste transporter" has the  
2 meaning given at Code of Federal Regulations, title 40, section 273.9.

3 **[In subparts 98c to 98f, the MPCA revises rule numbering to accept added**  
4 **subparts.]//**

5 *[For text of subps 99 to 102b, see M.R.]*

6 Subp. 102c. **Wastewater.** "Wastewater" means waste that contains less than one  
7 percent by weight total organic carbon (TOC) and less than one percent by weight total  
8 suspended solids (TSS), with the following exceptions:

9 A. F001, F002, F003, F004, or F005 wastewaters are solvent-water mixtures that  
10 contain less than one percent by weight total organic carbon or less than one percent by  
11 weight total F001, F002, F003, F004, or F005 solvent constituents listed in ~~part~~  
12 7045.1355 Code of Federal Regulations, title 40, section 268.40, as incorporated in part  
13 7045.1390;

14 **[In item A, the MPCA is replacing a reference to a State rule repealed in this**  
15 **rulemaking with a citation to the equivalent federal regulation being incorporated by**  
16 **reference in this rulemaking. The MPCA also describes where it incorporates the**  
17 **federal language.]//**

18 *[For text of items B and C, see M.R.]*

19 Subp. 103. **Wastewater treatment unit.** "Wastewater treatment unit" means a device  
20 which:

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

22 B. receives and treats or stores an influent wastewater which is a hazardous waste  
23 as defined in parts 7045.0102 to ~~7045.0143~~ 7045.0155; or generates and accumulates a  
24 wastewater treatment sludge which is a hazardous waste as defined in parts 7045.0102 to  
25 ~~7045.0143~~ 7045.0155; or treats or stores a wastewater treatment sludge which is a  
26 hazardous waste as defined in parts 7045.0102 to ~~7045.0143~~ 7045.0155; and

27 **[In item B, the MPCA corrects 3 citations to ranges of rules that changed as parts**  
28 **were added.]//**

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

30 *[For text of subps 104 to 109, see M.R.]*

## 32 **7045.0065 INCORPORATION AND AVAILABILITY OF REFERENCES.**

33 The documents referred to in this ~~chapter may be obtained by contacting the~~  
34 ~~appropriate offices as listed in this part.~~ part are incorporated by reference. The  
35 documents are not subject to frequent change, unless otherwise noted, and are available  
36 online or through the Minitex interlibrary loan system, unless otherwise noted:

37 **[The MPCA is revising part 7045.0065 "Availability of References," to incorporate by**  
38 **reference in item D below, the documents found in 40 CFR 260.11, (References to**  
39 **Standard Methods, as amended). Because this incorporation by reference is to a**  
40 **more comprehensive list of documents, the MPCA is also repealing existing items**  
41 **below that are either already addressed by the incorporated references listed in 40**  
42 **CFR 260.11, or that are no longer referenced in the State rules. The MPCA is also**  
43 **revising the numbering to accept added items. Because certain of the referenced**  
44 **documents are not widely published, the MPCA has filed copies of those documents**



1 **with Minnesota's State Law Library, as required by Minnesota's Administrative**  
2 **Procedures Act, to assure their availability.]]//**

3 A. standards of the American Society for Testing and Materials, in the Annual  
4 Book of ASTM Standards, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959,  
5 available at the Engineering Library of the University of Minnesota;

6 **[The MPCA is removing this reference because references to the ASTM standards**  
7 **pertinent to this rule are now found in the newly incorporated federal references in 40**  
8 **CFR 260.11.]]//**

9 B. Minnesota Uniform Fire Code, as incorporated by reference in part 7510.3510;

10 **[The MPCA is removing this reference because it is not needed. Each reference to the**  
11 **Minnesota Uniform Fire Code found in these rules is accompanied by the statement,**  
12 **"as incorporated by reference in part 7511.0090," which references the current**  
13 **proper citation.]]//**

14 ~~C. A. the implicit price deflator for gross national domestic product in from the~~  
15 ~~Survey of Current Business, Bureau of Economic Analysis, United States Department of~~  
16 ~~Commerce, 110 4th Street South, Minneapolis, Minnesota 55401, available at the Saint~~  
17 ~~Paul Public Library. This document is subject to frequent change and is readily available~~  
18 ~~at the Bureau of Economic Analysis Web site: www.bea.gov;~~

19 **[In former item C, now item A, the MPCA deletes an obsolete address for obtaining**  
20 **this document. The document is subject to frequent changes and a current version is**  
21 **readily available at the U.S. Department of Commerce's Bureau of Economic**  
22 **Analysis Web site: www.bea.gov. Also, the MPCA is revising the term "gross national**  
23 **product" to the current federal replacement term, "gross domestic product."]]//**

24 ~~D. The Manual on Disposal of Refinery Wastes, volume 1, issued by the American~~  
25 ~~Petroleum Institute, (Washington, D.C., 1969), available at the state of Minnesota Law~~  
26 ~~Library;~~

27 **[The MPCA repeals the language in former item D because it is no longer necessary**  
28 **to incorporate this reference in the State rules. This manual was formerly identified**  
29 **in conjunction with a waste listed in part 7045.0135, subpart 3, item G, subitem (4).**  
30 **In the amendments to part 7045.0135, the MPCA incorporates the federal lists of**  
31 **hazardous waste by reference. In the incorporated federal lists, there is no longer a**  
32 **reference to this manual.]]//**

33 ~~E. Methods for Chemical Analysis of Water and Wastes, publication number~~  
34 ~~600/4-79-020, March 1979, issued by the Environmental Monitoring and Support~~  
35 ~~Laboratory, 26 West St. Clair, Cincinnati, Ohio 45268, available at the state of Minnesota~~  
36 ~~Law Library;~~

37 **[The MPCA is removing the reference to Methods for Chemical Analysis of Water**  
38 **and Wastes, in old item E because this method is no longer found to be referenced in**  
39 **these rules.]]//**

40 ~~F. Standard TM-01-69 of the National Association of Corrosion Engineers, P.O.~~  
41 ~~Box 218340, Houston, Texas 77218, available at the state of Minnesota Law Library;~~

42 **[The MPCA is removing the reference to Standard TM-01-69 in old item F because**  
43 **this method is included in the standardized "Test Methods for Evaluating Solid Waste,**  
44 **Physical/Chemical Methods," EPA publication number SW-846, that the MPCA**  
45 **incorporates through item D of this part.]]//**

1 G. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,  
2 publication number SW 846 (Second Edition, 1982, as amended by Update I, April 1984,  
3 and Update II, April 1985) of the Office of Solid Waste, United States Environmental  
4 Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The Second Edition of  
5 SW 846 and Updates I and II available at the Minnesota Law Library and from the  
6 National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161,  
7 (703) 487 4600 as Document number PB 87 120 291;

8 **[The MPCA is removing old item G because the MPCA now incorporates this**  
9 **reference, “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,”**  
10 **EPA publication number SW-846, through item D of this part.]//**

11 H. B. the most recent edition of the Uniform Customs and Practice for  
12 Documentary Credits (Publication 290), 1975:, published by the International Chamber  
13 of Commerce Publishing Corporation, Incorporated, 156 5th Avenue, Suite 820, New  
14 York, New York 10017; and

15 **[The MPCA revises former item H, new item B, both to cite the most recent edition**  
16 **and to remove information about an address provided for obtaining the referenced**  
17 **material. Since physical addresses are subject to periodic change, the MPCA believes**  
18 **that it is reasonable to provide the document title and publisher information from**  
19 **which a reader may obtain the document. The reader can obtain the document**  
20 **through a library or by use of the internet. The MPCA corrects this reference to cite**  
21 **the most recent edition of the referenced material as this is what was intended by the**  
22 **existing rule language found in part 7045.0524.]//**

23 I. C. Standard Industrial Classification Manual issued by the Office of  
24 Management and Budget, Executive Office of the President of the United States;  
25 available from the National Technical Information Service, 5285 Port Royal Road,  
26 Springfield, Virginia 22161 (1987); and

27 **[The MPCA revises former item I, new item C, to remove information about an**  
28 **address provided for obtaining the referenced material. Since physical addresses are**  
29 **subject to periodic change, the MPCA believes that it is reasonable to provide the**  
30 **document title and publisher information from which a reader may obtain the**  
31 **document. The reader can obtain the document through a library or by use of the**  
32 **internet. The standard means for ordering this document is online via the publisher’s**  
33 **Web site.]//**

34 D. the documents found in Code of Federal Regulations, title 40, section 260.11, as  
35 amended.

36 **[In added item D, the MPCA incorporates by reference the documents found in 40**  
37 **CFR 260.11, “References to Standard Methods,” as amended. Various State rules,**  
38 **many of which are based on federal regulations, refer to the federal standards or test**  
39 **methods. Since they can change over time, it is reasonable to make rules that**  
40 **incorporate the latest standards and test methods. The items incorporated by**  
41 **reference are either common and widely available, or the MPCA has filed copies with**  
42 **Minnesota’s State Law Library to assure their availability. Item D includes language**  
43 **from the following RCRA amendments and results in equivalence to the language**  
44 **found in 40 CFR 260.11:**

- 45 • **required RCRA Amendment 126: “Testing and Monitoring Activities” = 40**  
46 **CFR 260.11(a); as supported at 58 FR 46040-46051, August 31, 1993. This is**

- 1 related to former item G.;
- 2 • required RCRA Amendment 128: “Wastes From the Use of Chlorophenolic  
3 Formulations in Wood Surface Protection” = 40 CFR 260.11(a); as supported  
4 at 59 FR 458-469, January 4, 1994;
  - 5 • required RCRA Amendment 132: “Wood Surface Protection; Correction” =  
6 40 CFR 260.11(a); as supported at 59 FR 28484, June 2, 1994; and
  - 7 • required RCRA Amendment 154-1.6-7: “Consolidated Organic Air Emission  
8 Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR  
9 260.11(a-b); as supported at 59 FR 62896-62953, December 6, 1994.]]

10  
11 **7045.0071 UNDERGROUND INJECTION.**

12 References to underground injection of waste throughout this chapter are subject to  
13 Minnesota statutes and rules prohibiting the discharge of waste or pollutants to the  
14 saturated or unsaturated zones.

15 **[In new part 7045.0071, the MPCA clarifies that, despite references to underground**  
16 **injection of waste found in chapter 7045 or in incorporated federal regulations,**  
17 **underground injection is also subject to other Minnesota statutes and rules that**  
18 **prohibit underground injection of waste or pollutants. For example, part 7060.0100**  
19 **prohibits the discharge of sewage, industrial waste, or other waste to the saturated**  
20 **zone (groundwater) or unsaturated zone (soil above the water table). The purpose of**  
21 **such a restriction, as stated in part 7060.0100, is to preserve and protect underground**  
22 **waters by preventing pollution. Thus, it is reasonable to include in the hazardous**  
23 **waste rules a clarification that reference to underground injection in chapter 7045 is**  
24 **not only subject to hazardous waste rules but also to other statutes and rules**  
25 **governing underground discharges of waste or pollutants.]]**

26  
27 **7045.0075 PETITIONS.**

28 Subpart 1. **Petitions for equivalent testing or analytical methods.** Any person  
29 seeking to use a testing or analytical method other than those described in parts  
30 7045.0102 to ~~7045.0143~~, 7045.0155 or 7045.0450 to ~~7045.0642~~ 7045.0651 may petition  
31 under these provisions. The person must demonstrate to the satisfaction of the  
32 commissioner that the proposed method is equal to or superior to the corresponding  
33 method prescribed in parts 7045.0102 to ~~7045.0143~~, 7045.0155 or 7045.0450 to  
34 ~~7045.0642~~ 7045.0651 in terms of its sensitivity, accuracy, precision, and reproducibility.  
35 Each petition must include:

36 **[In subpart 1, the MPCA corrects six citations to ranges of rules that changed as**  
37 **parts were added.]]**

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

39 E. comparative results obtained from using the proposed method with those  
40 obtained from using the relevant or corresponding methods prescribed in parts ~~7045.0100~~  
41 ~~7045.0102~~ to ~~7045.0143~~, ~~7045.0155~~ or 7045.0450 to ~~7045.0642~~ ~~7045.0651~~;

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

43 After receiving a petition for an equivalent testing or analytical method, the  
44 commissioner may request any additional information on the proposed method which the  
45 commissioner may reasonably require to evaluate the method.

1 Subp. 2. **Petitions to exclude a waste produced at a particular facility.** Petitions to  
2 exclude a waste produced at a particular facility are as follows:

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

4 E. If the waste is listed with code "T" in part 7045.0135, subitems (1) to (4) apply.

5 (1) The petitioner must demonstrate that the waste:

6 (a) does not contain the constituent or constituents in part 7045.0141 that  
7 caused the agency to list the waste, using the appropriate test methods prescribed in ~~Code~~  
8 of Federal Regulations, title 40, part 261, appendix III, as amended "Test Methods for  
9 Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846,  
10 incorporated by reference in part 7045.0065, item D; or

11 **[In unit (a), the MPCA revises the rules to include a specific reference to part**  
12 **7045.0141, where the hazardous constituent list is located, so that it can be easily**  
13 **found. The MPCA also provides the name and revised citation for the appropriate**  
14 **test method that was formerly located in repealed 40 CFR part 261, Appendix III, but**  
15 **which is now at 40 CFR 260.11, which the MPCA has incorporated by reference at**  
16 **part 7045.0065, item D. This change relates to required RCRA Amendment 126:**  
17 **"Testing and Monitoring Activities" = 40 CFR 260.22(d)(1)(i); as supported at 58 FR**  
18 **46040-46051, August 31, 1993.]//**

19 *[For text of unit (b), see M.R.]*

20 *[For text of subitems (2) to (4), see M.R.]*

21 *[For text of items F to H, see M.R.]*

22 Subp. 3. **Petition for reduced regulation of hazardous waste being speculatively**  
23 **accumulated or reclaimed prior to use.** The agency may, upon presentation of a  
24 petition for those purposes, reduce any of the requirements of chapter 7045 applicable to  
25 reclamation, reuse, or recycling. The agency shall apply the standards and criteria set  
26 forth below in determining whether to grant a petition to reduce the regulatory  
27 requirements for the following recycled hazardous wastes.

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

29 B. Any person seeking a reduction in regulation of hazardous wastes that are  
30 reclaimed and then reused as feedstock within the original ~~primary~~ production process in  
31 which the hazardous wastes were generated if the reclamation is an essential part of the  
32 production process may petition under these provisions. The agency's decision regarding  
33 the petition shall be based on the following standards and criteria:

34 **[In item B, the MPCA deletes the word "primary" from the discussion of feedstocks.**  
35 **Deleting the word "primary" is optional as the effect reduces regulatory stringency.**  
36 **The MPCA believes that adopting this federal change to allow a broader type of**  
37 **production process to qualify for feedstock reuse is reasonable and is adequately**  
38 **protective. This change relates to optional RCRA Amendment 137.5: "Universal**  
39 **Treatment Standards and Treatment Standards for Organic Toxicity Characteristic**  
40 **Wastes and Newly Listed Wastes" = 40 CFR 260.31(a-b); as supported at 59 FR**  
41 **47982-48110, September 19, 1994; as amended at 60 FR 242-302, January 3, 1995.]//**

42 *[For text of subitems (1) to (8), see M.R.]*

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

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

45 Subp. 5. **Petition for use of alternate manifest.** A person who meets the criteria in  
46 item A may submit a petition to the commissioner for approval of the use of an alternate

1 manifest system as described in item B. The criteria the commissioner shall use in  
2 determining whether to approve the use of the alternate manifest system are provided in  
3 item C.

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

5 B. Upon approval, an alternate manifest system may be used in lieu of the manifest  
6 system described in parts 7045.0261 ~~to~~ and 7045.0265. The commissioner shall only  
7 approve alternate manifest systems meeting the following criteria:

8 **[In item B, the MPCA revises language to clarify that there are currently no parts**  
9 **between parts 7045.0261 and 7045.0265.]//**

10 (1) The alternate manifest system must include a manifest form to be used by  
11 the generator to notify the commissioner each time waste is transported under this subpart.  
12 The manifest form must include: a space for the generator's name, mailing address,  
13 telephone number, and identification number; a space for the transporter's name and  
14 identification number; a space for the name, address, telephone number, and  
15 identification number of the recycling facility; a space for the United States Department  
16 of Transportation shipping name, hazard class, ~~and~~ identification number, and packing  
17 group of the waste as specified in the United States Department of Transportation Code,  
18 title 49, parts 171 to ~~179~~ 199; a space for the number and type of containers and total  
19 volume of the waste being shipped; a space for the waste identification number as  
20 specified in part 7045.0131, 7045.0135, or 7045.0137; a space for the signature of the  
21 generator or the generator's authorized representative affirming the correctness of the  
22 information; the mailing address of the commissioner; and a statement advising the  
23 generator to complete the form and submit it to the commissioner within five working  
24 days of transporting waste.

25 **[In subitem (1), the MPCA corrects one of several citations to a range of regulations**  
26 **amended by the U.S. Department of Transportation. The MPCA also follows advice**  
27 **from Minnesota's Department of Transportation to revise language to conform with**  
28 **more recent changes to those federal regulations.]//**

29 *[For text of subitems (2) and (3), see M.R.]*

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

31 *[For text of subps 6 and 7, see M.R.]*

32 Subp. 8. [See repealer.]

33 **[The MPCA repeals subpart 8 because only the EPA may grant case-by-case**  
34 **extensions to an effective date for land disposal restrictions—the subject of this**  
35 **subpart. This repeal does not change the effect of the rule, which formerly referenced**  
36 **the EPA as the sole authority for granting this type of extension. The MPCA believes**  
37 **that it is reasonable to repeal this subpart since the State cannot accept the**  
38 **application or grant those types of extensions. The MPCA will refer anyone seeking**  
39 **this type of extension to the EPA.]//**

40 Subp. 9. **Petitions to allow land disposal of a prohibited waste.** A person seeking an  
41 exemption from a prohibition for the disposal of a restricted hazardous waste in a  
42 particular unit or units must submit a petition to the agency and to the EPA demonstrating,  
43 to a reasonable degree of certainty, that there will be no migration of hazardous  
44 constituents from the disposal unit or injection zone for as long as the wastes remain  
45 hazardous. The demonstration to the EPA must include the provisions in Code of Federal  
46 Regulations, title 40, section 268.6. The demonstration to the agency must include an

1 identification of the specific waste and the specific unit for which the demonstration will  
2 be made, a waste analysis to describe fully the chemical and physical characteristics of  
3 the subject waste, and a comprehensive characterization of the disposal unit site including  
4 an analysis of background air, soil, and water quality. The demonstration must also  
5 include a monitoring plan that detects migration at the earliest practicable time, and  
6 sufficient information to assure the commissioner that the owner or operator of a land  
7 disposal unit receiving restricted wastes will comply with other applicable federal, state,  
8 and local laws. The person seeking the exemption must also comply with items A to L.

9 *[For text of items A to C, see M.R.]*

10 D. If the owner or operator determines that there is migration of hazardous  
11 constituents from the unit, the owner or operator must immediately suspend receipt of  
12 prohibited waste at the unit and notify the commissioner in writing within ten days of the  
13 determination that a release has occurred. Within 60 days of receiving the notification,  
14 the commissioner shall determine whether the owner or operator can continue to receive  
15 prohibited waste in the unit and whether the variance is to be revoked. The commissioner  
16 shall also determine whether further examination of any migration is warranted under  
17 applicable provisions of parts 7045.0450 to ~~7045.0642~~ 7045.0651.

18 **[In item D, the MPCA corrects a citation to a range of rules that changed as parts  
19 were added.]//**

20 *[For text of items E to I, see M.R.]*

21 J. Before the agency's decision, the applicant must comply with all restrictions on  
22 land disposal under parts ~~7045.1300 to 7045.1380~~ part 7045.1390 when the effective date  
23 for the waste has been reached.

24 **[In item J, the MPCA provides the replacement citation for a repealed range of  
25 rules.]//**

26 *[For text of items K and L, see M.R.]*

27 Subp. 10. *[See repealer.]*

28 **[The MPCA repeals Subpart 10 because only the EPA may grant petitions for  
29 alternate treatment standards or alternative technology, which are the subjects of the  
30 repealed subpart. This repeal does not change the effect of the rule, which formerly  
31 referenced the EPA as the sole authority for granting this type of petition. The  
32 MPCA believes that it is reasonable to repeal this subpart since the State cannot  
33 accept the application or grant those types of petitions. The MPCA will refer anyone  
34 seeking this type of extension to the EPA.]//**

35 *[For text of subps 11 and 12, see M.R.]*

## 37 **7045.0090 ADOPTION AND INCORPORATION BY REFERENCE.**

38 Subpart 1. **Applicability.** Except as specified in subparts 2 and 3, the terms and  
39 standards identified in subparts 1a to ~~4e~~ 1h apply whenever federal regulations are  
40 ~~adopted or~~ incorporated by reference in this chapter whether or not this part is  
41 specifically referenced. Terms used in incorporated Code of Federal Regulations, title 40,  
42 and defined in part 7045.0020 or in Minnesota Statutes have the meaning given in part  
43 7045.0020 or in Minnesota Statutes.

44 **[The MPCA recently promulgated part 7045.0090 to address general conditions  
45 governing materials incorporated by reference and to list State counterparts to cited**

1 federal regulations. Additional conditions specific to the incorporated material may  
2 appear in these rules at the place where the material is incorporated. The MPCA is  
3 revising part 7045.0090 in two ways. The first is to organize existing requirements by  
4 their federal part/topic. For example, subpart 1d addresses incorporated federal  
5 regulations that relate to hazardous waste generators, and subpart 1e addresses  
6 incorporated federal regulations relating to hazardous waste transporters.  
7 Organizing these subparts by their federal topic makes it easier for the reader to find  
8 conditions related to incorporated material. This type of change is only meant to  
9 clarify this part. The reasonableness of the existing material in this part was  
10 originally justified in the Statement of Need and Reasonableness for the rulemaking  
11 in which the MPCA first adopted this part (part 7045.0090 was originally adopted in  
12 a rulemaking, "Rules Governing Adoption of Rules by Reference, Corrective Action  
13 and Remediation Waste Management, Minnesota Rules Parts 7045.0020, 7045.0090,  
14 7045.0450, 7045.0478, 7045.0485, 7045.0545, 7045.0546, 7045.0547, 7045.0548 and  
15 7045.0552," dated September 8, 2004). In that rulemaking, the MPCA determined  
16 that it was reasonable to provide guidance on how cites and cross references within  
17 federal regulations would apply in rules when incorporated by reference. While the  
18 MPCA is now significantly rearranging existing guidance, the MPCA already  
19 established its reasonableness. The second type of change to this part addresses an  
20 expanded list of incorporations by reference in this rule. Below, the MPCA discusses  
21 added or revised references.]]

22 Subp. 1a. General Specific terms. Terms defined in Minnesota Rules and Minnesota  
23 Statutes that are also defined in Code of Federal Regulations, title 40, The following  
24 terms and phrases have the meaning given in part 7045.0020 and the applicable  
25 Minnesota statute.

26 [The MPCA revises and restructures old item A, into a new subpart 1a, under which  
27 it defines specific terms.]]

28 A. "EPA" and "agency" mean the Pollution Control Agency and its commissioner.

29 [In item A, the MPCA clarifies that when it incorporates federal regulations into rule  
30 by reference, references in federal regulations to "EPA" or to "agency" mean the  
31 Minnesota Pollution Control Agency. The MPCA removes a reference to  
32 "commissioner" in this subpart since commissioner is addressed in item B.]]

33 B. "Generator" has the meaning given in part 7045.0020.

34 [The MPCA moves this definition into item D.]]

35 C. "Hazardous waste" has the meaning given in part 7045.0020.

36 [The MPCA moves this definition into item D.]]

37 D. B. "Regional administrator," "administrator," and "director" mean the  
38 commissioner of the Pollution Control Agency.

39 [In item B, the MPCA adds the term administrator because that term is sometimes  
40 used in federal regulations that are incorporated by reference and clarifies that this  
41 term also means the MPCA commissioner.]]

42 E. C. "State," "authorized state," "approved state," or "approved program" means  
43 Minnesota.

44 F. "Waste" has the meaning given in part 7045.0020.

45 [The MPCA moves this definition into a new item D.]]

1 D. "Generator," "hazardous waste," and "waste" have the meanings given in part  
2 7045.0020.

3 **[In item D, the MPCA consolidates terms that were previously defined in former  
4 items B, C, and F.]//**

5 Subp. 1b. **Hazardous waste management system general standards; Code of  
6 Federal Regulations, title 40, part 260.** References to the petition processes established  
7 in "Code of Federal Regulations, title 40, part 260, subpart C," or "Code of Federal  
8 Regulations, title 40, or Code of Federal Regulations, title 40, sections 260.20 to 260.41,"  
9 mean the petition processes established in part 7045.0075.

10 **[In subpart 1b, the MPCA clarifies that references in incorporated federal language  
11 to the petition process in 40 CFR part 260, subpart C, mean the State counterpart  
12 found in part 7045.0075.]//**

13 Subp. 1c. **Identification and listing standards; Code of Federal Regulations, title  
14 40, part 261.**

15 A. References to any section in "Code of Federal Regulations, title 40, part 261,  
16 subpart C," "subparts A to C, or to Code of Federal Regulations, title 40, sections 261.20  
17 261.1 to 261.24," or "characteristic hazardous waste" mean the characteristics established  
18 in part parts 7045.0102 to 7045.0131 or part 7045.0214, subpart 3.

19 **[In item A, the MPCA clarifies that references in incorporated federal language to 40  
20 CFR part 261, subparts A to C, regarding the identification and listing of hazardous  
21 wastes, mean the State counterparts found in parts 7045.0102 to 7045.0131 and  
22 7045.0214, subpart 3.]//**

23 B. References to "Code of Federal Regulations, title 40, section 261.4," mean the  
24 exclusions listed in part 7045.0120.

25 C. References to "Code of Federal Regulations, title 40, section 261.6," mean the  
26 use, reuse, recycling, and reclamation requirements of part 7045.0125.

27 **[In items B and C, the MPCA eliminates unnecessary quotation marks]//**

28 D. References to any section in Code of Federal Regulations, title 40, part 261,  
29 subpart D, or to Code of Federal Regulations, title 40, sections 261.30 to 261.38, mean  
30 parts 7045.0135 to 7045.0145.

31 **[In item D, the MPCA clarifies that references in incorporated federal language to 40  
32 CFR part 261, subpart D, regarding the lists of hazardous wastes, mean the State  
33 counterparts found in parts 7045.0135 to 7045.0145.]//**

34 Subp. 1d. **Standards applicable to generators of hazardous waste, Code of Federal  
35 Regulations, title 40, part 262.** References to Code of Federal Regulations, title 40, part  
36 262, or to any section in Code of Federal Regulations, title 40, sections 262.10 to 262.70,  
37 mean parts 7045.0205 to 7045.0325.

38 **[In subpart 1d, the MPCA clarifies that references in incorporated federal language  
39 to 40 CFR part 262, regarding generators of hazardous wastes, mean the State  
40 counterparts found in parts 7045.0205 to 7045.0325.]//**

41 Subp. 1e. **Standards applicable to transporters of hazardous waste, Code of  
42 Federal Regulations, title 40, part 263.** References to any section in Code of Federal  
43 Regulations, title 40, sections 263.10 to 263.31, mean parts 7045.0351 to 7045.0397.

44 **[In subpart 1e, the MPCA clarifies that references in incorporated federal language to  
45 40 CFR sections 263.10 to 263.31, regarding the transportation of hazardous waste,  
46 mean the State counterparts found in parts 7045.0351 to 7045.0397.]//**



1 Subp. ~~4d~~ 1f. **Permitted and interim status standards for owners and operators of**  
2 **hazardous waste treatment, storage, and disposal facilities; Code of Federal**  
3 **Regulations, title 40, parts 264 and 265.**

4 A. References to "Code of Federal Regulations, title 40, part 264, subpart F,"  
5 "~~Code Code~~ of Federal Regulations, title 40, sections 264.90 to 264.101," "~~Code Code~~ of  
6 Federal Regulations, title 40, part 265, subpart F," or "Code of Federal Regulations, title  
7 40, sections 265.90 to 265.94," mean the requirements of parts 7045.0484, 7045.0485,  
8 7045.0590, and 7045.0592 relating to groundwater protection, monitoring, and corrective  
9 action for releases.

10 **[In item A, the MPCA clarifies that references in incorporated federal language to 40**  
11 **CFR part 264, subpart F, or to 265, subpart F, regarding the operation of hazardous**  
12 **waste facilities, mean the State counterparts found in parts 7045.0484, 7045.0485,**  
13 **7045.0590, and 7045.0592.]//**

14 B. References to "Code of Federal Regulations, title 40, part 264, subpart H,"  
15 "~~Code Code~~ of Federal Regulations, title 40, sections 264.140 to 264.151," "~~Code Code~~  
16 of Federal Regulations, title 40, part 265, subpart H," or "Code of Federal Regulations,  
17 title 40, sections 265.140 to 265.150," mean the financial assurance requirements of parts  
18 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

19 **[In item B, the MPCA clarifies that references in incorporated federal language to 40**  
20 **CFR part 264, subpart H, or to 265, subpart H, regarding financial assurance for**  
21 **hazardous waste facilities, mean the State counterparts found in parts 7045.0498 to**  
22 **7045.0524 and 7045.0608 to 7045.0624.]//**

23 C. References to "Code of Federal Regulations, title 40, part 264, subpart O,"  
24 "~~Code Code~~ of Federal Regulations, title 40, sections 264.340 to 264.351," "~~Code Code~~  
25 of Federal Regulations, title 40, part 265, subpart O," or "Code of Federal Regulations,  
26 title 40, sections 265.340 to 265.352," mean the thermal treatment standards of parts  
27 7045.0542 and 7045.0640.

28 **[In item C, the MPCA clarifies that references in incorporated federal language to 40**  
29 **CFR part 264, subpart O, or to 265, subpart O, regarding thermal treatment facilities,**  
30 **mean the State counterparts in parts 7045.0542 and 7045.0640.]//**

31 D. References to "Code of Federal Regulations, title 40, part 264, subpart N,"  
32 "~~Code Code~~ of Federal Regulations, title 40, sections 264.300 to 264.317," "~~Code Code~~  
33 of Federal Regulations, title 40, part 265, subpart N," or "Code of Federal Regulations,  
34 title 40, sections 265.300 to 265.316," mean the landfill standards of parts 7045.0538 and  
35 7045.0638.

36 **[In item D, the MPCA clarifies that references in incorporated federal language to 40**  
37 **CFR part 264, subpart N, or to 265, subpart N, regarding landfills, mean the State**  
38 **counterparts in parts 7045.0538 and 7045.0638.]//**

39 Subp. ~~4e~~ 1g. **Permit requirements; Code of Federal Regulations, title 40, part 270.**  
40 References to "Code of Federal Regulations, title 40, part 270, subparts A to H," "~~Code~~  
41 ~~Code~~ of Federal Regulations, title 40, sections 270.1 to 270.230," or any other reference  
42 to a hazardous waste facility permit mean the hazardous waste facility permit  
43 requirements in parts 7001.0500 to 7001.0730.

44 **[In subpart 1g, the MPCA clarifies that references in incorporated federal language**  
45 **to 40 CFR part 270, subparts A to H, regarding hazardous waste permits mean the**  
46 **State counterparts in parts 7001.0500 to 7001.0730.]//**

1        Subp. 1h. Other standards.

2        **[The MPCA creates subpart 1h to address the adoption of standards that do not fit**  
3        **into any of the existing categories.]//**

4        A. References to Code of Federal Regulations, title 40, part 273, mean part  
5        7045.1400 (universal waste).

6        **[In new item A, the MPCA clarifies that references in incorporated federal language**  
7        **to 40 CFR part 273, regarding universal wastes, mean the State counterparts in part**  
8        **7045.1400.]//**

9        B. References to Code of Federal Regulations, title 40, part 279, mean parts  
10       7045.0692 to 7045.0990 (used oil).

11       **[In new item B, the MPCA clarifies that references in incorporated federal language**  
12       **to 40 CFR part 279, regarding used oil, mean the State counterparts in parts**  
13       **7045.0692 to 7045.0990.]//**

14       C. References to underground injection of waste in any Code of Federal  
15       Regulations incorporated in this chapter are subject to Minnesota Statutes and rules  
16       prohibiting the discharge of waste or pollutants to the saturated or unsaturated zones.

17       **[In new item C, the MPCA clarifies that Minnesota statutes and rules prohibit**  
18       **underground injection of waste or pollutants. This is not a change but only a**  
19       **clarification of existing rules and statutes.]//**

20       D. References to Code of Federal Regulations, title 40, part 266, subpart C, mean  
21       part 7045.0665 (uses constituting disposal).

22       **[In item D, the MPCA clarifies that references in incorporated federal language to 40**  
23       **CFR part 266, subpart C, mean the State counterparts in part 7045.0665.]//**

24       E. References to Code of Federal Regulations, title 40, part 266, subpart F, mean  
25       part 7045.0675 (precious metal recovery).

26       **[In item E, the MPCA clarifies that references in incorporated federal language to 40**  
27       **CFR part 266, subpart F, mean the State counterparts in part 7045.0675.]//**

28       F. References to Code of Federal Regulations, title 40, part 266, subpart G, mean  
29       part 7045.0685 (spent lead-acid batteries being reclaimed).

30       **[In item F, the MPCA clarifies that references in incorporated federal language to 40**  
31       **CFR part 266, subpart G, mean the State counterparts in part 7045.0685.]//**

32       *[For text of subps 2 and 3, see M.R.]*

33       Subp. 4. Applicable law. When federal regulations incorporated into this chapter cite  
34       additional federal regulations and when this chapter does not address whether the cited  
35       federal regulations or corresponding state rules apply, state rules shall apply.

36       **[In subpart 4, the MPCA clarifies that, unless otherwise specified, when either**  
37       **Minnesota Rules or corresponding RCRA regulations could apply, the most stringent**  
38       **rule or regulation governs.]//**

39  
40       **7045.0102 MIXTURES OF WASTES.**

41       **[The MPCA revises part 7045.0102 to clarify the existing requirements and to make**  
42       **the rule correspond more closely to parallel requirements in 40 CFR section 261.3.**  
43       **Except for several new federal exclusions being added to subpart 2, item E, subitems**  
44       **(6) and (7), the revisions to this rule part are intended to clarify the rule without**  
45       **changing its meaning. The MPCA intends to continue regulating the same mixtures**

1 that were considered to be hazardous under the former rule, and, except for the  
2 newly added exceptions in Item E, to continue excluding those mixtures that were  
3 excluded from regulation under the former rule.//

4 Subpart 1. **Scope.** Except as provided in part 7045.0665, subpart 1, mixtures of wastes  
5 are listed in subparts 2 and 3 identified in subpart 2.

6 [In subpart 1, the MPCA replaces the word “listed,” which has a special meaning in  
7 this chapter, with the more appropriate term “identified.” The MPCA also removes  
8 an obsolete reference to subpart 3 that was repealed in a prior rulemaking.//

9 Subp. 2. **Mixtures of hazardous and nonhazardous wastes.** The mixing of a  
10 hazardous waste with a nonhazardous waste as described in this subpart constitutes  
11 treatment. Generators who mix hazardous and nonhazardous wastes on site must meet the  
12 requirements of part 7045.0211 for generators with on-site facilities. Mixtures excluded  
13 under part 7045.0075, subpart 2, are excluded from regulation. Wastes excluded under  
14 this subpart are subject to part 7045.1390, even if they no longer exhibit a characteristic  
15 at the point of land disposal.

16 [In subpart 2, the MPCA adds two new sentences. The first clarifies that wastes  
17 excluded through the petition process in part 7045.0075, subpart 2, are not further  
18 addressed by this mixtures rule. The existing rule, and corresponding 40 CFR section  
19 261.3, repeated a similar phrase at different units throughout the part. In this  
20 introductory paragraph, the MPCA adds one reference to the waste petition process  
21 to consolidate several redundant references. In the second new sentence, the MPCA  
22 is adding a requirement that corresponds to 40 CFR 261.3(g)(3). This is based on  
23 RCRA Amendment 192A.2: “Mixture and Derived-From Rules Revisions” = 40 CFR  
24 261.3(g)(3); as supported at 66 FR 27266-27297, May 16, 2001. This sentence helps  
25 the reader to understand that treatment standards for land disposal may be more  
26 restrictive than the criteria used for determining whether the waste is characteristic  
27 waste.//

28 A. A mixture is a hazardous waste if it is a ~~mixture of nonhazardous waste and any~~  
29 ~~waste which is hazardous solely because it exhibits the characteristic of ignitability,~~  
30 ~~corrosivity, oxidativity, or reactivity as described in part 7045.0131, unless the resulting~~  
31 ~~mixture does not exhibit any of the characteristics of hazardous waste as defined in part~~  
32 ~~7045.0131~~ contains a waste that is hazardous solely because it exhibits any of the  
33 characteristics of ignitability, corrosivity, oxidativity, or reactivity identified in part  
34 7045.0131, or contains a hazardous waste listed in part 7045.0135 solely because of  
35 ignitability, corrosivity, or reactivity, and the resulting mixture exhibits any characteristic  
36 of a hazardous waste identified in part 7045.0131.

37 [Former item A language stated that wastes that exhibit hazardous characteristics  
38 solely for ignitability, reactivity, corrosivity or oxidativity are not regulated as  
39 hazardous waste if, after mixing, they no longer display those characteristics. The  
40 MPCA intends the effect of item A to remain the same, however, it rephrases item A  
41 to make three changes.//

42  
43 First, the MPCA changes the identified characteristics to plural form instead of  
44 singular in order to clarify that this item also applies when mixtures contain more  
45 than one of the characteristics (e.g., a waste that is both corrosive and ignitable).//

1 The use of the term “solely” is meant to clarify that the waste could only be hazardous  
2 because of those specific characteristics, not that it was limited to only one of those  
3 characteristics. To qualify for this provision, a waste must not be hazardous for any  
4 reason other than ignitability, corrosivity, oxidativity or reactivity (e.g., may not be  
5 characteristic for or listed based on toxicity or lethality).//  
6

7 The second change is that the MPCA revised item A to address both listed and  
8 characteristic waste that, when mixed, continues to exhibit a characteristic of  
9 hazardous waste. This was done by incorporating the contents of three former items  
10 into item A. Item A addresses mixtures of characteristic wastes that had been  
11 addressed in former item A and in the second part of former item C. It also addresses  
12 mixtures of listed wastes formerly addressed in the first part of former item C and  
13 former item B. Former item B stated that mixtures containing wastes that were listed  
14 for ignitability, corrosivity, or reactivity were not hazardous if the resulting mixture  
15 was not characteristic. Former item E further addressed this concept by excluding  
16 from regulation sewered wastes that were listed for reasons of ignitability, corrosivity,  
17 and reactivity. The MPCA combines all of these types of mixtures into new item A.//  
18

19 In new item A the MPCA addresses mixtures resulting from both categories of  
20 wastes—those that are hazardous because they are listed and those that are  
21 hazardous because they exhibit a characteristic. Regardless of how the waste is  
22 initially identified as hazardous, if, after mixing, the waste still exhibits one of the  
23 specified characteristics (ignitable, reactive, oxidative or corrosive), it continues to be  
24 regulated as a hazardous waste. A mixture of these types of wastes, whether it is  
25 derived from a listed waste or a characteristic waste, will be regulated as hazardous if  
26 the resulting mixture has a hazardous characteristic.//  
27

28 Finally, the MPCA rephrases this part to use more affirmative language to state that  
29 the mixture is a hazardous waste if it exhibits a characteristic (in lieu of the previous  
30 language which said that it is a hazardous waste unless it does not exhibit a  
31 characteristic).//  
32

33 Although the format of these mixture provisions has changed, the MPCA intends that  
34 mixtures of these types of waste are not hazardous wastes if they do not exhibit these  
35 characteristics of hazardous waste. This is not a changed requirement from the  
36 previous rule, but is only a rephrasing intended to simplify and clarify the existing  
37 requirement.//  
38

39 The structure of the State mixtures rule differs significantly from the federal  
40 counterparts. However, there are many parallel elements, and the EPA determined  
41 that the State and federal rules are equivalent. The MPCA intends for its mixtures  
42 rule to continue to regulate the same wastes as the federal regulation and to remain  
43 equivalent to the federal mixtures rule.//  
44

45 In addition to its initiative to reorganize and clarify its mixtures rules, the MPCA is  
46 also adopting changes based on changes the EPA made to corresponding federal

1 regulations. Further discussion of recent amendments to the federal mixtures  
2 language as it relates to the changes being made to this part are discussed in the  
3 following federal amendments:

- 4 • RCRA Amendment 192A.2: “Mixture and Derived-From Rules Revisions” =  
5 40 CFR 261.3(g)(1)-(3); as supported at 66 FR 27266-27297, May 16, 2001.
- 6 • RCRA Amendment 194: “Mixture and Derived-From Rules Revision II” = 40  
7 CFR 261.3(g)(4); as supported at 66 FR 50332-50334, October 3, 2001.//

8 B. Except as provided in item D or E, a mixture is a hazardous waste if it is a  
9 mixture of nonhazardous waste and any waste listed in part 7045.0135 solely because of  
10 ignitability, corrosivity, or reactivity, unless: contains a waste listed for toxicity in part  
11 7045.0135.

12 (1) ~~the resulting mixture does not exhibit any of the characteristics of hazardous~~  
13 ~~waste as defined in part 7045.0131;~~

14 (2) ~~the resulting mixture has been excluded from regulation pursuant to part~~  
15 ~~7045.0075, subpart 2; or~~

16 (3) ~~the nonhazardous waste is exempt from regulation under part 7045.0120,~~  
17 ~~item I, and the resultant mixture no longer exhibits any characteristic of hazardous waste~~  
18 ~~as defined in part 7045.0131 for which the hazardous waste listed in part 7045.0135 was~~  
19 ~~listed.~~

20 **[Item B is significantly revised to only refer to mixtures of wastes that are listed for**  
21 **reasons of toxicity. Mixtures of wastes that are listed for toxicity were formerly**  
22 **regulated in former items C, D and E, and their regulatory status has not changed as**  
23 **a result of this revision. A mixture that contains a waste listed for toxicity remains a**  
24 **hazardous waste.//**

25  
26 **Although this is not a new requirement and need not be justified, the MPCA believes**  
27 **it is reasonable to repeat the reasoning behind this requirement. Unlike other waste**  
28 **characteristics in new item A, there is no provision in new item B that a listed toxic**  
29 **waste will somehow, after mixing, not exhibit a characteristic and, therefore, be**  
30 **excluded from regulation. This is because the MPCA has special concerns about the**  
31 **nature of toxic wastes and about disguising toxicity through dilution. This is different**  
32 **than the concerns with other waste characteristics. The types of wastes that are listed**  
33 **for toxicity can include carcinogens and other extremely hazardous or insidious**  
34 **chemicals. A listing for toxicity can be based on very complex reasons and toxicity**  
35 **cannot be evaluated as simply as a characteristic such as corrosivity, reactivity or**  
36 **ignitability. If a waste that is ignitable, corrosive or reactive is mixed with another**  
37 **waste so that those original properties are no longer present (i.e., it will no longer**  
38 **burn, corrode or react) then it is reasonable to cease to manage it as a hazardous**  
39 **waste for those characteristics. But, if a waste contains a toxic or lethal component,**  
40 **such as a carcinogen or poison, it is not reasonable to simply allow it to be diluted**  
41 **through mixing below a regulatory threshold for that carcinogen or poison. A waste**  
42 **may be listed for toxicity through a number of routes and there is no way, other than**  
43 **a complicated delisting petition, to determine whether it is safe to cease to regulate it**  
44 **as toxic. For this reason, and because of the concern that dilution does not constitute**  
45 **proper treatment for toxic materials, it is reasonable to provide specific limits on the**

1 activity of mixing toxic wastes. The MPCA discusses regulating toxic wastes further  
2 below relating to changes to former item C.//

3  
4 While the Minnesota-only characteristic “lethality” is related to toxicity, the MPCA  
5 provides no discussion of lethality in item B because lethality is solely a characteristic  
6 and is not currently used as the basis for any waste to be listed. The argument not to  
7 allow dilution of toxic waste would similarly apply to lethal waste.//

8  
9 The MPCA adds the phrase, “except as provided in item E,” to item B because it  
10 refers to specific exceptions for sewerage wastes. These specific exceptions were  
11 formerly identified in old item F and are now provided in new item E.//

12  
13 The MPCA is deleting the former introductory paragraph and former subitem (1)  
14 because those types of wastes are being addressed in new item A (a mixture  
15 containing waste listed for ignitability, corrosivity or reactivity is hazardous unless it  
16 no longer exhibits any of those characteristics).//

17  
18 The MPCA is deleting former subitem (2) because its effect is addressed by a phrase  
19 added at the end of the introductory paragraph in subpart 2 (a mixture of a waste  
20 that has been removed from regulation as a hazardous waste as a result of a petition is  
21 no longer regulated as hazardous waste).//

22  
23 The MPCA is removing former subitem (3) to delete the specific reference to mixtures  
24 of mining waste that are excluded from regulation in part 7045.0120, subpart 1, item I.  
25 The reference to this exclusion here is an unnecessary duplication, and is even  
26 confusing since the other exclusions in part 7045.0120 are not also referenced here.  
27 Wastes that are exempted from regulation in part 7045.0120 are not considered to be  
28 hazardous waste, and are not the subject of this mixtures rule. The type of mixture  
29 that was formerly addressed in this subpart (a mixture of a nonhazardous waste,  
30 excluded mining waste, and a waste that was listed for ignitability, reactivity or  
31 corrosivity) is now being addressed in new item A.//

32 C. Except as provided in item D, a mixture is a hazardous waste if it is a  
33 nonsewered mixture of nonhazardous waste and any waste listed in part 7045.0135 (other  
34 than wastes listed solely because of ignitability, corrosivity, or reactivity) or any waste  
35 which is hazardous because it exhibits the characteristics of toxicity or lethality as  
36 identified in part 7045.0131 unless the resulting mixture has been excluded from  
37 regulation pursuant to part 7045.0075, subpart 2 contains a waste that exhibits the  
38 characteristic of toxicity or lethality identified in part 7045.0131.

39 [The MPCA has rephrased item C to more clearly state the existing requirement that  
40 mixtures of wastes that are characteristic for toxicity or lethality remain hazardous  
41 wastes. As discussed above for new item A, the MPCA believes that when mixtures  
42 contain wastes that are characteristic or listed for ignitability, corrosivity, oxidativity  
43 or reactivity and the mixture no longer exhibits any of those characteristics, it is  
44 reasonable to exempt these mixtures from regulation as a hazardous waste. However,  
45 as discussed in the note above, the MPCA views wastes that exhibit the characteristics  
46 of toxicity or lethality differently. The MPCA views the mixing of wastes that exhibit

1 **the characteristics of toxicity or lethality as dilution and not a valid treatment and is**  
2 **not proposing any change to the effect of this item.//**

3  
4 **In item C the MPCA also removes the reference to “nonsewered” mixtures because**  
5 **the changes made in this part eliminate the need to distinguish between sewerred and**  
6 **nonsewerred waste management. Item D and new item E provide specific exceptions**  
7 **for sewerred mixtures, but in all other cases, the regulation of the wastes under this**  
8 **subpart does not change depending on whether they are sewerred or not. The MPCA**  
9 **has also deleted a phrase addressing mixtures of wastes that are listed for toxicity**  
10 **because those types of mixtures are addressed in new item B. The MPCA deleted a**  
11 **phrase addressing mixtures of wastes that are characteristic for either toxicity or**  
12 **lethality because those types of mixtures are more clearly addressed in this item as it**  
13 **is rephrased.//**

14 D. A mixture is a hazardous waste if it is a sewerred mixture of nonhazardous waste  
15 and any waste which is hazardous because it exhibits the characteristics of toxicity or  
16 lethality as defined in part 7045.0131 unless:

17 (1) prior to entering the sewer the resulting mixture no longer exhibits the  
18 characteristic of toxicity or lethality; and

19 (2) the sewerred of the mixture has been approved by the agency pursuant to  
20 parts 7045.0221 to 7045.0255.

21 This provision does not apply to those mixtures defined as nonhazardous under item ~~F~~  
22 E.

23 ~~E. Except as provided in item F, a mixture is a hazardous waste if it is a sewerred~~  
24 ~~mixture of nonhazardous waste and any waste listed in part 7045.0135 (other than wastes~~  
25 ~~listed solely because of ignitability, corrosivity, or reactivity) unless the resulting mixture~~  
26 ~~has been excluded from regulation under part 7045.0075, subpart 2.~~

27 **[The requirements of former item E are being deleted, because the wastes that were**  
28 **identified in former item E (wastes that are listed for toxicity) are being addressed in**  
29 **new item B without changing the effect of the rule. New item B does not distinguish**  
30 **between whether the waste is sewerred or not. Except as specifically excluded under**  
31 **item E, if a waste is listed for toxicity, it remains a hazardous waste regardless of**  
32 **whether the resulting mixture is sewerred or nonsewerred.//**

33 ~~F. E. Except as otherwise provided in item A, B, or D, the following sewerred~~  
34 ~~mixture of nonhazardous wastes and hazardous wastes listed in part 7045.0135 Except~~  
35 ~~as otherwise provided in item A, B, or D, the following sewerred mixtures are not~~  
36 ~~hazardous wastes if the generator can demonstrate that the mixture consists of wastewater,~~  
37 ~~the discharge of which is subject to regulation under the Federal Water Pollution Control~~  
38 ~~Act Amendments of 1972, United States Code, title 33, section 1317(b) or 1342, as~~  
39 ~~amended either section 307(b) or 402 of the Clean Water Act, including wastewater at~~  
40 ~~facilities which have eliminated the discharge of wastewater; and~~

41 **[This new item E includes the provisions that were formerly in item F, mixtures of**  
42 **wastes that were discharged to the sewer under the Clean Water Act, without**  
43 **changing the effect of the existing rule. In this item the MPCA identifies a number of**  
44 **mixtures of specific listed hazardous wastes and excludes them from regulation as**  
45 **hazardous waste when they are discharged according to the Clean Water Act**  
46 **requirements. New item E and subitems (1), (2), (4) and (5) contain the same**

1 provisions as the introduction and corresponding subitems found in former item F.  
2 Subitem (3) was also included in former item F, but has been revised to correspond to  
3 the exception provided in 261.3(a)(2)(iv)(C). Each exception in item E is based on the  
4 corresponding federal provision. Subitems (6) and (7) are new and are discussed  
5 below. The MPCA is also replacing an obsolete reference to the Federal Water  
6 Pollution Control Act with a reference to the Clean Water Act. The revised State  
7 language provides equivalence to the federal language and addresses changes found in  
8 RCRA Amendment 192A.2: "Mixture and Derived-From Rules Revisions" = 40 CFR  
9 261.3(a)(2)(iv); as supported at 66 FR 27266-27297, May 16, 2001.]//

10 (1) one or more of the following spent solvents listed in part 7045.0135, subpart  
11 1a, item B: carbon tetrachloride, tetrachloroethylene, trichloroethylene; provided that the  
12 solvents are discharged into the wastewater stream as a result of normal manufacturing  
13 operations and provided further that the maximum total weekly usage of these solvents,  
14 other than the amounts that can be demonstrated not to be discharged to wastewater,  
15 divided by the average weekly flow of wastewater into the headworks of the facility's  
16 wastewater treatment or pretreatment system does not exceed one part per million;  
17 [In subitem (1), the MPCA corrects an existing citation to more accurately specify the  
18 correct listed wastes. The federal regulation that corresponds to this subitem (40  
19 CFR 261.3(a)(2)(iv)(A)) cites 40 CFR part 261.31, which correlates to part 7045.0135,  
20 subpart 1a, item B.]//

21 (2) one or more of the following spent solvents listed in part 7045.0135, subpart  
22 1a, item B: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene,  
23 cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide,  
24 isobutanol, pyridine, spent chlorofluorocarbon solvents; provided that the solvents are  
25 discharged into the wastewater stream as a result of normal manufacturing operations and  
26 provided further that the maximum total weekly usage of these solvents, other than the  
27 amounts that can be demonstrated not to be discharged to wastewater, divided by the  
28 average weekly flow of wastewater into the headworks of the facility's wastewater  
29 treatment or pretreatment system does not exceed 25 parts per million;  
30 [In subitem (2), the MPCA corrects an existing citation to more accurately specify the  
31 correct listed wastes. The federal regulation that corresponds to this subitem (40  
32 CFR 261.3(a)(2)(iv)(B)) cites 40 CFR part 261.31, which correlates to part 7045.0135,  
33 subpart 1a, item B.]//

34 (3) heat exchanger bundle cleaning sludge from the petroleum refining industry,  
35 EPA Hazardous Waste No. K050 as listed in part 7045.0135, subpart 1a, item C;  
36 [The MPCA amends subitem (3) to clarify that the number, K050, is an EPA  
37 Hazardous Waste Number.]//

38 (4) a discarded commercial chemical product, or chemical intermediate listed in  
39 part 7045.0135, subpart 1a, item D, arising from de minimis losses of these materials  
40 from manufacturing operations in which these materials are used as raw materials or are  
41 produced in the manufacturing process. De minimis losses include those from normal  
42 material handling operations (such as spills from the unloading or transfer of materials  
43 from bins or other containers or leaks from pipes, valves, or other devices used to transfer  
44 materials); minor leaks of process equipment, storage tanks or containers; leaks from  
45 well-maintained pump packings and seals; sample purgings; relief device discharges;  
46 discharges from safety showers and rinsing and cleaning of personal safety equipment;



1 and ~~rinsing~~ rinsate from empty containers or from containers that are rendered empty by  
2 that rinsing; or

3 **[In subitem (4), the MPCA corrects an existing citation to more accurately specify the**  
4 **correct listed wastes. The federal regulation that corresponds to this subitem (40**  
5 **CFR 261.3(a)(2)(iv)(D)) cites 40 CFR part 261.33, which correlates to part 7045.0135,**  
6 **subpart 1a, item D. In addition, the MPCA is amending the rule to correspond to the**  
7 **federal regulation by changing this use of the verb “rinsing” to the more appropriate**  
8 **use of the noun “rinsate.”]//**

9 (5) wastewater resulting from laboratory operations containing toxic wastes  
10 listed in part 7045.0135, provided that the annualized average flow of laboratory  
11 wastewater does not exceed one percent of total wastewater flow into the headworks of  
12 the facility's wastewater treatment or pretreatment system, or provided the waste's  
13 combined annualized average concentration does not exceed one part per million in the  
14 headworks of the facility's wastewater treatment or pretreatment facility. Toxic wastes  
15 used in laboratories that are demonstrated not to be discharged to wastewater are not to  
16 be included in this calculation;

17 (6) one or more of the following wastes listed in part 7045.0135, subpart 1a,  
18 item C: wastewaters from the production of carbamates and carbamoyl oximes (EPA  
19 Hazardous Waste No. K157), provided that the maximum weekly usage of formaldehyde,  
20 methyl chloride, methylene chloride, and triethylamine, including all amounts that can  
21 not be demonstrated to be reacted in the process, destroyed through treatment, or is  
22 recovered (i.e., what is discharged or volatilized), divided by the average weekly flow of  
23 process wastewater prior to any dilutions into the headworks of the facility's wastewater  
24 treatment system does not exceed a total of five parts per million by weight; or

25 **[In subitem (6), the MPCA adopts new language that corresponds to federal language**  
26 **found at 40 CFR 261.3(a)(2)(iv)(F). The MPCA believes that it is reasonable to**  
27 **exclude these waste streams because their discharge is adequately regulated through**  
28 **the Clean Water Act. This language is based on an optional provision in RCRA**  
29 **Amendment 140: “Carbamate Production Identification and Listing of Hazardous**  
30 **Waste” = 40 CFR 261.3(a)(2)(iv)(F); as supported at 60 FR 7824-7859, February 9,**  
31 **1995; as amended at 60 FR 19165, April 17, 1995; and at 60 FR 25619, May 12,**  
32 **1995.]//**

33 (7) wastewaters derived from the treatment of one or more of the following  
34 wastes listed in part 7045.0135, subpart 1a, item C: organic waste, including heavy ends,  
35 still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of  
36 carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), provided that the  
37 maximum concentration of formaldehyde, methyl chloride, methylene chloride, and  
38 triethylamine prior to any dilutions into the headworks of the facility's wastewater  
39 treatment system does not exceed a total of five milligrams per liter.

40 **[In subitem (7), the MPCA adopts new language that corresponds to federal language**  
41 **found at 40 CFR 261.3(a)(2)(iv)(G). The MPCA believes that it is reasonable to**  
42 **exclude these waste streams because their discharge is adequately regulated through**  
43 **the Clean Water Act. This language is based on an optional provision in RCRA**  
44 **Amendment 140: “Carbamate Production Identification and Listing of Hazardous**  
45 **Waste” = 40 CFR 261.3(a)(2)(iv)(G); as supported at 60 FR 7824-7859, February 9,**

1 1995; as amended at 60 FR 19165, April 17, 1995; and at 60 FR 25619, May 12,  
2 1995.]//

3 ~~G.~~ For the purpose of this ~~part~~ item, headworks refers to the influent plumbing of a  
4 privately owned national pollutant discharge elimination system, state disposal system, or  
5 pretreatment facility or to the facility's point of discharge to a municipal collection  
6 system when the treatment facility is a publicly owned wastewater treatment facility.

7 [The MPCA is amending former item G to become a paragraph at the end of new  
8 item E because the definition that it provides is only relevant to item E. The MPCA  
9 does not change the definition of "headworks" but clarifies that it applies only to item  
10 E, and not to all of part 7045.0102.]//

11 F. A mixture of used oil and a hazardous waste is a hazardous waste except as  
12 provided in part 7045.0800.

13 [The MPCA adds new item F, corresponding to 40 CFR part 261.3 (a)(2)(v), to  
14 address mixtures of used oil and hazardous waste. Item F does not provide new  
15 conditions for exceptions but instead refers readers to the rules that address used oil  
16 management. This item clarifies but does not change the regulatory status of used oil  
17 mixtures.]//

18 ~~H. G.~~ Any mixture of a waste from the extraction, beneficiation, and processing of  
19 ores and minerals excluded under part 7045.0120, subpart 1, item I, and any other waste  
20 exhibiting a characteristic of hazardous waste under part 7045.0131 is a hazardous waste  
21 only if:

22 [The MPCA changes the numbering from former item H to item G. The MPCA also  
23 corrects the reference to accurately reflect that the citation is to part 7045.0120,  
24 subpart 1, item I.]//

25 *[For text of subitems (1) and (2), see M.R.]*

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

## 28 7045.0120 EXEMPTIONS AND SPECIAL REQUIREMENTS.

29 Subpart 1. **Exempt types of waste.** The following waste may be stored, labeled,  
30 transported, treated, processed, and disposed of without complying with the requirements  
31 of this chapter:

32 *[For text of items A to H, see M.R.]*

33 I. waste from the extraction, beneficiation, and processing of ores and minerals,  
34 including coal, ~~and including~~ phosphate rock, and overburden from the mining of  
35 uranium ore. For purposes of this item, beneficiation of ores and minerals is restricted to  
36 the following activities: crushing; grinding; washing; dissolution; crystallization;  
37 filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove  
38 water or carbon dioxide; roasting, autoclaving, or chlorination in preparation for leaching  
39 (except where the roasting, autoclaving, or chlorination/leaching sequence produces a  
40 final or intermediate product that does not undergo further beneficiation or processing);  
41 gravity concentration; magnetic separation; electrostatic separation; flotation; ion  
42 exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap,  
43 dump, vat, tank, and in situ leaching. For the purposes of this item, waste from the  
44 processing of ores and minerals includes only the following wastes as generated:

45 (1) slag from primary copper processing;

- 1 (2) slag from primary lead processing;
- 2 (3) red and brown muds from bauxite refining;
- 3 (4) phosphogypsum from phosphoric acid production;
- 4 ~~(2)-(5) slag from elemental phosphorus production;~~
- 5 ~~(3)-(6) gasifier ash from coal gasification;~~
- 6 ~~(4)-(7) process wastewater from coal gasification;~~
- 7 (8) calcium sulfate wastewater treatment plant sludge from primary copper
- 8 processing;
- 9 ~~(5)-(9) slag tailings from primary copper processing;~~
- 10 ~~(6)-(10) fluorogypsum from hydrofluoric acid production;~~
- 11 (11) process wastewater from hydrofluoric acid production;
- 12 (12) air pollution control dust or sludge from iron blast furnaces;
- 13 ~~(7)-(13) iron blast furnace slag;~~
- 14 ~~(8)-(14) treated residue from the roasting/leaching of chrome ore; and~~
- 15 (15) process wastewater from primary magnesium processing by the anhydrous
- 16 process;
- 17 (16) process wastewater from phosphoric acid production;
- 18 (17) basic oxygen furnace and open hearth furnace air pollution control dust or
- 19 sludge from carbon steel production;
- 20 ~~(9)-(18) basic oxygen furnace and open hearth furnace slag from carbon steel~~
- 21 ~~production;~~
- 22 (19) chloride process waste solids from titanium tetrachloride production; and
- 23 (20) slag from primary zinc processing.

24 **[In subitems (1) to (20), the MPCA adopts language to clarify the exclusion of specific**

25 **mining wastes. The language of this item corresponds to 40 CFR 261.4(b)(7)(ii)(A)-**

26 **(T) (with the exception that the MPCA is not adopting a reference to 40 CFR 266.112,**

27 **dealing with Burning in Industrial Furnaces, because the MPCA has not yet adopted**

28 **provisions equivalent to that portion of the federal regulations. (Further information**

29 **regarding this amendment can be found at required RCRA Amendment 167E:**

30 **“Bevill Exclusion Revisions and Clarifications” = 40 CFR 261.4(b)(7)(ii)(A)-(T); as**

31 **supported at 63 FR 28556-28753, May 26, 1998.]//**

32 A residue derived from coprocessing mineral processing secondary materials with

33 normal beneficiation raw materials or with normal mineral processing raw materials

34 remains excluded under this subpart if the owner or operator processes at least 50 percent

35 by weight normal beneficiation raw materials or normal mineral processing raw materials

36 and legitimately reclaims the secondary mineral processing materials;

37 **[In this paragraph at the end of item I, the MPCA adopts a clarification of the**

38 **exclusions being added above it. The clarification corresponds to federal language**

39 **found at 40 CFR 261.4(b)(7)(iii) (The federal rule language is the result of two**

40 **amendments). Further information about the clarification can be found at required**

41 **RCRA Amendment 167E: “Bevill Exclusion Revisions and Clarifications” = 40 CFR**

42 **261.4(b)(7)(iii); as supported at 63 FR 28556-28753, May 26, 1998 and also at**

43 **required RCRA Amendment 179.3: “Land Disposal Restrictions Phase IV --**

44 **Technical Corrections and Clarifications to Treatment Standards” = 40 CFR**

45 **261.4(b)(7)(iii); as supported at 64 FR 25408-25417, May 11, 1999.]//**

46 *[For text of items J to S, see M.R.]*

1 T. spent wood preserving solutions that have been reclaimed and reused for their  
2 original intended purpose, and wastewaters from the wood preserving process that have  
3 been reclaimed and are reused to treat wood; if, prior to reuse, the wood preserving  
4 wastewaters and spent wood preserving solutions described in this item meet all of the  
5 following conditions:

6 **[In item T, the MPCA adopts language that clarifies the exclusion of certain wood**  
7 **preserving solutions to narrow the scope of what is being excluded. This more**  
8 **stringent clarification corresponds to federal language found at 40 CFR**  
9 **261.4(a)(9)(iii). This change relates to required RCRA Amendment 167 F: “Exclusion**  
10 **of Recycled Wood Preserving Wastewaters” = 40 CFR 261.4(a)(9)(iii); as supported at**  
11 **63 FR 28556-28753, May 26, 1998.]//**

12 (1) the wood preserving wastewaters and spent wood preserving solutions are  
13 reused on site at waterborne plants in the production process for their original intended  
14 purpose;

15 **[In subitem (1), the MPCA adopts language corresponding to 40 CFR**  
16 **261.4(a)(9)(iii)(A). This is a continuation of the same federal revision discussed in**  
17 **item T.]//**

18 (2) prior to reuse, the wood preserving wastewaters and spent wood preserving  
19 solutions are managed to prevent release to land resources or waters of the state;

20 **[In subitem (2), the MPCA adopts language corresponding to 40 CFR**  
21 **261.4(a)(9)(iii)(B). This is a continuation of the same federal revision discussed in**  
22 **item T. The MPCA has revised the adopted language to change “land” to “land**  
23 **resources” and “groundwater” to “waters of the state” to use Minnesota terms**  
24 **without changing the intended meaning.]//**

25 (3) any unit used to manage wood preserving wastewaters or spent wood  
26 preserving solutions prior to reuse can be visually or otherwise determined to prevent  
27 such releases;

28 **[In subitem (3), the MPCA adopts language corresponding to 40 CFR**  
29 **261.4(a)(9)(iii)(C). This is a continuation of the same federal revision discussed in**  
30 **item T. The MPCA has revised the adopted language to clarify that these**  
31 **wastewaters are from wood preserving.]//**

32 (4) any drip pad used to manage the wood preserving wastewaters or spent  
33 wood preserving solutions prior to reuse complies with the standards governing drip pads  
34 in part 7045.0644; and

35 **[In subitem (4), the MPCA adopts language corresponding to 40 CFR**  
36 **261.4(a)(9)(iii)(D). This is a continuation of the same federal revision discussed in**  
37 **item T. The MPCA has revised the adopted language to clarify that these**  
38 **wastewaters are related to wood preserving. The MPCA replaces a federal citation**  
39 **with the corresponding Minnesota Rules citation. The MPCA has not adopted a**  
40 **reference found in the federal counterpart to a conditional exemption for generators**  
41 **of less than 100kg/month because this conditional exemption is not provided in the**  
42 **Minnesota Rules.]//**

43 (5) prior to operating pursuant to this exclusion, the plant owner or operator  
44 submits to the commissioner a onetime notification stating that the plant intends to claim  
45 the exclusion, giving the date on which the plant intends to begin operating under the  
46 exclusion, and containing the following language: "I have read the applicable regulation

1 establishing an exclusion for wood preserving wastewaters and spent wood preserving  
2 solutions and understand it requires me to comply at all times with the conditions set out  
3 in the regulation." The plant must maintain a copy of that document in its on-site records  
4 until closure of the facility. The exclusion applies only so long as the plant meets all of  
5 the conditions. If the plant goes out of compliance with any condition, the plant owner or  
6 operator may apply to the commissioner for reinstatement. Reinstatement is conditioned  
7 on the commissioner finding that the plant has returned to compliance with all conditions  
8 and that violations are not likely to recur;

9 **[In subitem (5), the MPCA adopts language corresponding to 40 CFR**  
10 **261.4(a)(9)(iii)(E). This is a continuation of the same federal revision discussed in**  
11 **item T. The MPCA revises the adopted federal language to clarify that the owner or**  
12 **operator must submit the notification to the MPCA commissioner and that the owner**  
13 **or operator (not the plant) would need to apply for reinstatement. The MPCA**  
14 **clarifies that reinstatement is based on the plant returning to compliance with all**  
15 **conditions. An additional change to this subitem is based on required RCRA**  
16 **Amendment 213: "Burden Reduction Initiative" = 40 CFR 261.4(a)(9)(iii)(E); as**  
17 **supported at 71 FR 16862-16915, April 4, 2006. This change requires the**  
18 **owner/operator to keep a copy of the exemption notice onsite until closure of the**  
19 **facility instead of just 3-years from the date specified in the notice. It should cost very**  
20 **little to retain this record, and the ability to prove that the rule was followed should**  
21 **benefit the owner or operator and the regulating agencies.]]**

22 *[For text of item U, see M.R.]*

23 **[In subitem (5), the MPCA adopts language corresponding to 40 CFR**  
24 **261.4(a)(9)(iii)(E). This is a continuation of the same federal revision discussed in**  
25 **item T. The MPCA revises the adopted federal language to clarify that the owner or**  
26 **operator must submit the notification to the MPCA commissioner and that the owner**  
27 **or operator (not the plant) would need to apply for reinstatement. The MPCA**  
28 **clarifies that reinstatement is based on the plant returning to compliance with all**  
29 **conditions. An additional change to this subitem is based on required RCRA**  
30 **Amendment 213: "Burden Reduction Initiative" = 40 CFR 261.4(a)(9)(iii)(E); as**  
31 **supported at 71 FR 16862-16915, April 4, 2006. This change requires the**  
32 **owner/operator to keep a copy of the exemption notice onsite until closure of the**  
33 **facility instead of just 3-years from the date specified in the notice. It should cost very**  
34 **little to retain this record, and the ability to prove that the rule was followed should**  
35 **benefit the owner or operator and the regulating agencies.]]**

36 V. used oil rerefining distillation bottoms that are used as feedstock to manufacture  
37 asphalt products; ~~or~~

38 **[In item V, the MPCA removes the "or" to accommodate expanding this list.]]**

39 W. sorbents, soil, and debris contaminated with petroleum fuel from spills and  
40 emergencies that are contained and reported in accordance with Minnesota Statutes,  
41 section 115.061, except for used oil spills and emergencies; or

42 **[In item W, the MPCA replaces a period with a semicolon to accommodate expanding**  
43 **this list.]]**

44 X. spent materials, other than hazardous wastes listed in part 7045.0135, generated  
45 within the primary mineral processing industry from which minerals, acids, cyanide,

1 water, or other values are recovered by mineral processing or by beneficiation, provided  
2 that:

3 **[In item X, the MPCA adopts an exemption that corresponds to the federal**  
4 **regulations found at 40 CFR 261.4(a)(17). This exemption addresses spent materials**  
5 **generated in the mineral processing industry. Because this rule is essential to the**  
6 **operation of the Land Disposal Restrictions adopted later in this rulemaking,**  
7 **adopting this amendment is required to maintain program authorization. This**  
8 **change relates to required RCRA Amendment 179.3: “Land Disposal Restrictions**  
9 **Phase IV -- Technical Corrections and Clarifications to Treatment Standards” = 40**  
10 **CFR 261.4(a)(17); as supported at 64 FR 25408-25417, May 11, 1999, and to RCRA**  
11 **Amendment 199.3: “Vacatur of Mineral Processing Spent Materials Being Reclaimed**  
12 **as Solid Wastes and TCLP Use with MGP Waste” = 40 CFR 261.4(a)(17); as**  
13 **supported at 67 FR 11251-11254, March 13, 2002.]//**

14 (1) the spent material is legitimately recycled to recover minerals, acids, cyanide,  
15 water, or other values;

16 **[In subitem (1), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(i).**  
17 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**  
18 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
19 **= 40 CFR 261.4(a)(17)(i); as supported at 67 FR 11251-11254, March 13, 2002.]//**

20 (2) the spent material is not accumulated speculatively;

21 **[In subitem (2), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(ii).**  
22 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**  
23 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
24 **= 40 CFR 261.4(a)(17)(ii); as supported at 67 FR 11251-11254, March 13, 2002.]//**

25 (3) except as provided in subitem (4), the spent material is stored in tanks,  
26 containers, or buildings meeting the following minimum integrity standards: a building  
27 must be an engineered structure with a floor, walls, and a roof, all of which are made of  
28 nonearthen materials providing structural support (except smelter buildings may have  
29 partially earthen floors provided the spent material is stored on the nonearthen portion),  
30 and have a roof suitable for diverting rainwater away from the foundation; a tank must be  
31 freestanding, not be a surface impoundment, and be manufactured of a material suitable  
32 for containment of its contents; a container must be freestanding and be manufactured of  
33 a material suitable for containment of its contents. If tanks or containers contain any  
34 particulate that may be subject to wind dispersal, the owner or operator must operate  
35 these units in a manner that controls fugitive dust. Tanks, containers, and buildings must  
36 be designed, constructed, and operated to prevent releases to the environment of these  
37 materials;

38 **[In subitem (3), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(iii).**  
39 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**  
40 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
41 **= 40 CFR 261.4(a)(17)(iii); as supported at 67 FR 11251-11254, March 13, 2002. The**  
42 **MPCA replaces “nonearthen” with “non-earthen” and “secondary materials” with**  
43 **“spent materials” to clarify the intended meaning of the federal counterparts.]//**

44 (4) the commissioner may make a site-specific determination, upon application  
45 by the owner or operator and after public review and comment, that only solid mineral  
46 processing spent material may be placed on pads rather than in tanks, containers, or

1 buildings. Solid mineral processing spent materials must not contain any free liquid. The  
2 commissioner must affirm that pads are designed, constructed, and operated to prevent  
3 releases of the spent material into the environment. Pads must provide the same degree of  
4 containment afforded by the tanks, containers, and buildings eligible for exclusion in  
5 subitem (3):

6 **[In subitem (4), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(iv).**  
7 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**  
8 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
9 **= 40 CFR 261.4(a)(17)(iv); as supported at 67 FR 11251-11254, March 13, 2002. The**  
10 **MPCA adds language to clarify that the owner or operator must apply for a**  
11 **commissioner’s determination (rather than an EPA Administrator’s determination as**  
12 **would be required under the federal regulations). The MPCA also replaces one use of**  
13 **the term “secondary materials” with the term “spent materials” to be consistent**  
14 **within the paragraph.]//**

15 (a) the commissioner must also consider if storage on pads poses the  
16 potential for releases via groundwater, surface water, and air exposure pathways. Factors  
17 to be considered for assessing the groundwater, surface water, and air exposure pathways  
18 are the volume and physical and chemical properties of the spent material, including its  
19 potential for migration off the pad; the potential for human or environmental exposure to  
20 hazardous constituents migrating from the pad via each exposure pathway; and the  
21 possibility and extent of harm to human and environmental receptors via each exposure  
22 pathway;

23 **[In unit (a), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(iv)(A).**  
24 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**  
25 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
26 **= 40 CFR 261.4(a)(17)(iv)(A); as supported at 67 FR 11251-11254, March 13, 2002;**  
27 **also, to required RCRA Amendment 167 D – REVISED: “Mineral Processing**  
28 **Secondary Materials Exclusion” = 40 CFR 261.4(a)(17)(iv)(A); as supported at 63 FR**  
29 **28556-28753, May 26, 1998.]//**

30 (b) pads must meet the following minimum standards: be designed of  
31 nonearthen material that is compatible with the chemical nature of the mineral processing  
32 spent material, be capable of withstanding physical stresses associated with placement  
33 and removal, have run-on/runoff controls, be operated in a manner that controls fugitive  
34 dust, and have integrity assurance through inspections and maintenance programs; and

35 **[In unit (b), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(iv)(B).**  
36 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**  
37 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
38 **= 40 CFR 261.4(a)(17)(iv)(B); as supported at 67 FR 11251-11254, March 13, 2002;**  
39 **also, to required RCRA Amendment 167 D – REVISED: “Mineral Processing**  
40 **Secondary Materials Exclusion” = 40 CFR 261.4(a)(17)(iv)(B); as supported at 63 FR**  
41 **28556-28753, May 26, 1998.]//**

42 (c) before making a determination under this subitem, the commissioner  
43 must provide notice and the opportunity for comment to all persons potentially interested  
44 in the determination in accordance with part 7001.0100, subpart 5;

45 **[In unit (c), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(iv)(C).**  
46 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**

1 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
2 **= 40 CFR 261.4(a)(17)(iv)(C); 67 FR 11251-11254, March 13, 2002; also, to required**  
3 **RCRA Amendment 167 D – REVISED: “Mineral Processing Secondary Materials**  
4 **Exclusion” = 40 CFR 261.4(a)(17)(iv)(A); 63 FR 28556-28753; May 26, 1998.】//**

5 (5) the owner or operator provides a notice to the commissioner, providing the  
6 following information: the types of materials to be recycled, the type and location of the  
7 storage units and recycling processes, and the annual quantities expected to be placed in  
8 land-based units. This notification must be updated when there is a change in the type of  
9 materials recycled or the location of the recycling process; and

10 **【In subitem (5), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(v).**  
11 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**  
12 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
13 **= 40 CFR 261.4(a)(17)(v); as supported at 67 FR 11251-11254, March 13, 2002; also,**  
14 **to required RCRA Amendment 167 D – REVISED: “Mineral Processing Secondary**  
15 **Materials Exclusion” = 40 CFR 261.4(a)(17)(v); as supported at 63 FR 28556-28753,**  
16 **May 26, 1998.】//**

17 (6) for purposes of this item, mineral processing spent materials must be the  
18 result of mineral processing and may not include any listed hazardous wastes. Listed  
19 hazardous wastes and characteristic hazardous wastes generated by nonmineral  
20 processing industries are not eligible for the exemption in this item.

21 **【In subitem (6), the MPCA adopts language corresponding to 40 CFR 261.4(a)(17)(vi).**  
22 **This change relates to RCRA Amendment 199.3: “Vacatur of Mineral Processing**  
23 **Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste”**  
24 **= 40 CFR 261.4(a)(17)(vi); as supported at 67 FR 11251-11254, March 13, 2002; also,**  
25 **to required RCRA Amendment 167 D – REVISED: “Mineral Processing Secondary**  
26 **Materials Exclusion” = 40 CFR 261.4(a)(17)(vi); as supported at 63 FR 28556-28753,**  
27 **May 26, 1998.】//**

28 Subp. 2. **Special requirements.** The following waste is exempt from the general  
29 requirements of this chapter if managed as specified:

- 30 A. waste collected as a result of a household hazardous waste management  
31 program under part 7045.0310;
- 32 B. spent or waste household batteries collected under part 7045.0686;
- 33 C. waste collected as a result of a very small quantity generator hazardous waste  
34 collection program under part 7045.0320;
- 35 D. feedstocks and by-products under part 7045.0125, subparts 5 and 6;
- 36 E. comparable fuels or comparable syngas fuels that meet the specifications and  
37 other requirements of Code of Federal Regulations, title 40, section 261.38, as amended,  
38 which is adopted and incorporated by reference; ~~and~~

39 **【In item E, the MPCA deletes the word “and” to accommodate this expanded list.】//**

- 40 F. universal waste managed under part 7045.1400.; ~~and~~

41 **【In item F, the MPCA replaces a period with a semicolon and adds the word “and” to**  
42 **accommodate this expanded list.】//**

43 G. hazardous waste containing radioactive waste when it meets the eligibility  
44 criteria and conditions of Code of Federal Regulations, title 40, part 266, subpart N,  
45 Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation  
46 and Disposal, as amended. This exemption also pertains to:





1 **7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING,**  
2 **AND RECLAMATION.**

3 *[For text of subps 1 to 3a, see M.R.]*

4 Subp. 4. **Management of specific hazardous wastes.** Management of the following  
5 wastes when recycled, is not subject to regulation under parts 7045.0205 to 7045.0695  
6 and ~~7045.1300 to 7045.1380~~ 7045.1390:

7 **[In subpart 4, the MPCA provides the replacement citation for a repealed range of**  
8 **rules.]//**

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

10 C. scrap metal and excluded scrap metal;

11 **[In item C, the MPCA is extending the exclusion of scrap metal to also include**  
12 **“excluded scrap metal.” The corresponding federal exclusion is found at 40 CFR**  
13 **261.4(a)(13). A definition of “excluded scrap metal” is being added in this rulemaking**  
14 **in part 7045.0020 and includes several categories of scrap metal that are also being**  
15 **defined through these amendments. Because excluding additional types of scrap**  
16 **metal makes the existing rules less stringent, the MPCA is not required to adopt this**  
17 **provision of the federal regulations to maintain authorization. However, the MPCA**  
18 **believes it is reasonable to exclude those types of wastes because they do not present**  
19 **an environmental risk when properly recycled. This change relates to RCRA**  
20 **Amendment 157.6: “Land Disposal Restrictions Phase IV--Treatment Standards for**  
21 **Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From**  
22 **RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste**  
23 **Provisions” = 40 CFR 261.4(a)(13) and 40 CFR 261.6(a)(3)(ii), as supported at 62 FR**  
24 **25998-26040, May 12, 1997.]//**

25 *[For text of items D and E, see M.R.]*

26 F. coke and coal tar from the iron and steel industry that contain EPA Hazardous  
27 Waste No. K087 listed under part 7045.0135, subpart 3, item Q, subitem (2), (decanter  
28 tank tar sludge from coking operations) from the iron and steel production process EPA  
29 Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148,  
30 and any wastes from the coke by-products processes that are hazardous only because they  
31 exhibit the toxicity characteristic, specified in part 7045.0131, subpart 7, when,  
32 subsequent to generation, these materials are recycled to coke ovens, recycled to the tar  
33 recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the  
34 tar's sale or refining. This exclusion is conditioned on there being no land disposal of the  
35 wastes from the point they are generated to the point they are recycled to coke ovens, tar  
36 recovery, or refining processes or mixed with coal tar;

37 **[The MPCA revises item F to delete the previous exclusion for coke and coal tar**  
38 **wastes and to adopt the more specific federal exclusion found at 40 CFR 261.4(a)(10).**  
39 **The adopted language is more specific regarding the types of wastes that are excluded**  
40 **and is required to maintain hazardous waste program authorization. This change is**  
41 **based on required RCRA Amendment 110.2: “Coke By-Products Listings” = 40 CFR**  
42 **261.4(a)(10); as supported at 57 FR 37284-37306, August 18, 1992.]//**

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

44 N. recyclable fuel, if the following conditions are met:

45 (1) the recyclable fuel is immediately removed from the generation site by a  
46 transporter in compliance with all applicable Minnesota Department of Transportation

1 requirements in Minnesota Statutes, sections 221.033 to ~~221.035~~ 221.0355, and Code of  
2 Federal Regulations, title 49, parts 171 to ~~179~~ 199;

3 **[In the amendments to subitem (1), the MPCA corrects a citation to a section of**  
4 **Minnesota Statutes that was repealed and provides the correct citation to the**  
5 **replacement section. The MPCA also follows advice from Minnesota’s Department of**  
6 **Transportation to correct one of several citations to a range of regulations amended**  
7 **by the U.S. Department of Transportation.]//**

8 *[For text of subitems (2) to (4), see M.R.]*

9 (5) if, because of a need to conduct waste analysis, recyclable fuel cannot be  
10 placed into the recycling process within 24 hours of receipt, the owner or operator of the  
11 fuel recycling facility shall contact the commissioner to request an extension of the  
12 storage time. A request for an extension can be for a single event or to address an  
13 ongoing need for additional time. A request for an extension must be submitted in writing  
14 to the commissioner and must include:

15 *[For text of units (a) and (b), see M.R.]*

16 (c) a description of how the waste will be managed during the storage period,  
17 including the measures that will be in place to prevent releases and how spills will be  
18 contained and cleaned up.

19 The commissioner's decision to approve holding the waste longer than 24 hours will  
20 be based on an evaluation of whether the owner or operator of the recycling facility can  
21 provide adequate protection of human health and the environment until the recyclable  
22 fuel is placed into the recycling process; ~~and~~

23 **[In unit (c), at the end of item N, the MPCA removes “and” to accommodate this**  
24 **expanded list.]//**

25 O. petroleum fuel filters if they are burned for energy recovery under subpart 3a, or  
26 recycled as scrap metal under item C, and are managed during accumulation and  
27 transportation ~~according to~~ in accordance with the requirements of part 7045.0990,  
28 subparts 3 to 5; ~~and~~

29 **[In item O, the MPCA revises language to clarify the intended meaning. The MPCA**  
30 **also adds “and” to accommodate this expanded list.]//**

31 P. circuit boards or shredded circuit boards being recycled, provided that they are:

32 (1) stored in containers sufficient to prevent a release to the environment prior  
33 to recovery; and

34 (2) free of mercury switches, mercury relays, and nickel-cadmium batteries and  
35 lithium batteries.

36 **[In item P, the MPCA adopts a new exclusion for circuit boards that are being**  
37 **recycled. The MPCA has for many years excluded circuit boards that are being**  
38 **recycled from regulation by considering them to be scrap metal (which is excluded**  
39 **from regulation in the existing rules) and this amendment merely formalizes that**  
40 **previous interpretation. The exclusion corresponds to 40 CFR 261.4(a)(14). Because**  
41 **this is an exclusion from regulation and makes the State rules less stringent, the**  
42 **adoption of this federal provision is optional. However, the MPCA believes that**  
43 **adopting this amendment is reasonable as it clarifies the MPCA’s existing**  
44 **interpretation of this rule. The MPCA also believes that it is reasonable to facilitate**  
45 **the recycling of circuit boards because proper recycling of circuit boards is protective**  
46 **of human health and the environment. This change relates to optional RCRA**

1 **Amendment 157.6: “Land Disposal Restrictions Phase IV--Treatment Standards for**  
2 **Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From**  
3 **RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste**  
4 **Provisions” = 40 CFR 261.4(a)(14); as supported at 62 FR 25998-26040, May 12,**  
5 **1997.]//**

6 Subp. 5. **Requirements for use of hazardous waste as feedstock.**

7 A. Except as provided in items B to D, hazardous wastes that are shown to be  
8 recycled by being used in a manner specified in subitems (1) to (3), are not subject to  
9 regulation under parts 7045.0205 to 7045.0990 and ~~7045.1300 to 7045.1380~~ 7045.1390.  
10 This subpart does not apply to wastes being accumulated speculatively as defined in part  
11 7045.0020, subpart 84a, or being managed by use constituting disposal as regulated under  
12 part 7045.0665 or burning for energy recovery, as regulated in part 7045.0692.  
13 Hazardous wastes are considered to be used as feedstock if they are:

14 **[The MPCA provides the replacement citation for a repealed range of rules.]//**

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

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

17 C. Transporters of hazardous wastes for use as feedstock must comply with all  
18 applicable requirements of Minnesota Statutes, sections 221.033 and ~~221.034~~ 221.0341,  
19 and with ~~221.035~~ 221.0355 if applicable, and Code of Federal Regulations, title 49, parts  
20 171 to ~~179~~ 199, as amended.

21 **[In item C, the MPCA corrects a citation to sections of Minnesota Statutes that were**  
22 **repealed and provides citations to the replacement sections. The MPCA also follows**  
23 **advice from Minnesota’s Department of Transportation to correct one of several**  
24 **citations to a range of regulations amended by the U.S. Department of**  
25 **Transportation.]//**

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

27 Subp. 6. **Requirements for reclamation of specific hazardous waste.**

28 A. A by-product or a sludge that is hazardous only because it exhibits a  
29 characteristic of hazardous waste as defined in part 7045.0131 and is reclaimed is subject  
30 to only the following requirements:

31 (1) A generator of such a hazardous waste is subject to the requirements of  
32 subpart 5, item B.

33 (2) Transporters of such a hazardous waste must comply with all applicable  
34 requirements of Minnesota Statutes, sections 221.033 and ~~221.034~~ 221.0341, and with  
35 ~~221.035~~ 221.0355 if applicable, and Code of Federal Regulations, title 49, parts 171 to  
36 ~~179~~ 199, as amended.

37 **[In subitem (2), the MPCA corrects a citation to sections of Minnesota Statutes that**  
38 **were repealed and provides citations to the replacement sections. The MPCA also**  
39 **follows advice from Minnesota’s Department of Transportation to correct one of**  
40 **several citations to a range of regulations amended by the U.S. Department of**  
41 **Transportation.]//**

42 *[For text of subitem (3), see M.R.]*

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

44 *[For text of subps 7 and 8, see M.R.]*

1 Subp. 9. **Facility requirements.** Unless exempted specifically in this part or parts  
2 7045.0692 and 7045.0790 to 7045.0990, owners ~~or~~ and operators of facilities ~~which~~ that  
3 recycle hazardous waste are subject to the following requirements:

4 **[In subpart 9, the MPCA revises language to clarify the intended meaning.]//**

5 A. If the recyclable hazardous waste is stored before it is recycled, the owners or  
6 operators are subject to the requirements of parts 7045.0450 to 7045.0534, 7045.0540,  
7 7045.0547, 7045.0548, 7045.0552 to 7045.0632, 7045.0645, 7045.0647, 7045.0648,  
8 7045.0652 to 7045.0686, and ~~7045.1300 to 7045.1380~~ 7045.1390, and chapter 7001. The  
9 recycling process itself is exempt from regulation except as provided in item C.

10 **[In item A, the MPCA deletes a citation to chapter 7023 that has been repealed and**  
11 **also provides the replacement citation for a range of rules being repealed in this**  
12 **rulemaking (the land disposal restrictions being added at part 7045.1390). The**  
13 **MPCA also adopts a number of cross references to requirements being added to the**  
14 **rules in this rulemaking. The references being cited identify rules that provide**  
15 **standards for organic air emissions from tanks, surface impoundments and**  
16 **containers and are discussed elsewhere in this SONAR where those air emission**  
17 **standards are being adopted. Further information about the added citations can also**  
18 **be found at required RCRA Amendment 154, 154-1.39: “Consolidated Organic Air**  
19 **Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR**  
20 **261.6(c)(1); as supported at 59 FR 62896-62953, December 6, 1994; and as amended**  
21 **by 60 FR 26828-26829, May 19, 1995; 60 FR 50426-50430, September 29, 1995; 60 FR**  
22 **56952-56954, November 13, 1995; 61 FR 4903-4916, February 9, 1996; 61 FR 28508-**  
23 **28511, June 5, 1996; and 61 FR 59932-59997, November 25, 1996.]//**

24 *[For text of items B to D, see M.R.]*

25 *[For text of subps 10 to 13, see M.R.]*

## 27 **7045.0127 RESIDUES IN EMPTY CONTAINERS AND EMPTY INNER** 28 **LINERS.**

29 Subpart 1. **Scope.** Any hazardous waste remaining in an empty container or an empty  
30 inner liner removed from an empty container, as defined in subparts 2 to 4 is not subject  
31 to regulation under parts 7045.0102 to 7045.1030 and ~~7045.1300 to 7045.1380~~  
32 7045.1390, or a hazardous waste facility permit. Any hazardous waste in a container or  
33 an inner liner removed from a container that is not empty, as defined in subparts 2 to 4, is  
34 subject to regulation under parts 7045.0102 to 7045.1030 and ~~7045.1300 to 7045.1380~~  
35 7045.1390, and the agency's permitting procedures.

36 **[In subpart 1, the MPCA provides the replacement citations for repealed ranges of**  
37 **rules.]//**

38 Subp. 2. **Empty containers or inner liners; definition.** A container or an inner liner  
39 removed from a container that has held any hazardous waste, except a waste that is a  
40 compressed gas or that is identified as an acute hazardous waste in part 7045.0135,  
41 ~~subpart 2, 3, or 4, item E 1a, items B and C,~~ and Code of Federal Regulations, title 40,  
42 section 261.33(e), as incorporated in part 7045.0135, is empty if:

43 **[In subpart 2, the MPCA replaces references to part 7045.0135, subparts 2, 3, and 4**  
44 **(lists of hazardous wastes) which are being repealed and replaced with new citations**  
45 **that address the same requirements. The MPCA intends that the same lists are**

1 addressed as in the former rules. By referencing 40 CFR 261.33(e), the MPCA  
2 provides a more accurate citation to a specific list in the federal regulations than can  
3 be provided by a reference to its State counterpart. The list of commercial chemical  
4 products in the federal regulations is being incorporated by reference in part  
5 7045.0135 but that State citation is too general to identify this specific list. The final  
6 phrase in the amendment to subpart 2 refers to the rule part incorporating the federal  
7 reference so that any associated conditions of incorporation can be assessed.]]/

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

9 Subp. 3. **Other empty containers or inner liners.** A container or inner liner that has  
10 held an acute hazardous waste identified in part 7045.0135, subpart ~~2, 3, or 4, item E 1a,~~  
11 items B and C, and Code of Federal Regulations, title 40, section 261.33(e), as  
12 incorporated in part 7045.0135, is empty if:

13 **[In subpart 3, the MPCA replaces references to part 7045.0135, subparts 2, 3, and 4**  
14 **(lists of hazardous wastes) which are being repealed and replaced with new citations**  
15 **that address the same requirements. The MPCA intends that the same lists are**  
16 **addressed as in the former rules. By referencing 40 CFR 261.33(e), the MPCA**  
17 **provides a more accurate citation to a specific list in the federal regulations than can**  
18 **be provided by a reference to its State counterpart. The list of commercial chemical**  
19 **products in the federal regulations is being incorporated by reference in part**  
20 **7045.0135 but that State citation is too general to identify this specific list. The final**  
21 **phrase in the amendment to subpart 2 refers to the rule part incorporating the federal**  
22 **reference so that any associated conditions of incorporation can be assessed.]]/**

23 *[For text of items A to C, see M.R.]*

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

## 26 **7045.0131 CHARACTERISTICS OF HAZARDOUS WASTE.**

27 Subpart 1. **In general.** A waste which is not excluded from regulation as a hazardous  
28 waste under part 7045.0120 is a hazardous waste if it exhibits ignitability, corrosivity,  
29 reactivity, toxicity, lethality, or is an oxidizer, as described in subparts 2 to 7. A  
30 hazardous waste which is identified by a characteristic in this part is assigned every  
31 hazardous waste number that is applicable. This number must be used in complying with  
32 the notification requirements of section 3010 of the federal Resource Conservation and  
33 Recovery Act and all applicable record keeping and reporting requirements under parts  
34 ~~7023.9000 to 7023.9050, 7045.0205 to 7045.0642 and 7045.1300~~ 7045.0651 and  
35 7045.1390, and chapter 7001. For purposes of this part, the commissioner shall consider a  
36 sample obtained using any of the applicable sampling methods specified in Code of  
37 Federal Regulations, title 40, part ~~260~~ 261, Appendix I ~~or part 261, Appendix II,~~ as  
38 ~~amended~~ incorporated in part 7045.0155, or Toxicity Characteristic Leaching Procedure,  
39 Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical  
40 Methods," EPA publication SW-846, incorporated by reference in part 7045.0065, item D,  
41 to be a representative sample.

42 **In subpart 1, the MPCA deletes a citation to chapter 7023 because that rule has been**  
43 **repealed. The MPCA is also revising a citation to a range of rules that has changed as**  
44 **parts were added as part of this rulemaking, and that included an error. The error**  
45 **was that previous reference to "...7045.0205 to 7045.0642 and 7045.1300" needed to**

1 be extended to include added parts. Also, it should have included all of the land  
2 disposal restrictions—not just those found in part 7045.1300. The MPCA discovered  
3 this error as a result of this rulemaking and is changing it to include part 7045.1390,  
4 which incorporates all of the land disposal restrictions by reference. The MPCA is  
5 correcting an additional error by changing “40 CFR 260” to “40 CFR 261.” 40 CFR  
6 Part 261 is the correct citation for the sampling methods identified in the  
7 corresponding federal regulations. The MPCA is changing a reference from Part 260,  
8 Appendix I to Part 261, Appendix I because that is the accurate cite. Finally, the  
9 MPCA is providing a reference to the State rule that incorporates and establishes any  
10 conditions regarding the federal Appendices to Part 261.]]

11 Subp. 2. **Ignitability.** A waste exhibits the characteristic of ignitability if a  
12 representative sample of the waste has any of the following properties:

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

14 C. it is an ignitable compressed gas as defined in Code of Federal Regulations, title  
15 49, section ~~173.300~~ 173.115, as amended, and as determined by the test methods  
16 described in that regulation or equivalent test methods approved by the commissioner  
17 under part 7045.0075, subpart 1.

18 **[In item C, the MPCA follows advice from Minnesota’s Department of  
19 Transportation to correct an error in a citation to a regulation that was amended by  
20 the U.S. Department of Transportation.]]**

21 A waste that exhibits the characteristic of ignitability has the hazardous waste number  
22 of D001.

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

24 Subp. 4. **Corrosivity.** A waste exhibits the characteristic of corrosivity if a  
25 representative sample of the waste has any of the following properties:

26 A. It is aqueous and has a pH less than or equal to 2.0 or greater than or equal to  
27 12.5, as determined by a pH meter using ~~either the test method Method 9040C in the~~  
28 ~~“Test Methods for Evaluating Solid Waste, Physical/Chemical Methods issued by the~~  
29 ~~United States Environmental Protection Agency,” EPA publication number SW-846~~  
30 ~~(First Edition, 1980 as updated by Revisions A (August 1980), B (July 1981), and C~~  
31 ~~(February 1982) or Second Edition, 1982) also described in Methods for Chemical~~  
32 ~~Analysis of Water and Waste issued by the Environmental Monitoring and Support~~  
33 ~~Laboratory, publication number 600/7-79-020 (March 1979), or an equivalent test~~  
34 ~~method approved by the commissioner under the procedures set forth in part 7045.0075,~~  
35 ~~subpart 1, incorporated by reference in part 7045.0065, item D; or~~

36 **[In item A, the MPCA is revising the rule to accurately identify the reference  
37 documents used in the determination of the corrosivity characteristic. This  
38 amendment is required to maintain consistency with the federal counterpart found at  
39 40 CFR 261.22(a)(1). This change relates to required RCRA Amendment 126:  
40 “Testing and Monitoring Activities” = 40 CFR 261.22(a)(1); as supported at 58 FR  
41 46040-46051, August 31, 1993. The MPCA also provides a reference to part  
42 7045.0065, item D, which incorporates and establishes any conditions regarding the  
43 specified test method.]]**

44 B. It is liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250  
45 inch) per year at a test temperature of 55 degrees Celsius (130 degrees Fahrenheit) as  
46 determined by the test method specified in National Association of Corrosion Engineers

1 Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste,  
2 Physical/Chemical Methods," issued by the United States Environmental Protection  
3 Agency, EPA publication number SW-846 (First Edition, 1980 as updated by Revisions  
4 A (August 1980), B (July 1981), and C (February 1982) or Second Edition, 1982) or an  
5 equivalent test method approved by the commissioner under the procedures set forth in  
6 part 7045.0075, subpart 1, incorporated by reference in part 7045.0065, item D.

7 **[In item B, the MPCA is revising the rule to accurately identify the reference**  
8 **documents used in the determination of the corrosivity characteristic. This**  
9 **amendment is required to maintain consistency with the federal counterpart found at**  
10 **40 CFR 261.22(a)(2). This change relates to required RCRA Amendment 126:**  
11 **"Testing and Monitoring Activities" = 40 CFR 261.22(a)(2); as supported at 58 FR**  
12 **46040-46051, August 31, 1993. The MPCA also provides a reference to part**  
13 **7045.0065, item D, which incorporates and establishes any conditions regarding the**  
14 **specified test method.]//**

15 A waste that exhibits the characteristic of corrosivity has the hazardous waste number  
16 of D002.

17 Subp. 5. **Reactivity.** A waste exhibits the characteristic of reactivity if a representative  
18 sample of the waste has any of the following properties:

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

20 H. it is a forbidden explosive as defined in Code of Federal Regulations, title 49,  
21 section ~~173.51~~ 173.54, as amended, a ~~Class A~~ Division 1.1 or 1.2 explosive as defined in  
22 Code of Federal Regulations, title 49, section ~~173.53~~ 173.50, as amended, or a ~~Class B~~  
23 ~~Division 1.2 or 1.3~~ explosive as defined in Code of Federal Regulations, title 49, section  
24 ~~173.88~~ 173.50, as amended.

25 A waste that exhibits the characteristic of reactivity has the hazardous waste number  
26 of D003.

27 **[In item H, the MPCA follows advice from Minnesota's Department of**  
28 **Transportation to revise language and citations to conform with U.S. Department of**  
29 **Transportation amendments to the cited material.]//**

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

31 Subp. 7. **Toxicity.** Toxicity is determined as follows:

32 A. A waste, except manufactured gas plant waste, exhibits the characteristic of  
33 **[In this line of item A, the MPCA adds an exception for manufactured gas plant waste**  
34 **to the regulation of the toxicity characteristic. This exception corresponds to the**  
35 **federal regulations found at 40 CFR 261.24(a). Although this is an optional**  
36 **amendment, the MPCA is adopting it because the MPCA concurs with the reasoning**  
37 **presented by the EPA and because adopting the federal exemption will maintain**  
38 **consistency with the federal regulations. This change relates to RCRA Amendment**  
39 **199.4: "Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid**  
40 **Wastes and TCLP Use with MGP Waste" = 40 CFR 261.24(a); as supported at 67 FR**  
41 **11251-11254, March 13, 2002.]//**

42 toxicity if, using the test methods described in Code of Federal Regulations, title 40, part  
43 261, appendix H, as amended, or equivalent methods approved by the commissioner  
44 under the procedures in part 7045.0075, subpart 1 Toxicity Characteristic Leaching  
45 Procedure, Method 1311 in "Test Methods for Evaluating Solid Waste,  
46 Physical/Chemical Methods," EPA publication SW-846, incorporated by reference in part



1 7045.0155, subpart 1, item B, the extract from a representative sample of the waste  
2 contains any of the contaminants listed in subpart 8 at a concentration equal to or greater  
3 than the respective ~~value given in that table~~ contaminant values listed. Where the waste  
4 contains less than 0.5 percent filterable solids, the waste itself, after filtering using the  
5 methodology outlined in Method 1311, is considered to be the extract for the purpose of  
6 this evaluation.

7 **[In item A, the MPCA is revising the rule to accurately identify the reference**  
8 **documents used in the determination of the toxicity characteristic. The existing rule**  
9 **referenced the test method where it was formerly located in 40 CFR part 261,**  
10 **Appendix II. The federal regulations have changed so that this test method is no**  
11 **longer found at 261, Appendix II so the MPCA is here identifying the name of the test**  
12 **method and referring to the State rule where the test method is being incorporated by**  
13 **reference. This amendment is required to maintain consistency with the federal**  
14 **counterpart found at 40 CFR 261.24(a). This change relates to required RCRA**  
15 **Amendment 126.6: “Testing and Monitoring Activities” = 40 CFR 261.24(a); as**  
16 **supported at 58 FR 46040-46051, August 31, 1993. The MPCA also refers to part**  
17 **7045.0065, item D that incorporates and establishes any conditions regarding the**  
18 **specified test method. In this rulemaking, the MPCA is also deleting the phrase “or**  
19 **equivalent methods approved by the commissioner under 7045.0075, subpart 1.” The**  
20 **MPCA believes that this is a reasonable deletion that does not change the effect of the**  
21 **rule or the availability of this option. The process for obtaining approval for the use**  
22 **of alternative test methods is still provided in 7045.0075. However, the federal**  
23 **regulations that correspond to this part have been amended to remove a specific**  
24 **reference to the petition process. The EPA explains in the August 31, 1993 Federal**  
25 **Register that this is a clarifying change and that removing this term does not alter the**  
26 **availability of the petition process to the regulated community.]]**

27 *[For text of items B and C, see M.R.]*

28 *[For text of subp 8, see M.R.]*

### 30 **7045.0133 EXEMPTION FROM REGULATION DUE TO LETHALITY.**

31 Subpart 1. **In general.** A generator's waste that exhibits the characteristics of lethality  
32 as described in part 7045.0131, subpart 6, may be exempted from regulation under parts  
33 7045.0102 to ~~7045.1380~~ 7045.1390 if the generator can demonstrate to the satisfaction of  
34 the agency that the waste is not capable of posing a present or potential hazard to human  
35 health and the environment if the waste were to be improperly treated, transported, stored,  
36 disposed, or managed under routine waste management methods.

37 **[In subpart 1, the MPCA corrects a citation to a range of rules that changed as parts**  
38 **were added.]]**

39 Subp. 2. **Factors to be considered.** In demonstrating that a waste should be exempt  
40 from regulation under parts 7045.0102 to ~~7045.1380~~ 7045.1390, the generator must  
41 present information related to the following factors:

42 **[In subpart 2, the MPCA corrects a citation to a range of rules that changed as parts**  
43 **were added.]]**

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

1 **7045.0135 LISTS OF HAZARDOUS WASTES.**

2 Subpart 1. [See repealer.]

3 [In this part, the MPCA is incorporating by reference the corresponding federal  
4 regulations that list hazardous wastes. Maintaining equivalence with the federal lists  
5 of hazardous wastes is an essential component of maintaining the MPCA's program  
6 authorization from EPA. The State rules must, at a minimum, include the same  
7 wastes that are listed in the federal regulations. While the State rules may be more  
8 comprehensive, they cannot be less. The MPCA has, with the exception of a State  
9 listing for PCB wastes, maintained lists identical to the corresponding federal  
10 regulations and continuing that commitment in this rulemaking. The MPCA believes  
11 that it is reasonable to follow the federal lists closely, whether the EPA adds or  
12 removes wastes from the lists, to provide consistency between states to support  
13 interstate commerce. It would be difficult for regulators and the regulated  
14 community to manage wastes shipped between states with different lists of wastes as  
15 the EPA adds or removes wastes from regulation. To efficiently match federal  
16 changes, the MPCA believes it is reasonable to incorporate the federal lists  
17 prospectively by reference. This provides the regulated community with the most  
18 current and accurate list of wastes that are regulated as hazardous in Minnesota. The  
19 reasonableness of adoption by reference as amended, is further discussed in part IV  
20 of this Statement. In order to incorporate the corresponding federal lists, the MPCA  
21 repealed existing subparts 1, 2, 2a, 3 and 4.]//

22 Subp. 1a. Incorporation by reference of federal regulations. The following lists of  
23 hazardous wastes found in Code of Federal Regulations, title 40, part 261, subpart D, as  
24 amended, are incorporated by reference:

25 A. section 261.30, general;

26 B. section 261.31, hazardous wastes from nonspecific sources;

27 [In subpart 1a, the MPCA incorporates by reference, as amended, the hazardous  
28 waste lists found in 40 CFR 261, subpart D. In items A and B, the MPCA  
29 incorporates existing 40 CFR sections 261.30 (general listing information) and 261.31  
30 (hazardous waste from nonspecific sources), and hazardous wastes added by EPA in  
31 the future. This incorporation picks up federal listings not yet adopted by Minnesota.  
32 Further information regarding one such listing addressing petroleum refining wastes  
33 can be found at optional RCRA Amendment 187: "Petroleum Refining Process  
34 Wastes – Clarification" = 40 CFR 261.31(a)/table; as supported at 65 FR 36365-36367,  
35 June 8, 2000.]//

36 C. section 261.32, hazardous wastes from specific sources;

37 [In item C, the MPCA incorporates 40 CFR section 261.32 which identifies hazardous  
38 wastes from specific sources. The following RCRA Amendments discuss hazardous  
39 wastes added to this list since 1992:

- 40 • required RCRA Amendment 110.3: "Coke By-Products Listings" = 40 CFR  
41 261.32; as supported at 57 FR 37284-37306, August 18, 1992;
- 42 • required RCRA Amendment 115.2: "Chlorinated Toluenes Production Waste  
43 Listing" = 40 CFR 261.32; as supported at 57 FR 47376-47386, October 15,  
44 1992;
- 45 • Optional RCRA Amendment 159.2: "Conformance With the Carbamate  
46 Vacatur" = 40 CFR 261.32/table; 62 FR 32974-32980, June 17, 1997;

- 1 • RCRA Amendment 183.2: “Land Disposal Restrictions Phase IV -- Technical  
2 Corrections” = 40 CFR 261.32; as supported at 64 FR 56469-56472, October  
3 20, 1999;
- 4 • Optional RCRA Amendment 185.4: “Organobromine Production Wastes  
5 Vacatur” = 40 CFR 261.32/table; as supported at 65 FR 14472-14475, March  
6 17, 2000; and
- 7 • required RCRA Amendment 189.4: “Chlorinated Aliphatics Listing and LDRs  
8 for Newly Identified Wastes” = 40 CFR 261.32/table; as supported at 65 FR  
9 67068-67133, November 8, 2000.】//

10 D. section 261.33, discarded commercial chemical products, off-specification  
11 species, container residues, and spill residues thereof;

12 **[In item D, the MPCA incorporates 40 CFR section 261.33. The following RCRA**  
13 **Amendments discuss hazardous wastes added to this list since 1994:**

- 14 • required RCRA Amendment 134.2: “Correction of Beryllium Powder (P015)  
15 Listing” = 40 CFR 261.33(e); as supported at 59 FR 31551-31552, June 20,  
16 1994;
- 17 • Optional RCRA Amendment 159.3: “Conformance With the Carbamate  
18 Vacatur” = 40 CFR 261.33(f); 62 FR 32974-32980, June 17, 1997; and
- 19 • Optional RCRA Amendment 185.5: “Organobromine Production Wastes  
20 Vacatur” = 40 CFR 261.33(f)/table; as supported at 65 FR 14472-14475,  
21 March 17, 2000.】//

22 E. section 261.35, deletion of certain hazardous waste codes following equipment  
23 cleaning and replacement; and

24 **[In item E, the MPCA incorporates 40 CFR section 261.35. This federal list provides**  
25 **conditions under which certain listed wastes would not be regulated. The MPCA had**  
26 **previously included this federal list in the State rules at part 7045.0145.】//**

27 F. section 261.38, comparable/syngas fuel exclusion.

28 **[In item F, the MPCA incorporates 40 CFR section 261.38 This is a federal exclusion**  
29 **that specifies conditions relating to comparable/syngas fuel. The MPCA has, in a**  
30 **previous rulemaking, adopted an exclusion for comparable/syngas fuel and believes**  
31 **that it is reasonable to incorporate this supporting federal list into the State rules.】//**

32 Subp. 2. [See repealer.]

33 Subp. 2a. [See repealer.]

34 Subp. 2b. Additions, modifications, or exceptions to incorporated provisions.

35 **[In new subpart 2b, the MPCA provides exceptions to its incorporations in subpart**  
36 **1a.】//**

37 A. Part 7045.0090, adoption and incorporation by reference, also applies.

38 **[In new item A, the MPCA refers readers to a general part of the State hazardous**  
39 **waste rules that establishes conditions and criteria governing the adoption and**  
40 **incorporation by reference of federal rules into State rules.】//**

41 B. The hazardous waste number in the "U" listing for paraldehyde in Code of  
42 Federal Regulations, title 40, section 261.33(f)/Table, should be U182.

43 C. In Code of Federal Regulations, title 40, section 261.38, Table 1, under  
44 "metals," in the listing for "cadmium, total," "ND" is the "composite value" and "1.2" is  
45 the "Concentration limit."

1 [In items B and C, the MPCA lists corrections offered by EPA guidance for states that  
2 adopt RCRA rules by reference. The EPA has identified errors in two lists. The  
3 MPCA follows the EPA guidance to correct these errors when adopting these lists:  
4 item B clarifies that the hazardous waste number in the “U” listing for Paraldehyde  
5 should be U182, and item C clarifies that in 40 CFR 261.38, table 1, under “metals,”  
6 in the listing for “cadmium, total,” “ND” is the “composite value” and “1.2” is the  
7 “Concentration limit.” The EPA had shifted the data in this row to the right one  
8 column in the table. The EPA compiles and periodically corrects errors in the federal  
9 regulations. These corrections should become moot when that occurs.]]

10 Subp. 3. [See repealer.]

11 Subp. 4. [See repealer.]

12 Subp. 5. **PCB wastes.** Requirements for PCB wastes are as follows:

13 [In existing subpart 5, the MPCA retains its listing of PCB waste as a hazardous  
14 waste. Minnesota Rules differ from the federal regulations which do not list PCB as a  
15 hazardous waste; rather, the EPA regulates PCB waste under the Toxic Substances  
16 Control Act (TSCA). In this subpart, the MPCA is revising existing language to  
17 improve clarity and to improve consistency with changes in Minnesota Statutes,  
18 section 116.07, subdivision 2b, for managing PCB waste. The specific changes are  
19 discussed in the paragraphs below.]]

20 A. For the purposes of this part, ~~“PCB” means the class of organic compounds~~  
21 ~~known as polychlorinated biphenyls at a concentration of 50 parts per million or greater~~  
22 ~~and includes any of several compounds produced by replacing one or more hydrogen~~  
23 ~~atoms on the biphenyl molecule with chlorine. “PCB” does not include chlorinated~~  
24 ~~biphenyl compounds that have functional groups attached other than chlorine.~~ subpart:

25 [The MPCA revises item A to provide definitions of terms used in this subpart. In  
26 addition, the MPCA has moved the definition of PCB above to general definitions in  
27 part 7045.0020 because PCB is used elsewhere in chapter 7045. The specific level at  
28 which a PCB becomes a hazardous waste (50 parts per million or greater) is provided  
29 in new subitem (2) below. This is not a change in the regulatory status of PCB wastes  
30 in Minnesota, the same level was specified in revised item A.]]

31 (1) “commercial storer of PCB waste” has the meaning given in Code of Federal  
32 Regulations, title 40, section 761.3, as amended;

33 [In subitem (1), the MPCA defines a “commercial storer of PCB waste” based on the  
34 corresponding federal TSCA definition. The MPCA adds this definition because in  
35 this rulemaking this term is added to part 7045.0208, item G, which allows certain  
36 generators to deliver their PCB waste to a commercial storer of PCB waste.]]

37 (2) “PCB” means a substance that contains PCB's at a concentration of 50 parts  
38 per million or greater;

39 [In subitem (2), the MPCA defines the point at which PCB's, generally defined in part  
40 7045.0020, subpart 71a, become a listed hazardous waste in Minnesota. It is  
41 important to provide the threshold at which PCB's become regulated as a listed  
42 hazardous waste so generators can properly manage their PCB wastes. The MPCA is  
43 not changing the “50 parts per million or greater” concentration at which PCB's  
44 become a hazardous waste.]]

45 (3) “PCB lighting ballast” means a device that electrically controls light fixtures  
46 and that contains a PCB small capacitor or potting material that contains PCB's; and

1 [In subitem (3), the MPCA defines PCB lighting ballast because it is a term used in  
2 item D and because Minnesota Statutes, section 116.07, subdivision 2b(a), which  
3 addresses the management of PCB wastes, states that PCB lighting ballasts are  
4 subject to MPCA requirements. The definition of “PCB small capacitor” limits the  
5 amount of dielectric material in a PCB lighting ballast. This definition applies to PCB  
6 lighting ballasts used in any type of lighting fixture. Potting material is an electrical  
7 insulating material used in lighting ballasts which may contain PCB’s and is also  
8 identified as a potential PCB waste in the TSCA regulations at 40 CFR 761.3. The  
9 MPCA believes it is reasonable to ensure that all lighting ballasts that contain PCB’s  
10 (including ballasts that contain PCB’s in the potting material) are properly  
11 managed.]]

12 (4) "PCB small capacitor" means a capacitor that contains less than 1.36  
13 kilograms (3 pounds) of PCB dielectric fluid.

14 [In subitem (4) the MPCA uses the same definition of “PCB small capacitor” used by  
15 TSCA in 40 CFR 761.3, because Minnesota Statutes, section 116.07, subdivision 2b(a),  
16 states that PCB small capacitors are subject to MPCA regulation. The MPCA  
17 believes that using the federal definition is reasonable to ensure consistency as these  
18 types of wastes are transported between states.]]

19 B. PCB materials or items are hazardous waste if and when they are discarded or  
20 stored prior to being discarded.

21 C. A generator of PCB wastes ~~who stores on site prior to disposal~~ is subject to the  
22 requirements of Minnesota Statutes, section 116.07, subdivision 2b, and is exempt from  
23 the agency's hazardous waste ~~storage facility permit requirements and parts 7045.0292~~  
24 ~~and 7045.0450 to 7045.0642 for the storage of those wastes except for the following~~  
25 ~~requirements:~~

26 [In item C, the MPCA revises language to clarify that Minnesota Statutes, section  
27 116.07, subdivision 2b, apply to generators of PCB waste. Minnesota amended this  
28 statute to address issues of duplication and overlap within the State program for  
29 regulating PCB wastes. Most of the management requirements that apply to PCB  
30 wastes are imposed through TSCA and are applicable regardless of Minnesota rules  
31 or statutes. The statute imposes Minnesota-specific requirements for certain types of  
32 PCB wastes and management activities. The revised statute created confusion  
33 regarding the application of these subpart 5 requirements. In this rulemaking, the  
34 MPCA believes it is reasonable to delete obsolete requirements and to clarify which  
35 requirements apply. A person who generates waste containing PCB at a  
36 concentration of 50 parts per million or greater is subject to the federal TSCA  
37 requirements and is also subject to Minnesota’s hazardous waste rules for proper  
38 disposal, licensing, and fees as described in this item.]]

39 ~~(1) the storage standards described in Code of Federal Regulations, title 40,~~  
40 ~~section 761.65, as amended; and~~

41 ~~(2) the requirements applicable to the generator based on generator size of part~~  
42 ~~7045.0292, subpart 1, 5, or 6, regarding proper labeling, personnel training, preparedness,~~  
43 ~~prevention, and contingency planning. However, PCB items in use or in storage prior to~~  
44 ~~disposal that are labeled as PCBs according to Code of Federal Regulations, title 40,~~  
45 ~~sections 761.40, 761.45, and 761.65, as amended, are not subject to the hazardous waste~~  
46 ~~labeling requirements of part 7045.0292.~~

1 (1) the hazardous waste management requirements of part 7045.0208;  
2 (2) the evaluation requirements of part 7045.0214;  
3 (3) the licensing requirements of parts 7045.0225 to 7045.0250; and  
4 (4) the fee requirements of chapter 7046, unless a generator demonstrates  
5 performance of a PCB phase-out agreement under Minnesota Statutes, section 116.07,  
6 subdivision 2b, paragraph (b).

7 **[The MPCA replaces existing subitems (1) and (2) with new subitems (1) to (4) which**  
8 **affirm the State requirements that apply to generators of PCB waste. These**  
9 **amendments are reasonable in order to clarify in rules the requirements already**  
10 **established in Minnesota Statutes, section 116.07, subdivision 2b(a). This statute**  
11 **requires that PCB generators comply with the State hazardous waste requirements**  
12 **for proper disposal, licensing and fees in addition to the federal requirements of**  
13 **TSCA. New subitems (1) and (2) address requirements that relate to disposing of**  
14 **hazardous waste. Subitem (1) refers to part 7045.0208, which is the rule that lists**  
15 **acceptable waste disposal options, including a new item G that specifically addresses**  
16 **PCB waste. Pointing to the existing requirement to evaluate waste in subitem (2) is**  
17 **reasonable because properly managing PCB waste requires evaluating the**  
18 **concentration of PCB in that waste. Subitem (3) identifies the rule parts that govern**  
19 **the issuance of licenses described in the governing statute. Finally, subitem (4)**  
20 **describes the hazardous waste fee provisions described in the statute. The intent is to**  
21 **clarify the applicability of existing requirements.]//**

22 D. PCB wastes may be transported without a hazardous waste manifest if  
23 transportation is via the owner's own vehicle and if that transportation is between the  
24 owner's facilities or premises. In addition to the requirements of item C, a generator or  
25 commercial storer of PCB waste who generates or stores PCB ballasts or PCB small  
26 capacitors must comply with the requirements of part 7045.0566, subpart 2. A  
27 commercial storer of PCB waste storing only PCB ballasts and PCB small capacitors is  
28 not subject to the facility standards in parts 7045.0450 to 7045.0651, except for the  
29 requirements of part 7045.0566, subpart 2, or to the hazardous waste facility permit  
30 requirements in chapter 7001.

31 **[In item D, the MPCA is deleting the requirement regarding the transportation of**  
32 **PCB wastes by the owner's own vehicle. This provision is no longer needed because**  
33 **of the clarification regarding the application of the federal TSCA requirements**  
34 **governing PCB management. The federal regulations have always applied and have**  
35 **provided more comprehensive requirements regarding transportation. It is**  
36 **appropriate to delete this one particular transportation requirement to eliminate the**  
37 **potential misunderstanding that this is the only transportation related requirement**  
38 **that applies. The MPCA is adding new language to item D to address the generators**  
39 **or commercial storers of PCB waste, PCB ballasts or PCB small capacitors.**  
40 **Minnesota Statute section 116.07, subdivision 2b(a), establishes that PCB small**  
41 **capacitors and lighting ballasts are, in addition to the requirements for licensing, fees**  
42 **and proper disposal, also subject to State on-site accumulation requirements. The**  
43 **statute allows the MPCA to apply appropriate accumulation standards. The**  
44 **accumulation standards applied to most hazardous wastes are found at part**  
45 **7045.0292 and are based on generator size. They are protective for all types and**  
46 **characteristics of wastes that may be generated, including liquids and highly reactive**

1 and ignitable wastes. The MPCA believes it is more appropriate to apply the  
2 preparedness and prevention rules in part 7045.0566 to the accumulation of PCB  
3 ballast and capacitors. These rules, while less prescriptive than those in part  
4 7045.0292, provide the MPCA with the authority to require reasonable precautions  
5 for the storage of PCB ballasts and capacitors. The MPCA believes that the  
6 requirements in part 7045.0566, subp. 2 provide adequate environmental protection  
7 for the accumulation of these types of wastes.]]

8 E. Thermal treatment of PCB wastes at concentrations less than 500 parts per  
9 million. High efficiency boilers as defined in Code of Federal Regulations, title 40,  
10 section 761.60(a), as amended, which are used for treatment of mineral oil dielectric fluid  
11 containing less than 500 ppm PCB, are exempt from the agency's hazardous waste  
12 facility permit requirements in chapter 7001 and parts ~~7023.9000 to 7023.9050,~~  
13 7045.0292, and 7045.0450 to ~~7045.0642 for storage and treatment of those wastes~~  
14 7045.0651, except for the following requirements:

15 [In item E, the MPCA deletes a citation to chapter 7023 that was repealed by another  
16 MPCA rulemaking. The MPCA also corrects a citation to a range of rules that  
17 changed as parts were added.]]

- 18 (1) parts 7045.0526 and 7045.0528;
- 19 (2) parts 7045.0556 and 7045.0558;
- 20 (3) parts 7045.0564 to 7045.0588; and
- 21 (4) parts 7045.0594 and 7045.0596.

22 [In subitems (1) to (4), the MPCA adds “and” to clarify that all of the requirements of  
23 the listed rule ranges apply to thermal treatment in this item]]

24 F. PCB wastes have the hazardous waste number of MN03.  
25

## 26 7045.0139 BASIS FOR LISTING HAZARDOUS WASTES.

27 Subpart 1. **General.** ~~The tables in subpart 2 list the constituents which caused the~~  
28 ~~agency to list wastes as hazardous in part 7045.0135, subparts 2 and 3. The notation~~  
29 ~~“N.A.” indicates the waste is hazardous because it fails the test for the characteristics of~~  
30 ~~ignitability, corrosivity, reactivity, or toxicity, and the listing of a chemical name is not~~  
31 ~~applicable. The basis for listing hazardous waste is found in part 7045.0155, subpart 1,~~  
32 ~~item D, which incorporates Code of Federal Regulations, title 40, part 261, Appendix VII,~~  
33 ~~Basis for Listing Hazardous Waste. Part 7045.0155, subpart 2, provides any applicable~~  
34 ~~exceptions.~~

35 Subp. 2. [See repealer.]

36 [In part 7045.0139, the MPCA revises language to direct readers to a new part  
37 7045.0150, Subpart 1, item D, which incorporates by reference the “basis for listing  
38 hazardous waste” in 40 CFR part 261, Appendix VII. The MPCA considered simply  
39 repealing part 7045.0139 in conjunction with the adoption of the same information in  
40 new part 7045.0150. However, the MPCA decided that there is value in retaining part  
41 7045.0139, even though the text of the list is being deleted, because of the complexity  
42 of removing all existing cross references, and because this rule part still retains a  
43 listing of the topic in the chapter index which the MPCA believes will be an aid to  
44 readers.]]  
45

1 **7045.0141 HAZARDOUS CONSTITUENTS.**

2 Subpart 1. **Scope.** ~~Hazardous constituents and their corresponding Chemical Abstract~~  
3 ~~Service registry numbers and hazardous waste numbers, if available, are listed in subparts~~  
4 ~~2 to 22. The hazardous constituents list is found in part 7045.0155, subpart 1, item E,~~  
5 ~~which incorporates Code of Federal Regulations, title 40, part 261, Appendix VIII,~~  
6 ~~Hazardous Constituents. Part 7045.0155, subpart 2, provides any applicable exceptions.~~

7 Subp. 2. [See repealer.]

8 Subp. 3. [See repealer.]

9 Subp. 4. [See repealer.]

10 Subp. 5. [See repealer.]

11 Subp. 6. [See repealer.]

12 Subp. 7. [See repealer.]

13 Subp. 8. [See repealer.]

14 Subp. 9. [See repealer.]

15 Subp. 10. [See repealer.]

16 Subp. 11. [See repealer.]

17 Subp. 12. [See repealer.]

18 Subp. 13. [See repealer.]

19 Subp. 14. [See repealer.]

20 Subp. 15. [See repealer.]

21 Subp. 16. [See repealer.]

22 Subp. 17. [See repealer.]

23 Subp. 18. [See repealer.]

24 Subp. 19. [See repealer.]

25 Subp. 20. [See repealer.]

26 Subp. 21. [See repealer.]

27 Subp. 22. [See repealer.]

28 Subp. 23. [See repealer.]

29 **[In part 7045.0141, the MPCA revises language to point readers to a new part**  
30 **7045.0150, Subpart 1, item E, which incorporates by reference the “hazardous**  
31 **constituents” list in 40 CFR part 261, Appendix VIII. The MPCA considered simply**  
32 **repealing part 7045.0141 in conjunction with the incorporation of the same**  
33 **information in new part 7045.0150. However, the MPCA decided that there is value**  
34 **in retaining part 7045.0141, even though the text of the list is being deleted, because of**  
35 **the complexity of removing all existing cross references, and because this rule part**  
36 **still retains a listing of the topic in the chapter index which the MPCA believes will be**  
37 **an aid to readers.//**

39 **7045.0143 GROUNDWATER PROTECTION HAZARDOUS**  
40 **CONSTITUENTS LIST.**

41 Subpart 1. **Scope.** For the purposes of the groundwater protection requirements in  
42 parts 7001.0640, subpart 1, item D, subitem (2); and 7045.0484, subparts 12, item G,  
43 subitem (2), and 13, item E, the hazardous constituents are listed with their corresponding  
44 Chemical Abstract Service registry numbers in subparts 2 to 27. Where "total" is entered  
45 for the Chemical Abstract Service registry number, all species in the groundwater that



1 ~~contain this element are included.~~ The groundwater protection hazardous constituents list  
2 is found in part 7045.0543, subpart 1, item D, which incorporates Code of Federal  
3 Regulations, title 40, part 264, Appendix IX, Ground Water Monitoring List. Part  
4 7045.0543, subpart 2, provides any applicable exceptions.

5 Subp. 2. [See repealer.]

6 Subp. 3. [See repealer.]

7 Subp. 4. [See repealer.]

8 Subp. 5. [See repealer.]

9 Subp. 6. [See repealer.]

10 Subp. 7. [See repealer.]

11 Subp. 9. [See repealer.]

12 Subp. 10. [See repealer.]

13 Subp. 12. [See repealer.]

14 Subp. 13. [See repealer.]

15 Subp. 14. [See repealer.]

16 Subp. 15. [See repealer.]

17 Subp. 17. [See repealer.]

18 Subp. 20. [See repealer.]

19 Subp. 21. [See repealer.]

20 Subp. 23. [See repealer.]

21 Subp. 25. [See repealer.]

22 Subp. 27. [See repealer.]

23 **[In part 7045.0143, the MPCA revises language to point readers to a new part**  
24 **7045.0543, Subpart 1, item D, which incorporates by reference the “Groundwater**  
25 **Monitoring List” in 40 CFR part 264, Appendix IX. The MPCA considered simply**  
26 **repealing part 7045.0143 in conjunction with the incorporation of the same**  
27 **information in new part 7045.0543. However, the MPCA decided that there is value**  
28 **in retaining part 7045.0143, even though the text of the list is being deleted, because of**  
29 **the complexity of removing all existing cross references, and because this rule part**  
30 **still retains a listing of the topic in the chapter index which the MPCA believes will be**  
31 **an aid to readers.]]**

32  
33 **7045.0155 APPENDICES TO IDENTIFICATION AND LISTING OF**  
34 **HAZARDOUS WASTE.**

35 **[In new part 7045.0150, the MPCA incorporates by reference federal appendices that**  
36 **relate to the identification and listing of hazardous waste.]]**

37 Subpart 1. Incorporation of federal regulations. The following appendices found in  
38 Code of Federal Regulations, title 40, part 261, as amended, are incorporated by  
39 reference:

40 **[In subpart 1, the MPCA is incorporating by reference appendices to 40 CFR part**  
41 **261, as amended (to include future amendments). These appendices address sampling**  
42 **methods, the basis for listing hazardous wastes, and a list of hazardous constituents.**  
43 **These appendices replace the same lists previously located in parts of these rules as**  
44 **described below. Further discussion of the reasonableness of incorporating these**  
45 **references as amended is provided in Part IV of the general discussion in this**  
46 **Statement. The MPCA believes that the same reasons why it is reasonable to adopt**

1 the federal lists of hazardous wastes by reference also apply to adopting the  
2 appendices addressed below. The MPCA believes that maintaining consistency with  
3 the federal program is the most reasonable regulatory strategy.]]

4 A. Appendix I, Representative Sampling Methods;

5 [In item A, the MPCA incorporates the representative sampling methods in 40 CFR  
6 261, Appendix I. Certain representative sampling methods also apply through the  
7 reference to SW-846 provided in 7045.0065. However, the MPCA believes it is  
8 reasonable to provide consistency with the federal standards by directly referencing  
9 the federal appendix that establishes these standard methods.]]

10 B. Appendix VII, Basis for Listing Hazardous Waste; and

11 [In item B, the MPCA incorporates a list in 40 CFR 261, Appendix VII which  
12 contains the basis for listing hazardous waste formerly found in 7045.0139. For each  
13 EPA hazardous waste number, this appendix identifies the hazardous constituents  
14 which form the basis for the hazardous waste listing. The EPA has amended this  
15 appendix several times since it was last amended by the MPCA. Information about  
16 those changes is available in the following RCRA Amendments:

- 17 • required RCRA Amendment 110.4: “Coke By-Products Listings” = 40 CFR  
18 261 VII; as supported at 57 FR 37284-37306, August 18, 1992;
- 19 • required RCRA Amendment 115.3: “Chlorinated Toluenes Production Waste  
20 Listing” = 40 CFR 261 VII; as supported at 57 FR 47376-47386, October 15,  
21 1992;
- 22 • Optional RCRA Amendment 159.4: “Conformance With the Carbamate  
23 Vacatur” = 40 CFR 261 VII; as supported at 62 FR 32974-32980, June 17,  
24 1997;
- 25 • Optional RCRA Amendment 185.6: “Organobromine Production Wastes  
26 Vacatur” = 40 CFR 261 VII; as supported at 65 FR 14472-14475, March 17,  
27 2000; and
- 28 • required RCRA Amendment 189.5: “Chlorinated Aliphatics Listing and LDRs  
29 for Newly Identified Wastes” = 40 CFR 261 VII; as supported at 65 FR 67068-  
30 67133, November 8, 2000.]]

31 C. Appendix VIII, Hazardous Constituents.

32 [In item C, the MPCA incorporates 40 CFR 261, Appendix VIII, which is a list of the  
33 hazardous constituents that was formerly found in 7045.0141. This list contains the  
34 hazardous constituents that the MPCA must consider in evaluating whether to list a  
35 waste as hazardous under part 7045.0129. The EPA has amended this appendix  
36 several times since it was last amended by the MPCA. Information about those  
37 changes is available in the following RCRA Amendments:

- 38 • required RCRA Amendment 128: “Wastes From the Use of Chlorophenolic  
39 Formulations in Wood Surface Protection” = 40 CFR 261 VIII; as supported  
40 at 59 FR 458-469, January 4, 1994;
- 41 • required RCRA Amendment 134.3: “Correction of Beryllium Powder (P015)  
42 Listing” = 40 CFR 261 VIII; as supported at 59 FR 31551-31552, June 20,  
43 1994;
- 44 • Optional RCRA Amendment 159.5: “Conformance With the Carbamate  
45 Vacatur” = 40 CFR 261 VIII; as supported at 62 FR 32974-32980, June 17,  
46 1997;

- **Optional RCRA Amendment 185.7: “Organobromine Production Wastes Vacatur” = 40 CFR 261 VIII; as supported at 65 FR 14472-14475, March 17, 2000; and**
- **required RCRA Amendment 189.6: “Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes” = 40 CFR 261 VIII; as supported at 65 FR 67068-67133, November 8, 2000.]//**

**Subp. 2. Additions, modifications, or exceptions to incorporated regulations.**

**[In subpart 2, the MPCA provides exceptions to the incorporations listed in subpart 1.]//**

A. Part 7045.0090, adoption and incorporation by reference, also applies.

**[In item A, the MPCA refers readers to the part of the State rules that establishes certain conditions that apply when rules are adopted or incorporated by reference.]//**

B. The chemical abstracts name for physostigmine listed in Code of Federal Regulations, title 40, part 261, Appendix VIII, is "Pyrrolo [2,3-b]indol-5-o1."

C. The chemical abstracts number for potassium pentachlorophenate in Code of Federal Regulations, title 40, part 261, Appendix VIII, should be "7778-73-6."

**[In items B and C, the MPCA is amending the rules to follow EPA guidance regarding corrections for states incorporating by reference Appendix VIII (hazardous constituent list). These changes have not yet been made to the federal regulations, but EPA has identified errors in its hazardous constituent list and has recommended that states correct these errors when states adopt this list.]//**

## **7045.0208 HAZARDOUS WASTE MANAGEMENT.**

Subpart 1. **Management by generator.** A generator must manage hazardous waste by using one of the methods described in items A to G H, unless otherwise specifically exempted under this chapter.

A. A generator may treat or dispose of hazardous waste at an on-site facility as provided under part 7045.0211.

B. A generator may ensure delivery of hazardous waste to an off-site storage, treatment, or disposal facility. If located in the United States, the facility used must be permitted to accept hazardous waste under the agency's permitting procedures, have interim status under parts 7045.0552 to ~~7045.0642~~ 7045.0651, or be authorized to manage hazardous waste by the Environmental Protection Agency or by a state with a hazardous waste management program authorized by the Environmental Protection Agency.

**[In item B, the MPCA corrects a citation to a range of rules that changed as parts were added.]//**

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

H. A generator may ensure delivery of PCB waste to a commercial storer of PCB waste, as defined in part 7045.0135, subpart 5.

**[The MPCA adds a new item H to clarify that it is acceptable for a generator to deliver PCB waste to a commercial storer of PCB waste. The concept of waste management at a “commercial storer of PCB waste” is based on provisions of the federal regulations in the Toxic Substances Control Act governing PCB wastes. The MPCA requirements that apply to management of PCB waste are in part 7045.0135,**

1 **subpart 5. New item H identifies a management option that is provided in part**  
2 **7045.0135, subpart 5. Further discussion of the reasonableness of the requirements**  
3 **for PCB management is provided in that part.]]**

4 *[For text of subs 1a to 3, see M.R.]*

5 Subp. 4. **Land disposal.** ~~Except as specified in part 7045.1300, subparts 2 and 3,~~  
6 Hazardous wastes are subject to the requirements of ~~parts 7045.1300 to 7045.1380~~ part  
7 7045.1390.

8 **[In subpart 4, the MPCA is deleting references to specific provisions of the land**  
9 **disposal restrictions that were formerly found in parts 7045.1300 to 7045.1380. These**  
10 **land disposal restrictions have been repealed and the MPCA has incorporated the**  
11 **federal land disposal restrictions by reference as amended in part 7045.1390. The**  
12 **revised language simply clarifies the continued applicability of the land disposal**  
13 **restrictions found at the revised rule part with no change in effect.]]**

## 15 **7045.0213 FARMERS; PESTICIDES.**

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

17 Subp. 2. **Special conditions.** A farmer who generates waste pesticides which are  
18 hazardous waste and who triple rinses each emptied pesticide container and disposes of  
19 the pesticide residues on the farmer's farm in a manner consistent with the disposal  
20 instructions on the pesticide label is not required with respect to those pesticides to  
21 comply with other standards in parts 7045.0205 to 7045.0320 or to comply with parts  
22 ~~7045.0450 to 7045.1380~~ 7045.1390, or to obtain a hazardous waste facility permit,  
23 provided that:

24 **[In subpart 2, the MPCA corrects a citation to a range of rules that changed as parts**  
25 **were added.]]**

26 *[For text of items A to C, see M.R.]*

## 28 **7045.0214 EVALUATION OF WASTES.**

29 Subpart 1. **General requirement.** Any person who produces a waste within the state  
30 of Minnesota or any person who produces a waste outside the state of Minnesota that is  
31 managed within the state of Minnesota, must evaluate the waste to determine if it is  
32 hazardous within 60 days of initially generating the waste. The generation start date must  
33 be recorded and available for inspection. Waste that is not evaluated within 60 days of the  
34 generation start date must be managed as a hazardous waste and the person who produces  
35 the waste must be considered a generator until the waste is determined to be  
36 nonhazardous under parts 7045.0214 to 7045.0218. A material is determined to be a  
37 waste in accordance with the conditions specified under the definition of other waste  
38 material in part 7045.0020. Any waste evaluated and exempted under part 7045.0075 or  
39 7045.0120 does not need to be reevaluated under this part. If the waste is determined to  
40 be hazardous, the generator must refer to parts 7045.0075, 7045.0450 to ~~7045.0685~~  
41 7045.0990, ~~and 7045.1300 to 7045.1380~~ 7045.1390, and 7045.1400 for possible  
42 exclusions or restrictions relating to management of the specific waste.

43 **[In subpart 1, the MPCA makes two changes. The first corrects an error in a citation**  
44 **to a range of rules that the MPCA believes was incomplete in the existing rules and**

1 that should have included the spent household battery requirements in part 7045.0686  
2 and also all the used oil provisions in parts 7045.0692 to 7045.0990. The MPCA  
3 believes it is reasonable to provide a complete reference to all the rules that may be  
4 applicable to a hazardous waste. This correction does not change the requirements of  
5 the battery and used oil rules; it merely provides a more accurate identification of the  
6 rules that may already apply. The MPCA also provides the replacement citation for a  
7 repealed range of rules addressing the land disposal restrictions that are being  
8 amended in this rulemaking.]/

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

10 Subp. 3. **Wastes generated by treatment, storage, or disposal.** Wastes generated by  
11 treatment, storage, or disposal of hazardous waste are as follows:

12 A. Except as provided in items B to E, or in part 7045.0102, any waste generated  
13 from the treatment, storage, or disposal of hazardous waste, including any sludge, spill  
14 residue, ash, emission control dust or leachate, but not including precipitation ~~run-off~~  
15 runoff, is a hazardous waste if it meets the criteria of subpart 2 or if it is derived from a  
16 waste that is listed in part 7045.0135.

17 **[In item A, the MPCA adds a reference to the State rules that govern mixtures of  
18 hazardous wastes. This reference is being added to this rule to make it consistent with  
19 its federal counterpart in 40 CFR 261.3(c)(2)(i). Further information about this  
20 amendment can be found at RCRA Amendment 192A: "Mixture and Derived-From  
21 Rules Revisions" = 40 CFR 261.3(c)(2)(i).]; as supported 66 FR 27266-27297, May 16,  
22 2001. The corresponding federal requirement at 40 CFR 261.3 (c)(2)(i) includes  
23 references to two types of wastes, in addition to the reference to the mixtures rule at  
24 40 CFR 261.3(c)(2)(g), that are not being addressed in this rulemaking. The first of  
25 these references is to wastes governed under 40 CFR 261.3(c)(2)(h), which regulates  
26 mixtures of radioactive and hazardous waste. The MPCA believes that these types of  
27 wastes are adequately addressed in the exemption provided in part 7045.0120,  
28 subpart 2, item G. The second type of waste that is addressed in the federal  
29 counterpart that is not being addressed in this rulemaking is the parenthetical  
30 reference to reclaimed wastes. The MPCA believes that the requirements governing  
31 the reuse and recycling of hazardous waste in part 7045.0125 adequately address this  
32 type of waste management activity and is not adding further conditions to this part.]/**

33 *[For text of items B to D, see M.R.]*

34 E. Nonwastewater residues, such as slag, resulting from high temperature metals  
35 recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary  
36 kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth  
37 furnace/electric furnace combinations, or industrial furnaces, ~~as defined in that are blast~~  
38 furnaces or smelting, melting, and refining furnaces, including pyrometallurgical devices,  
39 such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces,  
40 or that are other devices that the commissioner determines qualify for inclusion as an  
41 industrial furnace under part 7045.0020, subpart 43b, that are disposed of in solid waste  
42 disposal units, provided that these residues meet the generic exclusion levels identified  
43 below in the tables in this item for all constituents, and exhibit no characteristics of  
44 hazardous waste. Testing requirements must be incorporated in a facility's waste analysis  
45 plan or a generator's self-implementing waste analysis plan. At a minimum, composite  
46 samples of residues must be collected and analyzed quarterly and/or when the process or

1 operation generating the waste changes. Persons claiming this exclusion in an  
2 enforcement action have the burden of proving by clear and convincing evidence that the  
3 material meets all of the exclusion requirements. The generic exclusion levels are for  
4 K061 and K062 nonwastewater HTMR residues are as follows:

5 **[Item E corresponds to language found at 40 CFR 261.3(c)(2)(ii)(C)(1). In item E, the**  
6 **MPCA first adds two new waste codes (K062 and F006) to the description of the types**  
7 **of wastes excluded. The MPCA then adds a list of the types of systems that qualify as**  
8 **HTMR processing systems to the cited definition of those systems. The MPCA then**  
9 **removes the word “of” as superfluous for clarity. Next, the MPCA revises the word**  
10 **“below” into the phrase “in the tables in this item” to clarify where to find the generic**  
11 **exclusion levels. Then, the MPCA clarifies the responsibilities of those who claim this**  
12 **exclusion. The MPCA then clarifies that the table of generic exclusion levels address**  
13 **nonwastewater residues for K061 and K062 wastes. This language corresponds to the**  
14 **federal requirements discussed above for the addition of K061 and K062. Finally, the**  
15 **MPCA completes the sentence by adding, “are as follows” to improve clarity. These**  
16 **changes are based on required RCRA Amendment 109.4: “Land Disposal**  
17 **Restrictions for Newly Listed Wastes and Hazardous Debris” = 40 CFR**  
18 **261.3(c)(2)(ii)(C)(1); as found in 57 FR 37194-37282, August 18, 1992.]//**

Constituent	Maximum for any single composite sample (mg/l)
Antimony	<del>0.063</del> <u>0.10</u>
Arsenic	<del>0.055</del> <u>0.50</u>
Barium	<del>6.3</del> <u>7.6</u>
Beryllium	<del>0.0063</del> <u>0.010</u>
Cadmium	<del>0.032</del> <u>0.050</u>
Chromium (total)	0.33
Lead	<del>0.095</del> <u>0.15</u>
Mercury	0.009
Nickel	<del>0.63</del> <u>1.0</u>
Selenium	0.16
Silver	0.30
Thallium	<del>0.013</del> <u>0.020</u>
<del>Vanadium</del>	<del>1.26</del>
<u>Zinc</u>	<u>70</u>

19  
20 **[In this table to item E, the MPCA adopts changes to the concentrations identified in**  
21 **the second column, adds a standard for “zinc” and deletes all reference to**  
22 **“vanadium.” These changes correspond to 40 CFR 261.3(c)(2)(ii)(C)(1) and relate to**  
23 **required RCRA Amendment 109.4: “Land Disposal Restrictions for Newly Listed**  
24 **Wastes and Hazardous Debris.” Further information about these amendments can**  
25 **be found at 57 FR 37194-37282, August 18, 1992.]//**

26  
27 The generic exclusion levels for F006 nonwastewater HTMR residues are as follows:

<u>Constituent</u>	<u>Maximum for any single composite sample (mg/l)</u>
<u>Antimony</u>	<u>0.10</u>
<u>Arsenic</u>	<u>0.50</u>
<u>Barium</u>	<u>7.6</u>
<u>Beryllium</u>	<u>0.010</u>
<u>Cadmium</u>	<u>0.050</u>
<u>Chromium (total)</u>	<u>0.33</u>
<u>Cyanide (total)</u>	<u>1.8 (mg/kg)</u>
<u>Lead</u>	<u>0.15</u>
<u>Mercury</u>	<u>0.009</u>
<u>Nickel</u>	<u>1.0</u>
<u>Selenium</u>	<u>0.16</u>
<u>Silver</u>	<u>0.30</u>
<u>Thallium</u>	<u>0.020</u>
<u>Zinc</u>	<u>70</u>

1 **[In this newly added table in item E, the MPCA adopts language that corresponds to**  
2 **40 CFR 261.3(c)(2)(ii)(C)(1) addressing nonwastewater residues for F006 wastes.**  
3 **This language relates to required RCRA Amendment 109.4: “Land Disposal**  
4 **Restrictions for Newly Listed Wastes and Hazardous Debris.” Further information**  
5 **about this amendment is available at 57 FR 37194-37282, August 18, 1992.]/**

6 For each ~~shipment of K061 high temperature metals recovery, K062, or F006 HTMR~~  
7 residues sent to a solid waste disposal unit that meets units, the treatment facility must  
8 prepare and send to the commissioner a onetime notification and certification certifying  
9 that the residues meet the generic exclusion levels for all constituents; and does do not  
10 exhibit any characteristic, a characteristics of hazardous waste. The notification and  
11 certification must also be kept in the facility's files. The notification and certification  
12 must be updated if the process or operation generating the waste changes or if the solid  
13 waste disposal unit receiving the waste changes. However, the treatment facility need  
14 only notify the commissioner on an annual basis if these changes occur. The notification  
15 and certification must be sent to the commissioner no later than December 31. The  
16 notification and certification must include the following information:

- 17 (1) the name and address of the solid waste disposal unit receiving the waste  
18 shipment shipments;
- 19 (2) the EPA hazardous waste number numbers and treatability group groups at  
20 the initial point of generation; and
- 21 (3) the treatment standards applicable to the waste at the initial point of  
22 generation.

23 The certification must be signed by an authorized representative of the treatment  
24 facility and must state as follows: "I certify under penalty of law that the generic  
25 exclusion levels for all constituents have been met without impermissible dilution and  
26 that no characteristic of hazardous waste is exhibited. I am aware that there are

1 significant penalties for submitting a false certification, including the possibility of fine  
2 and imprisonment."

3 **[In the above paragraph of item E, and subitems (1) to (3), the MPCA adopts further**  
4 **conditions and clarifications of the exclusion of K061, K062 and F006 wastes that**  
5 **correspond to 40 CFR 261.3(c)(2)(ii)(C)(2). These changes are based on required**  
6 **RCRA Amendment 109.4: "Land Disposal Restrictions for Newly Listed Wastes and**  
7 **Hazardous Debris." Further information about these amendments is available at 57**  
8 **FR 37194-37282, August 18, 1992. The MPCA slightly revised the federal language to**  
9 **add reference to the treatment facility being the entity that must meet the**  
10 **requirements in order to clarify the intended meaning of EPA requirements. The**  
11 **MPCA consulted with EPA, who advised the MPCA that EPA's intent was for the**  
12 **facility that undertakes the HTMR treatment to keep the records, notify the**  
13 **EPA/state, and make the certification. The MPCA believes that the language**  
14 **proposed is a reasonable interpretation of the federal intent.]//**

15  
16 **7045.0255 ~~ONE-TIME~~ ONETIME DISPOSAL REQUIREMENTS.**

17 A person having hazardous waste subject to regulation under this chapter who is only  
18 a hazardous waste generator for the ~~one time~~ onetime disposal of hazardous waste which  
19 is not currently being produced, must comply with this chapter except as provided in  
20 items A to D. The exemptions in this part do not apply to generators that generate  
21 hazardous waste more than one time.

22 A. The generator is exempt from parts 7045.0225 to 7045.0250, license and license  
23 reporting.

24 B. A large quantity generator is exempt from part 7045.0292, subpart 1, but must  
25 instead comply with part 7045.0292, subpart 5, items A to F, and must meet the  
26 requirements of part 7045.0566, relating to preparedness and prevention, and ~~part~~  
27 ~~7045.1315, subpart 1, item D~~ Code of Federal Regulations, title 40, section 268.7(a)(5),  
28 as incorporated in part 7045.1390, relating to waste analysis for restricted wastes.

29 **[In item B, the MPCA replaces a citation to a repealed rule with the corresponding**  
30 **federal regulation as incorporated by reference.]//**

31 C. A small quantity generator is exempt from the requirements of part 7045.0292,  
32 subpart 5, items G and H, but instead must meet the requirements of part 7045.0566,  
33 relating to preparedness and prevention, and ~~part 7045.1315, subpart 1, item D~~ Code of  
34 Federal Regulations, title 40, section 268.7(a)(5), as incorporated in part 7045.1390,  
35 relating to waste analysis for restricted wastes.

36 **[In item C, the MPCA replaces a citation to a repealed rule with the corresponding**  
37 **federal regulation as incorporated by reference.]//**

38 D. A very small quantity generator is exempt from part 7045.0292, subpart 6, but  
39 instead must comply with part 7045.0292, subpart 5, items A to F, and must meet the  
40 requirements of part 7045.0566, relating to preparedness and prevention, and ~~part~~  
41 ~~7045.1315, subpart 1, item D~~ Code of Federal Regulations, title 40, section 268.7(a)(5),  
42 as incorporated in part 7045.1390, relating to waste analysis for restricted wastes.

43 **[In item D, the MPCA replaces a citation to a repealed rule with the corresponding**  
44 **federal regulation as incorporated by reference.]//**

45



1 **7045.0270 PRETRANSPORT REQUIREMENTS.**

2 Subpart 1. **Marking.** Before transporting or offering hazardous waste for  
3 transportation off-site, a generator must:

4 A. mark each package of hazardous waste in accordance with the applicable United  
5 States Department of Transportation regulations on hazardous materials under Code of  
6 Federal Regulations, title 49, part 172, subpart D, as amended; and

7 **[In item A, the MPCA follows advice from Minnesota’s Department of  
8 Transportation to provide a more correct citation.]//**

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

10 *[For text of subps 2 and 3, see M.R.]*

11 Subp. 4. **Packaging.** Before transporting hazardous waste or offering a hazardous  
12 waste for transportation off-site, a generator must package the waste in accordance with  
13 the applicable United States Department of Transportation regulations on packaging  
14 under Code of Federal Regulations, title 49, parts 173, 178, ~~and~~ 179, and 180, as  
15 amended.

16 **[In subpart 4, following advice from the Minnesota Department of Transportation,  
17 the MPCA corrects one of several citations to a range of regulations amended by the  
18 U.S. Department of Transportation.]//**

19 Subp. 5. **Labeling.** Before transporting or offering hazardous waste for transportation  
20 off-site, a generator must label each package in accordance with the applicable United  
21 States Department of Transportation regulations on hazardous materials under Code of  
22 Federal Regulations, title 49, part 172, subpart E, as amended.

23 **[In subpart 5, the MPCA follows advice from Minnesota’s Department of  
24 Transportation to provide a more correct citation.]//**

25 *[For text of subps 6 and 7, see M.R.]*

26  
27 **7045.0292 ACCUMULATION OF HAZARDOUS WASTE.**

28 **[In part 7045.0292, the MPCA is proposing several rule changes based on  
29 corresponding amended federal regulations. The MPCA is not adopting one federal  
30 provision found in 40 CFR 262.34 in which the EPA allows waste accumulation in  
31 containment buildings by generators who are not subject to permit or interim status  
32 standards. The MPCA is adopting language that allows permitted and interim status  
33 facilities do accumulate in containment buildings in this rulemaking in parts  
34 7045.0550 and 7045.0650. However, the MPCA rejects this option, which reduces  
35 regulations, for non-permitted generators. Generators are subject to much less  
36 inspection scrutiny, so allowing this practice for generators is not the same as allowing  
37 it for permitted or interim status facilities. The MPCA believes that allowing this  
38 practice by generators would result in an unacceptably high risk of mismanagement.  
39 The MPCA believes that a reduction in regulation that allows accumulation in  
40 containment buildings by generators is not adequately protective of human health  
41 and the environment. The federal containment building requirements are identified  
42 in required RCRA Amendment 109.17: “Land Disposal Restrictions for Newly Listed  
43 Wastes and Hazardous Debris,” = 40 CFR 264.1100-1102, Subpart DD. Further  
44 information about the federal amendment can be found at 57 FR 37194-37282,  
45 August 18, 1992.]//**

1 Subpart 1. **Large quantity generator.** A large quantity generator may accumulate  
2 hazardous waste on site without a permit or without having interim status if:

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

4 B. the waste is placed as follows:

5 (1) in containers which meet the standards of part 7045.0270, subpart 4, and are  
6 managed in accordance with applicable requirements of parts 7045.0594, subpart 2;  
7 7045.0596, subpart 3, ~~and~~; 7045.0626; 7045.0645; 7045.0647; and 7045.0648;

8 **[In item B, subitem (1), the MPCA extends the range of applicable rules to include the**  
9 **existing air emission standards in parts 7045.0647 and 7045.0648 and new air**  
10 **emission standards being adopted in part 7045.0645. This provision corresponds to 40**  
11 **CFR 262.34(a)(1)(i). This change relates to required RCRA Amendments 154, 154-**  
12 **1.8a, and 154-5.2: “Consolidated Organic Air Emission Standards for Tanks, Surface**  
13 **Impoundments, and Containers.” Further information can be found at 59 FR 62896-**  
14 **62953, December 6, 1994; 61 FR 4903-4916, February 9, 1996; and 61 FR 59932-**  
15 **59997, November 25, 1996. Subsequent amendments and clarifications to the federal**  
16 **air emission standards relate to required RCRA Amendment 177: “Organic Air**  
17 **Emission Standards: Clarification and Technical Amendments;” as supported at 64**  
18 **FR 3382, January 21, 1999. In addition, the MPCA breaks the paragraph into**  
19 **subitems (1)-(3) to improve readability.]/**

20 (2) in tanks provided the generator complies with the applicable requirements of  
21 parts 7045.0594, subpart 2;  
22 7045.0596, subpart 3, ~~and~~; 7045.0628; 7045.0645;  
23 7045.0647; and 7045.0648, except part 7045.0628, ~~subpart~~ subparts 9, item C, and  
24 ~~subpart~~ 12; ~~or~~

25 **[In subitem (2), the MPCA extends the range of applicable rules to include the**  
26 **existing air emission standards in parts 7045.0647 and 7045.0648 and new air**  
27 **emission standards being adopted in part 7045.0645. This provision corresponds to**  
28 **40 CFR 262.34(a)(1)(ii). This change relates to required RCRA Amendments 154,**  
29 **154-1.8a, 154-5.2: “Consolidated Organic Air Emission Standards for Tanks, Surface**  
30 **Impoundments, and Containers.” Further information supporting this amendment**  
31 **can be found at 59 FR 62896-62953, December 6, 1994; 61 FR 4903-4916, February 9,**  
32 **1996; and 61 FR 59932-59997, November 25, 1996. Subsequent changes relate to**  
33 **required RCRA Amendment 177: “Organic Air Emission Standards: Clarification**  
34 **and Technical Amendments,” as supported at 64 FR 3382, January 21, 1999.]/**

35 (3) for wood preserving operations on drip pads, provided the generator  
36 complies with parts 7045.0594, subpart 2;  
37 7045.0596, subpart 3;  
38 and 7045.0644 and maintains records containing a description of procedures that will be followed to ensure  
39 that all wastes are removed from drip pads and associated collection systems at least once  
40 every 90 days, and maintains documentation of the quantities, dates, and times of each  
41 waste removal. ~~These~~ Records relating to drip pads must be maintained at the licensed  
42 site and must be easily available for agency inspection;

43 **[In item B, the MPCA makes minor changes in grammar and punctuation.]/**

44 *[For text of items C to F, see M.R.]*

45 G. the requirements of parts 7045.0558; 7045.0562, subparts 1 and 2; 7045.0566 to  
7045.0576; and ~~7045.1315, subpart 1, item D~~ Code of Federal Regulations, title 40,  
section 268.7(a)(5), as incorporated in part 7045.1390, are fulfilled regarding personnel

1 training, ignitable, reactive, or incompatible waste, preparedness and prevention,  
2 contingency planning, and waste analysis for restricted wastes.

3 **[In item G, the MPCA replaces a citation to a repealed rule with the corresponding**  
4 **federal regulation as incorporated by reference. This is based on RCRA Amendment**  
5 **183.4: “Land Disposal Restrictions Phase IV -- Technical Corrections,” which**  
6 **corresponds to 40 CFR 262.34(a)(4). Further information can be found at 64 FR**  
7 **56469-56472, October 20, 1999.]//**

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

9 Subp. 5. **Small quantity generator.** A small quantity generator may accumulate up to  
10 3,000 kilograms of hazardous waste that is not acute hazardous waste on site without a  
11 permit or without having interim status if:

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

13 B. the waste is placed in containers which meet the standards of part 7045.0270,  
14 subpart 4, and are managed in accordance with parts 7045.0594, subpart 2; 7045.0596,  
15 subpart 3; and 7045.0626, subparts 1 to 8; in tanks provided the generator complies with  
16 the requirements of parts 7045.0594, subpart 2; 7045.0596, subpart 3; and 7045.0629; or  
17 for wood preserving operations on drip pads, provided the generator complies with parts  
18 7045.0594, subpart 2; 7045.0596, subpart 3; and 7045.0644 and maintains records  
19 containing a description of procedures that will be followed to ensure that all wastes are  
20 removed from drip pads and associated collection systems at least once every 180 days,  
21 and maintains documentation of the quantities, dates, and times of each waste removal.  
22 These records relating to drip pads must be maintained at the licensed site and must be  
23 easily available for agency inspection;

24 **[In item B, the MPCA specifies that a generator can accumulate waste in containers**  
25 **under certain conditions, but that the air emission standards for containers being**  
26 **adopted in this rulemaking in part 7045.0626, subpart 9, do not apply to the**  
27 **accumulation of waste in containers by small quantity generators. This amendment**  
28 **corresponds to 40 CFR 262.34(d)(2), and is based on required RCRA Amendment**  
29 **154-1.8a: “Consolidated Organic Air Emission Standards for Tanks, Surface**  
30 **Impoundments, and Containers.” Further information regarding this amendment**  
31 **can be found at 59 FR 62896-62953, December 6, 1994.]//**

32 *[For text of items C to F, see M.R.]*

33 G. the generator meets the requirements of parts 7045.0566, relating to  
34 preparedness and prevention; 7045.0568, relating to the arrangements with local  
35 authorities for emergencies; and ~~7045.1315, subpart 1, item D~~ Code of Federal  
36 Regulations, title 40, section 268.7(a)(5), as incorporated in part 7045.1390, relating to  
37 waste analysis for restricted wastes; and

38 **[In item G, the MPCA replaces a citation to a repealed Rule with a citation to the**  
39 **corresponding federal rule incorporated by reference. This amendment corresponds**  
40 **to 40 CFR 262.34(d)(4), and is based on required RCRA Amendment 179.5: “Land**  
41 **Disposal Restrictions Phase IV -- Technical Corrections and Clarifications to**  
42 **Treatment Standards.” Further information regarding this amendment can be**  
43 **found at 64 FR 25408-25417, May 11, 1999.]//**

44 *[For text of item H, see M.R.]*

1 Subp. 6. **Very small quantity generator.** A very small quantity generator may  
2 accumulate up to 1,000 kilograms of hazardous waste that is not acute hazardous waste  
3 on site without a permit or without having interim status if:

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

5 B. the waste is placed in containers which meet the standards of part 7045.0270,  
6 subpart 4, and are managed in accordance with parts 7045.0594, subpart 2; 7045.0596,  
7 subpart 3; and 7045.0626, subparts 1 to 8; in tanks provided the generator complies with  
8 the requirements of parts 7045.0594, subpart 2; 7045.0596, subpart 3; and 7045.0629; or  
9 for wood preserving operations on drip pads, provided the generator complies with parts  
10 7045.0594, subpart 2; 7045.0596, subpart 3; and 7045.0644 and maintains records  
11 containing a description of procedures that will be followed to ensure that all wastes are  
12 removed from drip pads and associated collection systems at least once every 180 days,  
13 and maintains documentation of the quantities, dates, and times of each waste removal.  
14 These records relating to drip pads must be maintained at the licensed site and must be  
15 easily available for agency inspection;

16 **[In item B, the MPCA adds a reference to part 7045.0626, subparts 1-8 to make it**  
17 **clear that very small quantity generators do not have to meet the air emission**  
18 **standards for containers in subpart 9. This change is not based on federal language**  
19 **because the EPA does not regulate generators that Minnesota refers to as very small**  
20 **quantity generators. In adopting this provision, Minnesota continues to apply the**  
21 **same requirements to very small quantity generators who accumulate waste in**  
22 **containers as it applies to small quantity generators in subpart 5, item B above.]//**

23 *[For text of items C to H, see M.R.]*

24 Subp. 7. **Acute hazardous waste accumulation.** A small quantity generator or a very  
25 small quantity generator who generates acute hazardous waste may accumulate that waste  
26 on site indefinitely until one kilogram of acute hazardous waste or 100 kilograms of  
27 residue, contaminated soil, water, or other debris resulting from the cleanup of a spill of  
28 an acute hazardous waste into or on any land or water, is accumulated. From the date the  
29 applicable limit is reached, the entire quantity of waste must be treated on site in  
30 compliance with part 7045.0211 or shipped off site in compliance with part 7045.0208  
31 within 90 days. A generator accumulating wastes under this subpart must meet the  
32 requirements in items A and B. that is not exempt under subpart 8 must comply with  
33 items A and B:

34 **[In subpart 7, the MPCA simplifies existing language and clarifies that a small or very**  
35 **small quantity generator accumulating acute hazardous waste is subject to this**  
36 **subpart, except that acute hazardous waste accumulated under the satellite**  
37 **accumulation requirements of subpart 8 is exempt from the requirements of subpart**  
38 **7.]//**

39 A. For the period preceding the accumulation start date, A generator may  
40 accumulate acute hazardous waste on site indefinitely in quantities equal to or less than  
41 one kilogram of acute hazardous waste and equal to or less than 100 kilograms of residue,  
42 contaminated soil, water, or other debris resulting from cleaning up spilled acute  
43 hazardous waste. The generator must comply with subpart 5, items B to H.

44 **[In Item A, the MPCA revises existing rule language to clarify that, up to a certain**  
45 **threshold, a small quantity generator or a very small quantity generator may**  
46 **accumulate acute hazardous waste indefinitely. Also, up to that threshold, the**

1 requirements of subpart 5, items B to H apply. If this waste totals equal to or less  
2 than the mass limits specified in subpart 7, then the generator, if a very small quantity  
3 generator, must meet the planning and preparedness requirements applicable to a  
4 small quantity generator of hazardous waste contained in subpart 5. The MPCA  
5 believes that the changes to this item are not changes to the intended meaning or  
6 application of the rules, but are reasonable clarifications of the original intent of this  
7 item, which was intended to apply requirements equivalent to those contained in 40  
8 CFR 261.5(f).]//

9 B. ~~For the period following the accumulation start date, the generator~~ A generator  
10 who accumulates on site more than one kilogram of acute hazardous waste, or more than  
11 100 kilograms of residue, contaminated soil, water, or other debris resulting from  
12 cleaning up spilled acute hazardous waste must comply with subpart 1.

13 [In Item B, the MPCA revises existing rule language to clarify that the requirements  
14 of subpart 1 apply to generators of acute hazardous waste when a certain quantity  
15 threshold is reached. If the generator accumulates acute hazardous waste quantities  
16 that exceed the limits specified in subpart 7, item B, regardless of generator size, they  
17 must meet all requirements applicable to a large quantity generator of hazardous  
18 waste contained in subpart 1. The MPCA believes the changes to this item are not  
19 significant changes to the intended meaning or application of the rules, but are  
20 reasonable clarifications of the original intent of this item, which was intended to  
21 apply requirements equivalent to those contained in 40 CFR 261.5(e).]//

22 Subp. 8. **Satellite accumulation.** Items A to D apply to all generators of hazardous  
23 waste.

24 A. A generator may, without a permit or interim status and without complying with  
25 subparts 1 to 7, accumulate as much as 55 gallons of hazardous waste or one quart of  
26 acute hazardous waste listed in part 7045.0135, ~~subparts 2 and 4, item E~~ subpart 1a, items  
27 B to D, per waste stream per each point of generation provided the generator complies  
28 with items B to D.

29 [In item A, first, the MPCA corrects citations to rules that were revised elsewhere in  
30 this rulemaking. The rule formerly referred to part 7045.0135, subparts 2 and 4, item  
31 E. Subpart 2 was the list of hazardous waste from non-specific sources and subpart 4,  
32 item E, was the list of discarded chemical products, off specification species,  
33 containers and spill residues. Due to the revision of part 7045.0135, subparts 2 and 4  
34 are now replaced by subpart 1a, items B and D, respectively. Part 7045.0135, subpart  
35 3, the list of wastes from specific sources, is now represented by subpart 1a, item C.  
36 This was not originally included here because there were no acutely toxic wastes on  
37 that list. Now, the MPCA proposes to replace the former references to part 7045.0135,  
38 subparts 2 and 4, item E, with a reference to part 7045.0135, subpart 1a, items B to D  
39 (newly including item C, "Hazardous Waste from Specific Sources"). The MPCA  
40 believes that it is just as reasonable to allow the satellite accumulation of hazardous  
41 waste from the list of specific sources as it is from the list of non-specific sources.  
42 Although there are currently no acutely hazardous wastes on the specific sources list,  
43 the MPCA anticipates that this list could change in the future to include such wastes  
44 and intends that, if so, their accumulation would be allowed at satellite locations. This  
45 is different than the federal satellite accumulation provision, but the MPCA believes  
46 that it is a reasonable addition to the State rules. Note that, as discussed in Part IV of

1 this Statement, the MPCA is adopting the lists of hazardous wastes prospectively by  
2 reference so that future changes to the lists will become effective in Minnesota without  
3 rulemaking. Adding a reference to part 7045.0135, subpart 1a, item C here will  
4 accommodate future changes to that list. Another difference is that part 7045.0135,  
5 subpart 1a, item D, is equivalent to 40 CFR 261.33(a-f). The federal rule equivalent to  
6 this subpart 8, only refers to section 261.33(e). The MPCA's incorporation of 40 CFR  
7 261.33 is too coarse to make that specific of reference; however, looking at the  
8 material in the range encompassed by 40 CFR 261.33(a-f), the MPCA believes it is  
9 harmless to reference the entire section 261.33.//

10 *[For text of items B to D, see M.R.]*

11 *[For text of subps 9 and 10, see M.R.]*

12 Subp. 11. **Accumulation requiring a permit.** A large quantity generator who  
13 accumulates hazardous waste for more than 90 days, or a small quantity generator who  
14 accumulates more than 3,000 kilograms of hazardous waste at any time, is an operator of  
15 a storage facility and is subject to the requirements of parts 7045.0450 to 7045.0642  
16 7045.0651 and the agency's permitting procedures in chapter 7001 and parts 7023.9000  
17 to 7023.9050 unless the generator has been granted a time extension under subpart 10.

18 **[In subpart 11, the MPCA corrects a citation to a range of rules that changed as parts**  
19 **were added. The MPCA also deletes a citation to chapter 7023 that was repealed in a**  
20 **prior rulemaking.]//**

21 *[For text of subp 12, see M.R.]*

## 23 7045.0294 RECORD KEEPING.

24 *[For text of subps 1 to 3, see M.R.]*

25 Subp. 3a. **Training records.** A generator must keep training records required under  
26 part 7045.0292, subparts 1, item G, and 5, item ~~G~~ H, subitem (3), on current personnel  
27 until closure of the licensed site. Training records on former employees must be kept for  
28 at least three years from the date of the employee's termination. Personnel training  
29 records may accompany personnel transferred within the same company.

30 **[In subpart 3a, the MPCA corrects an error in the citation. The rule requires that**  
31 **generators keep records related to employee training required in part 7045.0292,**  
32 **subpart 5, item G. This citation is incorrect because the training and recording**  
33 **keeping requirement is specified in item H, subitem (3).]//**

34 *[For text of subps 4 and 5, see M.R.]*

## 36 7045.0300 ADDITIONAL REPORTING.

37 The commissioner, when necessary to determine compliance with the requirements of  
38 this chapter, may require generators to furnish additional reports concerning the  
39 quantities and disposition of waste identified or listed in parts ~~7045.0100~~ 7045.0102 to  
40 7045.0143 7045.0155.

41 **[In part 7045.0300, the MPCA corrects a citation to a range of rules that changed as**  
42 **parts were added. In addition, the MPCA is correcting an error in the previous range**  
43 **of rules. There is no part 7045.0100, this section of the rules starts at part**  
44 **7045.0102.]//**

1

2 **7045.0302 INTERNATIONAL SHIPMENTS; SPECIAL CONDITIONS.**

3 *[For text of subps 1 and 1a, see M.R.]*

4 Subp. 2. **Notification.** When shipping hazardous waste outside the state of Minnesota  
5 to a foreign country the primary exporter must notify the commissioner and the EPA of  
6 an intended export before the waste is scheduled to leave the United States. A complete  
7 notification should be submitted 60 days before the initial shipment is intended to be  
8 shipped off site. This notification may cover export activities extending over a 12-month  
9 or lesser period.

10 The notification must be sent to the commissioner at 520 Lafayette Road, Saint Paul,  
11 Minnesota 55155-4194, and to the Office of Enforcement and Compliance Assurance,  
12 Office of Federal Activities, International Compliance Assurance Division (2254A),  
13 Environmental Protection Agency, 1200 Pennsylvania Avenue N.W., Washington, DC  
14 20460. Hand-delivered notifications must be sent to the Office of Enforcement and  
15 Compliance Assurance, Office of Federal Activities, International Compliance Assurance  
16 Division (2254A), Environmental Protection Agency, Ariel Rios Building, 12th Street  
17 and Pennsylvania Avenue N.W., Washington, DC 20460. In both cases, the following  
18 must be prominently displayed on the front of the envelope: "Attention: Notification of  
19 Intent to Export."

20 The primary exporter must provide the commissioner and the EPA with written  
21 renotification of any changes to the notification, except for changes to the telephone  
22 number, decreases in the quantity indicated in item B, subitem (3), and changes in the  
23 means of transport in item B, subitem (5). The waste shall not be shipped until the  
24 primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving  
25 country's consent to the changes.

26 The notification must be in writing, signed by the primary exporter, and include the  
27 following information:

28 A. name, mailing address, telephone number, and identification number of the  
29 primary exporter; and

30 B. by consignee, for each hazardous waste type:

31 (1) a description of the hazardous waste and the EPA hazardous waste number  
32 (from Code of Federal Regulations, title 40, part 261, subpart C or D, as amended),  
33 United States Department of Transportation proper shipping name, hazard class, ~~and~~  
34 identification number (UN/NA), and packing group for each hazardous waste as  
35 identified in Code of Federal Regulations, title 49, parts 171 to 177, as amended;

36 **[In item B, the MPCA follows advice from Minnesota's Department of**  
37 **Transportation to revise language to conform with amended U.S. Department of**  
38 **Transportation regulations.]//**

39 *[For text of subitems (2) to (9), see M.R.]*

40 *[For text of subps 3 to 7, see M.R.]*

41

42 **7045.0365 TRANSFER FACILITY REQUIREMENTS.**

43 Subpart 1. **Applicability.** A transporter who stores manifested shipments of hazardous  
44 waste in containers meeting the requirements of part 7045.0270, subpart 4, at a transfer

1 facility for a period of ten days or fewer is not subject to regulation under parts  
2 7045.0450 to ~~7045.0642~~ 7045.0651 and ~~7045.1300 to 7045.1380~~ 7045.1390, and a  
3 hazardous waste facility permit with respect to the storage of those wastes. The owner or  
4 operator must notify the commissioner in writing of his or her activity.

5 **[In subpart 1, the MPCA corrects a citation to a range of rules that changed as parts  
6 were added. The MPCA also provides the replacement citation for a repealed range  
7 of rules.]//**

8 *[For text of subps 2 and 3, see M.R.]*  
9

## 10 **7045.0371 TRANSPORTATION OF HAZARDOUS WASTE.**

11 Hazardous waste shall be transported in accordance with all applicable requirements  
12 of Minnesota Statutes, sections 221.033 and ~~221.034~~ 221.0341, and with ~~221.035~~  
13 221.0355 if applicable, and Code of Federal Regulations, title 49, parts 171 to ~~179~~ 199, as  
14 amended.

15 **[In part 7045.0371, the MPCA corrects citations to sections of Minnesota Statutes that  
16 were repealed and provides citations to the correct replacement sections. The MPCA  
17 also corrects one of several occurrences of a citation to a range of federal  
18 transportation regulations that changed as the U.S. Department of Transportation  
19 added a part.]//**

## 21 **7045.0395 HAZARDOUS WASTE DISCHARGES.**

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

23 Subp. 5. **Reporting.** Any air, rail, highway, or water transporter who has discharged  
24 hazardous waste must:

25 A. report in writing as required by Code of Federal Regulations, title 49, section  
26 171.16, as amended, to the ~~Director, Office of Hazardous Materials Regulations,~~  
27 Materials Transportation Bureau Information Systems Manager, PHH-63, Pipeline and  
28 Hazardous Materials Safety Administration, Department of Transportation, Washington,  
29 D.C. 20590-0001, or submit an electronic hazardous materials incident report to the  
30 Information Systems Manager, DHM-63, Pipeline and Hazardous Materials Safety  
31 Administration, Department of Transportation, Washington, D.C. 20590-0001 at  
32 <http://hazmat.dot.gov>;

33 **[In item A, the MPCA follows advice from Minnesota's Department of  
34 Transportation to revise language to conform with amended U.S. Department of  
35 Transportation regulations.]//**

36 *[For text of items B and C, see M.R.]*  
37

## 38 **7045.0450 FACILITIES GOVERNED BY FACILITY STANDARDS.**

39 Subpart 1. General requirements.

40 *[For text of items A to C, see M.R.]*

41 D. Parts 7045.0450 to 7045.0551 apply to the owners and operators of all facilities  
42 that treat, store, or dispose of hazardous waste referred to in ~~parts 7045.1300 to~~  
43 7045.1380 part 7045.1390.



1 **[In item D, the MPCA provides the replacement citation for a repealed range of rules.**  
2 **The MPCA labels this paragraph as item D.]//**

3 *[For text of item E, see M.R.]*

4 Subp. 2. **Relationship to interim status standards.** A facility owner or operator who  
5 has fully complied with the requirements for interim status under part 7045.0554 shall  
6 comply with parts 7045.0552 to ~~7045.0642~~ 7045.0651 in lieu of parts 7045.0450 to  
7 7045.0551 until final administrative disposition of the permit application is made. The  
8 treatment, storage, or disposal of hazardous waste is prohibited except in accordance with  
9 a permit and except for the extent to which parts 7045.0552 to ~~7045.0642~~ 7045.0651  
10 provide for the continued operation of an existing facility which meets certain conditions  
11 until final administrative disposition of the owner's or operator's permit application is  
12 made, except as provided under parts 7045.0485, 7045.0545, and 7045.0546.

13 **[In subpart 2, the MPCA corrects several citations to a range of rules that changed as**  
14 **parts were added.]//**

15 Subp. 3. **Exemptions.** The requirements of parts 7045.0450 to 7045.0551 do not apply  
16 to the following specific waste management units, facilities, or activities, although all  
17 other waste management activities of the owner or operator may be regulated:

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

19 E. an elementary neutralization unit, a pretreatment unit, or a wastewater treatment  
20 unit, but only if the unit does not receive hazardous waste from generators other than the  
21 owner or operator of the unit, provided that if the owner or operator is diluting hazardous  
22 ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in Code of  
23 Federal Regulations, title 40, section 268.40, Table of Treatment Standards for  
24 Hazardous Wastes, as incorporated in part 7045.1390) or reactive (D003) waste to  
25 remove the characteristic before land disposal, the owner or operator must comply with  
26 part 7045.0456, subpart 2;

27 **[In item E, the MPCA adopts qualifying conditions to an existing exemption for**  
28 **certain types of treatment units. The conditions only apply to those units treating**  
29 **ignitable or reactive waste, and reference existing required precautions for the**  
30 **management of ignitable and reactive wastes. The additional conditions correspond**  
31 **to requirements in 40 CFR 264.1(g)(6) and are derived from required RCRA**  
32 **Amendment 124.2: "Land Disposal Restrictions for Ignitable and Corrosive**  
33 **Characteristic Wastes Whose Treatment Standards Were Vacated." Further**  
34 **information about the amendments is found in 58 FR 29860-29887, May 24, 1993.**  
35 **The additions also correspond to requirements from RCRA Amendment 137.5 and**  
36 **137.11: "Universal Treatment Standards and Treatment Standards for Organic**  
37 **Toxicity Characteristic Wastes and Newly Listed Wastes" = 40 CFR 264.1(g)(6).**  
38 **Further information about these amendments is found in 59 FR 47982-48110,**  
39 **September 19, 1994, as amended at 60 FR 242-302, January 3, 1995. While the**  
40 **language being added at this time is essentially the same as the federal regulations**  
41 **(except for the substitution of cross references to State rule parts and the removal of a**  
42 **reference to the definitions part of the rules), this exclusion remains more restrictive**  
43 **than the federal counterpart because the existing language restricts this exemption to**  
44 **waste generated onsite. This is reasonable as the MPCA has consistently not allowed**  
45 **accepting waste from off-site at unpermitted facilities. This is an existing difference**  
46 **and is not being changed as a result of this rulemaking.]//**

1 *[For text of items F to I, see M.R.]*

2 J. (1) except as provided in subitem (2), treatment or containment activities during  
3 immediate response to any of the following situations: a discharge of a hazardous waste,  
4 an imminent and substantial threat of a discharge of hazardous waste, or a discharge of a  
5 material which, when discharged, becomes a hazardous waste;

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

7 (3) a person who is covered by subitem (1) and who continues or initiates  
8 hazardous waste treatment or containment activities after the immediate response is over  
9 is subject to all applicable requirements of parts 7045.0450 to ~~7045.0544~~ 7045.0551 and  
10 the agency's permitting procedures for those activities;

11 **[In subitem (3), the MPCA corrects a citation to a range of rules that changed as parts**  
12 **were added.]//**

13 K. treatment of hazardous waste by a generator in the generator's accumulation  
14 tanks or containers in accordance with part 7045.0292. If the treatment involves  
15 evaporation of aqueous waste or polymerization of polyester or other chemical fixation  
16 treatment processes in open containers, the generator is exempt from parts 7045.0450 to  
17 ~~7045.0544~~ 7045.0551, but before beginning the treatment process must submit to the  
18 commissioner the information required under part 7045.0539, subpart 2, items A to C,  
19 that is relevant to the treatment activity and must be notified by the commissioner that the  
20 treatment activity is approved. The commissioner shall approve the treatment activity if  
21 the commissioner finds that the treatment activity will not endanger human health and the  
22 environment; or

23 **[In item K, the MPCA corrects a citation to a range of rules that changed as parts**  
24 **were added.]//**

25 *[For text of item L, see M.R.]*

26  
27 **7045.0452 GENERAL FACILITY STANDARDS.**

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

29 Subp. 5. **General inspection requirements.** General inspection requirements include  
30 the following:

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

32 C. The frequency of inspection may vary for the items on the schedule. However, it  
33 ~~must~~ the frequency must be based on the rate of possible deterioration of the equipment  
34 and the probability of an environmental or human health incident if the deterioration ~~or~~  
35 ~~malfunctions,~~ malfunction, or any operator error goes undetected between inspections.  
36 Areas subject to spills, such as loading and unloading areas, must be inspected daily  
37 when in use. At a minimum, the inspection schedule must include the terms and  
38 frequencies called for in parts 7045.0526, subpart 5; 7045.0528, subparts 4 and 7;  
39 7045.0532, subpart 5; 7045.0534, subpart 6; 7045.0536, subpart 6; 7045.0538, subpart 5;  
40 7045.0539, subpart 3; and 7045.0542, subpart 7; and the process vent ~~and,~~ equipment  
41 leak, and tank, surface impoundment, and container standards in Code of Federal  
42 Regulations, title 40, sections 264.1033, 264.1052, 264.1053, ~~and~~ 264.1058, as amended,  
43 and sections 264.1083 to 264.1089, as incorporated in part 7045.0540, where applicable.  
44 The inspection schedule must be submitted with the permit application. The  
45 commissioner shall evaluate the schedule along with the rest of the application to ensure

1 that it adequately protects human health and the environment. As part of this review, the  
2 commissioner may modify or amend the schedule as necessary.

3 **[In the first sentences of item C, the MPCA simply revised existing language to clarify**  
4 **the intended meaning. These changes do not alter the effect of the rule and are not**  
5 **based on federal amendments. The MPCA also adopts references to newly added**  
6 **requirements addressing air emissions from tanks, surface impoundments and**  
7 **containers that correspond to amendments to 40 CFR 264.15(b)(4). These changes**  
8 **are from required RCRA Amendment 154-1.12: “Consolidated Organic Air Emission**  
9 **Standards for Tanks, Surface Impoundments, and Containers.” Further information**  
10 **about the amendment can be found at 59 FR 62896-62953, December 6, 1994; as**  
11 **amended by 60 FR 26828-26829, May 19, 1995; 60 FR 50426-50430, September 29,**  
12 **1995; 60 FR 56952-56954, November 13, 1995; 61 FR 4903-4916, February 9, 1996; 61**  
13 **FR 28508-28511, June 5, 1996; and 61 FR 59932-59997, November 25, 1996. This**  
14 **amendment also adopts language from required RCRA Amendment 163.2: “Organic**  
15 **Air Emission Standards for Tanks, Surface Impoundments, and Containers;**  
16 **Clarification and Technical Amendment” = 40 CFR 264.15(b)(4). Further**  
17 **information about the amendment can be found at 62 FR 64636-64671, December 8,**  
18 **1997.]//**

19 *[For text of items D and E, see M.R.]*  
20

## 21 **7045.0458 WASTE ANALYSIS REQUIREMENTS.**

22 Subpart 1. **Waste analysis.** Waste analysis procedures are listed in items A to D.

23 A. Before an owner or operator treats, stores, or disposes of any hazardous waste,  
24 or nonhazardous waste if applicable under part 7045.0488, subpart 2a, the owner or  
25 operator shall obtain a detailed chemical and physical analysis of a representative sample  
26 of the waste. This analysis must contain all the information which must be known in  
27 order to treat, store, or dispose of the waste in accordance with the requirements of parts  
28 7045.0450 to 7045.0551 and ~~7045.1300 to 7045.1380~~ 7045.1390, or with the conditions  
29 of a permit issued under the agency's permitting procedures.

30 **[In item A, the MPCA provides the replacement citation for a repealed range of**  
31 **rules.]//**

32 B. The analysis may include data developed under parts 7045.0102 to ~~7045.0143~~  
33 7045.0155 and existing published or documented data on the hazardous waste or on  
34 hazardous waste generated from similar processes, including data obtained from the  
35 generator.

36 **[In item B, the MPCA corrects a citation to a range of rules that changed as parts**  
37 **were added.]//**

38 *[For text of items C and D, see M.R.]*

39 Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a  
40 written waste analysis plan which describes the procedures that will be used to comply  
41 with subpart 1. The owner or operator shall keep this plan at the facility. The plan must  
42 specify:

43 *[For text of items A to E, see M.R.]*

44 F. where applicable, the methods that will be used to meet the additional waste  
45 analysis requirements for specific waste management methods as specified in parts

1 7045.0456; 7045.0538, subpart 10; 7045.0542, subpart 2; and ~~7045.1315~~ Code of Federal  
2 Regulations, title 40, section 268.7, as incorporated in part 7045.1390; and the process  
3 vent ~~and~~, equipment leak, and tank, surface impoundment, and container test methods  
4 and procedures in Code of Federal Regulations, title 40, sections 264.1034(d) ~~and~~,  
5 264.1063(d), as amended, and section 264.1083, as incorporated in part 7045.0540;

6 **[In item F, the MPCA amends the rules to replace a reference to a land disposal**  
7 **restriction requirement, which is being repealed, with a citation to that same**  
8 **requirement in the federal regulations. The amendment refers directly to the federal**  
9 **counterpart because, in part 7045.1390, where this information is being incorporated**  
10 **by reference, the incorporation does not provide the necessary level of specificity to**  
11 **identify the applicable section. This amendment corresponds to 40 CFR 264.13(b)(6),**  
12 **and is from required RCRA Amendment 154-1: “Consolidated Organic Air Emission**  
13 **Standards for Tanks, Surface Impoundments, and Containers.” Further information**  
14 **about this amendment can be found at 59 FR 62896-62953, December 6, 1994, as**  
15 **amended by 61 FR 59932-59997, November 25, 1996.]//**

16 G. for off-site facilities, the waste analysis plan must also specify the procedures  
17 ~~which that~~ will be used to inspect and, if necessary, analyze each movement of hazardous  
18 waste received at the facility to ensure that it matches the identity of the waste designated  
19 on the accompanying manifest or shipping paper. The plan must describe:

20 **[In item G, the MPCA makes a clarifying change for grammatical purposes.]//**

21 (1) the procedures ~~which that~~ will be used to determine the identity of each  
22 movement of waste managed at the facility; ~~and~~

23 **[In subitem (1), the MPCA makes a grammatical word change. The MPCA also**  
24 **removes the word “and” to accommodate this expanded list.]//**

25 (2) the sampling method ~~which that~~ will be used to obtain a representative  
26 sample of the waste to be identified, if the identification method includes sampling. The  
27 waste analysis plan must be submitted with the permit application; and

28 **[In subitem (2), the MPCA makes a clarifying change for grammatical purposes. The**  
29 **MPCA also adds the word “and” to accommodate this expanded list.]//**

30 (3) the procedure that the owner or operator of an off-site landfill receiving  
31 containerized hazardous waste will use to determine whether a hazardous waste generator  
32 or treater has added a biodegradable sorbent to the waste in the container;

33 **[In subitem (3), the MPCA requires the plan to contain information about the use of**  
34 **sorbents to eliminate free liquid in waste being landfilled. This requirement**  
35 **corresponds to 40 CFR 264.13(c)(3) and is based on required RCRA Amendment**  
36 **118.2: “Liquids in Landfills II.” Further information regarding this amendment can**  
37 **be found at 57 FR 54452-54461, November 18, 1992.]//**

38 H. for surface impoundments exempted from the land disposal restrictions under  
39 ~~part 7045.1310~~ Code of Federal Regulations, title 40, section 268.4, as incorporated in  
40 part 7045.1390, the procedures and schedules for:

41 (1) the sampling of impoundment contents;

42 (2) the analysis of test data; and

43 (3) the annual removal of residues which are not delisted under part 7045.0075,  
44 subpart 2, or which exhibit a characteristic of hazardous waste under part 7045.0131, and  
45 either do not meet the treatment standards of ~~parts 7045.1350 to 7045.1360~~ Code of  
46 Federal Regulations, title 40, sections 268.40 to 268.42, as incorporated in part

1 7045.1390, or, where no treatment standards have been established, such residues are  
2 prohibited from land disposal under ~~parts 7045.1320 to 7045.1333~~ Code of Federal  
3 Regulations, title 40, sections 268.30 to 268.35, as incorporated in part 7045.1390, or  
4 RCRA section 3004(d); and

5 **[In item H, the MPCA replaces repealed cites with references to corresponding**  
6 **federal land disposal restriction requirements that were incorporated by reference in**  
7 **part 7045.1390 of this rule. The MPCA cites directly to the appropriate federal**  
8 **provisions because the incorporation by reference of the federal land disposal**  
9 **restrictions in part 7045.1390 does not provide a sufficient level of specificity to**  
10 **identify the particular provisions being addressed. The MPCA also adds “and” to**  
11 **accommodate this expanded list.】//**

12 I. for owners and operators seeking an exemption to the air emission standards of  
13 part 7045.0540 in accordance with Code of Federal Regulations, title 40, section  
14 264.1082, as incorporated in part 7045.0540:

15 (1) if direct measurement is used for the waste determination, the procedures  
16 and schedules for waste sampling and analysis and the results of the analysis of test data  
17 to verify the exemption; and

18 (2) if knowledge of the waste is used for the waste determination, any  
19 information prepared by the facility owner or operator or by the generator of the  
20 hazardous waste, if the waste is received from off site, that is used as the basis for  
21 knowledge of the waste.

22 **[In item I, the MPCA is adding requirements that apply to waste analysis at facilities**  
23 **that are subject to the air emission standards being added in this rulemaking. This**  
24 **requirement corresponds to 40 CFR 264.13(b)(8) and is based on required RCRA**  
25 **Amendment 154-1.11: “Consolidated Organic Air Emission Standards for Tanks,**  
26 **Surface Impoundments, and Containers.” Further information about the air**  
27 **emission standards can be found at 59 FR 62896-62953, December 6, 1994, as**  
28 **amended by 61 FR 4903-4916, February 9, 1996. The MPCA has slightly revised the**  
29 **language of the federal counterpart by removing an extraneous “the” to clarify the**  
30 **intended meaning.】//**

## 32 **7045.0478 OPERATING RECORD.**

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

34 Subp. 3. **Record information.** The information in items A to T must be recorded, as it  
35 becomes available, and maintained in the operating record until closure of the facility.

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

37 C. A description and the quantity of each hazardous waste received, and the  
38 method and date of treatment, storage, or disposal at the facility in accordance with the  
39 record-keeping instructions in Code of Federal Regulations, title 40, part 264, Appendix I,  
40 as incorporated in part 7045.0543.

41 **[In item C, the MPCA adds a reference to recordkeeping instructions that must be**  
42 **followed. This change corresponds to provisions in 40 CFR 264.73(b)(1).】//**

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

44 E. Records and results of waste analyses and waste determinations performed as  
45 specified in parts 7045.0456; 7045.0458; 7045.0538, subpart 10; and 7045.0542,

1 subpart 2, ~~7045.1310, and 7045.1315~~ and Code of Federal Regulations, title 40, sections  
2 264.1034 and 264.1063, as amended, and sections 264.1083, 268.4(a), and 268.7, as  
3 incorporated in part 7045.0540 or 7045.1390; and the process vent and equipment leak  
4 test methods and procedures in Code of Federal Regulations, title 40, sections 264.1034  
5 and 264.1063, as amended.

6 **[In item E, the MPCA is adding requirements that apply to the operating records at**  
7 **facilities that are subject to the air emission standards being added in this rulemaking.**  
8 **This requirement corresponds to 40 CFR 264.74(b)(3); and is based on required**  
9 **RCRA Amendment 154-1.13: “Consolidated Organic Air Emission Standards for**  
10 **Tanks, Surface Impoundments, and Containers.” Further information about the air**  
11 **emission standards can be found at 59 FR 62896-62953, December 6, 1994. The**  
12 **MPCA also replaces citations to repealed State rules with citations to equivalent**  
13 **federal rules as incorporated by reference.//**

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

15 H. Monitoring, testing, or analytical data and corrective action where required by  
16 parts 7045.0461; 7045.0484; 7045.0528, subparts 2, 4, and 7; 7045.0532, subparts 4a, 4b,  
17 and 5; 7045.0534, subparts 4a, 5, 5a, and 6; 7045.0536, subparts 5, 6, and 8; 7045.0538,  
18 subparts 4a, 5, 5a, and 6; 7045.0539, subpart 3; and 7045.0542, subpart 7; and the process  
19 vent ~~and~~, equipment leak, ~~and tank, surface impoundment, and container~~ test methods  
20 and procedures and record keeping requirements in Code of Federal Regulations, title 40,  
21 sections 264.1034(c) to (f), 264.1035, 264.1063(d) to (i), and 264.1064, as amended, and  
22 sections 264.1082 to 264.1090, as incorporated in part 7045.0540.

23 **[In item H, the MPCA is adding requirements that apply to the operating record at**  
24 **facilities that are subject to the air emission standards being added in this rulemaking.**  
25 **This requirement corresponds to 40 CFR 264.73(b)(6), and is based on required**  
26 **RCRA Amendment 154-1.13: “Consolidated Organic Air Emission Standards for**  
27 **Tanks, Surface Impoundments, and Containers.” Further information about the air**  
28 **emission standards can be found at 59 FR 62896-62953, December 6, 1994. This**  
29 **amendment also addresses changes based on required RCRA Amendment 163.3:**  
30 **“Organic Air Emission Standards for Tanks, Surface Impoundments, and**  
31 **Containers; Clarification and Technical Amendment.” Further information about**  
32 **these amendments can be found at 62 FR 64636-64671, December 8, 1997.//**

33 *[For text of items I to K, see M.R.]*

34 L. The certification in item K signed by the owner or operator of the facility or an  
35 authorized representative.

36 **[In item L, the MPCA clarifies where to find the referenced certification.//**

37 M. Records of the quantities and date of placement for each shipment of hazardous  
38 waste placed in land disposal units under an extension to the effective date of any land  
39 disposal restriction granted ~~under part 7045.0075, subpart 8~~ by the United States  
40 Environmental Protection Agency under Code of Federal Regulations, title 40, section  
41 268.5, a petition under part 7045.0075, subpart 9, or a certification under Code of Federal  
42 Regulations, title 40, section 268.8, as ~~amended~~ incorporated in part 7045.1390, and the  
43 applicable notice required of a generator under ~~part 7045.1315, subpart 1~~ Code of Federal  
44 Regulations, title 40, section 268.7(a), as incorporated in part 7045.1390.

45 **[In item M, the MPCA clarifies that any extensions to the effective date of land**  
46 **disposal restrictions may only be granted by the EPA. Throughout this rulemaking,**

1 the MPCA is replacing citations to repealed part 7045.0075, subpart 8, with the  
2 corresponding CFR citation. The reason for this change is that the case-by-case  
3 extensions to an effective date for applicable land disposal restrictions are only  
4 granted by the EPA, so the MPCA believes it is most reasonable to refer readers  
5 directly to those federal provisions. In item M, the MPCA also replaces a citation to  
6 repealed part 7045.1315, subpart 1, with a citation to equivalent 40 CFR 268.7(a), as  
7 incorporated by reference in part 7045.1390. This is necessary because part  
8 7045.1390 lacks the level of specificity to identify this exact incorporated federal  
9 provision.]]

10 N. For an off-site treatment facility, a copy of the notice, and the certification and  
11 demonstration, if applicable, required of the generator or the owner under Code of  
12 Federal Regulations, title 40, section 268.7(a)(1) or 268.8, as amended, or part 7045.1315,  
13 subpart 1, item A incorporated in part 7045.1390.

14 **[In item N, the MPCA replaces a citation to repealed part 7045.1315, subpart 1, item**  
15 **A, with a citation to equivalent 40 CFR 268.7(a)(1), as incorporated by reference in**  
16 **part 7045.1390. This is necessary because part 7045.1390 lacks the level of specificity**  
17 **to identify this exact incorporated federal provision.]]**

18 O. For an on-site treatment facility, the information contained in the notice, except  
19 the manifest number, and the certification and demonstration, if applicable, required of  
20 the generator or owner or operator under Code of Federal Regulations, title 40, section  
21 268.7(a)(1) or 268.8, as amended, or part 7045.1315, subpart 1, item A incorporated in  
22 part 7045.1390.

23 **[In item O, the MPCA replaces a citation to repealed part 7045.1315, subpart 1, item**  
24 **A, with a citation to equivalent 40 CFR 268.7(a)(1), as incorporated by reference in**  
25 **part 7045.1390. This is necessary because part 7045.1390 lacks the level of specificity**  
26 **to identify this exact incorporated federal provision.]**

27 P. For an off-site land disposal facility, a copy of the notice, and the certification  
28 and demonstration, if applicable, required of the generator or the owner or operator of a  
29 treatment facility under Code of Federal Regulations, title 40, ~~section~~ sections 268.7 and  
30 268.8, as amended, and part 7045.1315 incorporated in part 7045.1390, whichever is  
31 applicable.

32 **[In item P, the MPCA replaces a citation to repealed part 7045.1315, with a citation to**  
33 **equivalent 40 CFR 268.7, as incorporated by reference in part 7045.1390. This is**  
34 **necessary because part 7045.1390 lacks the level of specificity to identify this exact**  
35 **incorporated federal provision.]**

36 Q. For an on-site land disposal facility, the information contained in the notice  
37 required of the generator or owner or operator of a treatment facility under ~~part~~  
38 7045.1315 Code of Federal Regulations, title 40, section 268.7, as incorporated in part  
39 7045.1390, except for the manifest number, and the certification and demonstration, if  
40 applicable, required under Code of Federal Regulations, title 40, section 268.8, as  
41 amended incorporated in part 7045.1390, whichever is applicable.

42 **[In item Q, the MPCA replaces a citation to repealed part 7045.1315, with a citation**  
43 **to equivalent 40 CFR 268.7, and advises where sections of 40 CFR 268 are**  
44 **incorporated by reference in part 7045.1390. This is necessary because part**  
45 **7045.1390 lacks the level of specificity to identify this exact incorporated federal**  
46 **provision.]**

1 R. For an off-site storage facility, a copy of the notice, and the certification and  
2 demonstration if applicable, required of the generator or the owner or operator under  
3 Code of Federal Regulations, title 40, section 268.7 or 268.8, as amended, or part  
4 7045.1315 incorporated in part 7045.1390.

5 **[In item R, the MPCA replaces a citation to repealed part 7045.1315, with a citation to  
6 equivalent 40 CFR 268.7, as incorporated by reference in part 7045.1390. This is  
7 necessary because part 7045.1390 lacks the level of specificity to identify this exact  
8 incorporated federal provision.]**

9 S. For an on-site storage facility, the information contained in the notice, except the  
10 manifest number, and the certification and demonstration if applicable, required of the  
11 generator or the owner or operator under Code of Federal Regulations, title 40, section  
12 268.7 or 268.8, as amended, or part 7045.1315 incorporated in part 7045.1390.

13 **[In item S, the MPCA replaces a citation to repealed part 7045.1315, with a citation to  
14 equivalent 40 CFR 268.7, as incorporated by reference in part 7045.1390. This is  
15 necessary because part 7045.1390 lacks the level of specificity to identify this exact  
16 incorporated federal provision.]**

17 *[For text of item T, see M.R.]*  
18

## 19 **7045.0482 REQUIRED REPORTS.**

20 *[For text of subps 1 to 3, see M.R.]*

21 Subp. 4. **Additional reports.** In addition to submitting the manifest discrepancy report  
22 described in part 7045.0476, subpart 3, and the annual reports and the unmanifested  
23 waste reports described in subparts 2 and 3, the owner or operator shall also report to the  
24 commissioner:

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

26 C. as otherwise required by parts 7045.0484, 7045.0532 to 7045.0538; and the  
27 process vent and, equipment leak, and tank, surface impoundment, and container  
28 standards in Code of Federal Regulations, title 40, part 264, subparts AA and BB, as  
29 amended parts 7045.0540, 7045.0547, and 7045.0548.

30 **[In item C, the MPCA is adding requirements that apply to the reports required from  
31 facilities that are subject to the air emission standards being added in this rulemaking.  
32 This requirement corresponds to 40 CFR 264.77(c) and is based on required RCRA  
33 Amendment 154-1.14: "Consolidated Organic Air Emission Standards for Tanks,  
34 Surface Impoundments, and Containers." Further information about the air  
35 emission standards can be found at 59 FR 62896-62953, December 6, 1994.]//**  
36

## 37 **7045.0484 GROUNDWATER PROTECTION.**

38 Subpart 1. **Scope.** This part applies as follows:

39 A. Except as provided in item B, the requirements of this part apply to owners or  
40 operators of facilities that treat, store, or dispose of hazardous waste. The owner or  
41 operator must comply with the requirements in subitems (1) to (3) for all wastes or waste  
42 constituents contained in solid or hazardous waste management units at the facility  
43 regardless of the time the waste was placed in such units:

44 (1) all solid waste management units must comply with part 7045.0485;



1 (2) a surface impoundment, waste pile, land treatment unit, ~~or~~ landfill, or  
2 containment building that is required under Code of Federal Regulations, title 40, section  
3 264.1102, as incorporated in part 7045.0550, to meet the requirements of a landfill, that  
4 receives hazardous waste after July 26, 1982, is a regulated unit and must comply with  
5 the requirements of subparts 2 to 14 for detecting, characterizing, and responding to  
6 releases; and

7 **[The MPCA is amending subitem (2) to add a reference to the standards that apply to**  
8 **containment buildings that must be closed as a landfill. Adding this reference**  
9 **completes the list of facilities that are considered to be regulated units and therefore**  
10 **subject to the groundwater protection requirements. In this rulemaking, the MPCA**  
11 **adds required federal standards that apply to containment buildings. However, the**  
12 **State rules governing ground water protection differ from the federal regulations, so**  
13 **there is no federal counterpart to this provision. The MPCA believes that adding**  
14 **containment buildings that are required to close as landfills to the list of regulated**  
15 **units is a reasonable extension of the State's existing commitment to the application of**  
16 **the ground water protection standards. The MPCA does not expect that containment**  
17 **buildings will normally be required to close as a landfill or that ground water**  
18 **monitoring will be necessary, however, the MPCA believes it is essential to anticipate**  
19 **this possibility and is therefore adding this provision to the ground water standards.]//**

20 (3) the financial responsibility requirements of part 7045.0485 apply to  
21 regulated units.

22 *[For text of items B to D, see M.R.]*

23 *[For text of subps 2 to 14, see M.R.]*

## 24

### 25 **7045.0486 CLOSURE.**

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

27 Subp. 2. **Closure performance standard.** The owner or operator shall close the  
28 facility in a manner minimizing the need for further maintenance. Closure procedures  
29 must result in controlling, minimizing, or eliminating, to the extent necessary to protect  
30 human health and the environment, postclosure escape of hazardous waste, hazardous  
31 constituents, leachate, contaminated runoff, or hazardous waste decomposition products  
32 to the ground or surface waters or to the atmosphere, in accordance with the closure  
33 requirements, including the requirements of parts 7045.0526, subpart 9; 7045.0528,  
34 subpart 9; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538,  
35 subpart 7; 7045.0539, subparts 2 to 4; and 7045.0542, subpart 8; and Code of Federal  
36 Regulations, title 40, section 264.1102, as incorporated in part 7045.0550.

37 **[In subpart 2, the MPCA adds a reference to closure and post closure care**  
38 **requirements for tanks and containment buildings. This language is based on**  
39 **required RCRA Amendment 109.13: "Land Disposal Restrictions for Newly Listed**  
40 **Wastes and Hazardous Debris" = 40 CFR 264.111(c). Further information about the**  
41 **federal amendment can be found at 57 FR 37194-37282, August 18, 1992.]//**

42 Subp. 3. **Submittal and contents of closure plan.** The owner or operator of a  
43 hazardous waste facility shall submit a closure plan with the permit application, and the  
44 closure plan must be approved by the agency as part of the permit issuance procedure.  
45 The approved closure plan shall become a condition of any permit. The agency's approval

1 must ensure that the approved closure plan is consistent with subparts 2, 4, and 5, ~~and~~  
2 ~~part~~; parts 7045.0484, groundwater protection, and 7045.0488, closure activities; and the  
3 applicable closure requirements of parts 7045.0526, subpart 9; ~~7045.0528, subpart 9;~~  
4 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7;  
5 7045.0539, subpart 2; ~~and~~ 7045.0542, subpart 8; and Code of Federal Regulations, title  
6 40, section 264.1102, as incorporated in part 7045.0550.

7 **[In subpart 3, the MPCA adopts cross references to specific provisions for**  
8 **groundwater protection and the closure of tanks and containment buildings based on**  
9 **the federal counterpart to this rule in 40 CFR 264.112(a)(2). This amendment is**  
10 **based on required RCRA Amendment 109.14: “Land Disposal Restrictions for Newly**  
11 **Listed Wastes and Hazardous Debris.” Additional information can be found at 57 FR**  
12 **37194-37282, August 18, 1992.]//**

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

19 *[For text of items A to F, see M.R.]*

20 *[For text of subps 4 to 6, see M.R.]*

## 22 **7045.0490 POSTCLOSURE.**

23 Subpart 1. **Scope.** Except as otherwise provided in part 7045.0450, the provisions of  
24 subparts 2, 3, and parts 7045.0492 to 7045.0496 apply to:

25 A. the owner or operator of a hazardous waste disposal facility;

26 B. the owner or operator of a waste pile or surface impoundment that is required by  
27 part 7045.0532, subpart 7, or 7045.0534, subpart 7, to have a postclosure plan; ~~and~~

28 C. the owner or operator of tank systems that are required under part 7045.0528,  
29 subpart 9, to meet the requirements for landfills; and

30 D. the owner or operator of containment buildings that are required under Code of  
31 Federal Regulations, title 40, section 264.1102, as incorporated in part 7045.0550, to  
32 meet the requirement for landfills.

33 **[In item D, the MPCA adds language to apply postclosure care requirements to the**  
34 **owner or operator of containment buildings. Containment building standards are**  
35 **being added to the State rules in this rulemaking at the part cited. This language is**  
36 **based on required RCRA Amendment 109.15: “Land Disposal Restrictions for Newly**  
37 **Listed Wastes and Hazardous Debris” = 40 CFR 264.110(b)(4); Additional**  
38 **information about the federal amendment can be found at 57 FR 37194-37282,**  
39 **August 18, 1992.]**

40 *[For text of subps 2 and 3, see M.R.]*

## 42 **7045.0498 FINANCIAL REQUIREMENTS.**

43 **[Existing State rules governing financial assurance are similar, but in some cases,**  
44 **more restrictive than their federal counterparts (the EPA deems them equivalent). In**

1 this rulemaking the MPCA is adopting certain changes based on federal amendments,  
2 but is also declining to adopt certain federal amendments. As a result, certain State  
3 rules remain more stringent than corresponding federal financial requirements.  
4 Although the MPCA is not required to justify changes that it is not addressing in this  
5 rulemaking, the MPCA believes it is helpful to explain some of the background of  
6 those decisions.//

7  
8 In drafting the existing financial requirements, the MPCA decided not to adopt  
9 certain financial assurance mechanisms based on concerns regarding their  
10 performance. In this rulemaking, the MPCA is adopting many changes intended to  
11 make the State rules consistent with their federal counterparts. However, the MPCA  
12 continues to decline adopting certain federal financial assurance mechanisms. For  
13 example, while the MPCA is including the newly available federal mechanisms of  
14 trust funds and letters of credit for liability coverage, the MPCA declines to adopt the  
15 federal option of a surety bond for this purpose. Further discussion of the specific  
16 reasonableness of the addition of the financial assurance options is discussed in part  
17 7045.0518.//

18  
19 The MPCA has also declined, at a number of points throughout the financial  
20 assurance rules, to adopt the federal changes that expand the list of entities that can  
21 provide a corporate guarantee for an owner or operator of a facility. The amended  
22 federal rules have been expanded to allow the corporate guarantee to be provided by  
23 a firm with a "substantial business relationship" with the owner or operator. The  
24 MPCA has chosen to continue to limit the corporate guarantee to the previous  
25 relationship, only the parent corporation. The MPCA believes that this is a  
26 reasonable limitation that facilitates settling claims while maintaining a clear source  
27 of financial assurance. In this regard, the existing State rules are not becoming more  
28 stringent. They will continue to limit who may be considered a corporate guarantor  
29 to only the owner or operator of the facility or its parent corporation.//

30 Subpart 1. **Scope.** Parts 7045.0502, 7045.0504, and 7045.0518 to 7045.0524 apply to  
31 owners and operators of all hazardous waste facilities, except as provided otherwise in  
32 this part or in part 7045.0450, subpart 3.

33 Parts 7045.0506 and 7045.0508 apply only to owners and operators of:

34 A. disposal facilities;

35 B. waste piles, and surface impoundments from which the owner or operator  
36 intends to remove the wastes at closure, to the extent that he or she is required to develop  
37 a contingent closure and postclosure care plan in parts 7045.0532, subpart 7; and  
38 7045.0534, subpart 7; ~~and~~

39 C. tank systems that are required under part 7045.0528, subpart 9, to meet the  
40 requirements for landfills; ~~and~~

41 D. containment buildings that are required under Code of Federal Regulations, title  
42 40, section 264.1102, as incorporated in part 7045.0550, to meet the requirements for  
43 landfills.

44 **[In item D, the MPCA applies financial assurance requirements to the owners and**  
45 **operators of containment buildings. These requirements are based on required**  
46 **RCRA Amendment 109.15: "Land Disposal Restrictions for Newly Listed Wastes and**

1 **Hazardous Debris” = 40 CFR 264.140(b)(4). Further information can be found in 57**  
2 **FR 37194-37282, August 18, 1992.]//**

3 Parts 7045.0512 to 7045.0516 apply only to owners and operators of facilities that  
4 treat, store, or dispose of hazardous waste in surface impoundments, waste piles, land  
5 treatment units, ~~or~~ landfills, or containment buildings that are required under Code of  
6 Federal Regulations, title 40, section 264.1102, as incorporated in part 7045.0550, to  
7 meet the requirements of landfills.

8 The state and the federal government are exempt from the requirements of parts  
9 7045.0498 to 7045.0524.

10 **[The MPCA is amending the above paragraph to require corrective action financial**  
11 **assurance for containment buildings that must close as landfills. The MPCA is**  
12 **adding new containment building standards in this rulemaking in part 7045.0550, and**  
13 **it is reasonable to make corresponding changes to those aspects of the rules that will**  
14 **be affected by these types of facilities. There is no federal counterpart to this**  
15 **paragraph, which requires land disposal facilities to prepare a cost estimate for**  
16 **corrective action (part 7045.0512) and applies financial assurance requirements for**  
17 **corrective actions (parts 7045.0514 and 7045.0516). Minnesota’s rules are different**  
18 **than the federal financial assurance requirements because Minnesota not only**  
19 **requires financial assurance for closure and post-closure care but also for corrective**  
20 **action. The MPCA believes that it is reasonable to extend this existing requirement**  
21 **for financial assurance for corrective action to also include containment buildings**  
22 **since containment buildings are required to meet the closure and post-closure care**  
23 **requirements of a landfill. The same concerns regarding the funding of necessary**  
24 **corrective actions that apply to land disposal facilities also apply to containment**  
25 **buildings. Although the MPCA believes that it is reasonable to allow waste to be**  
26 **stored in containment buildings, this option carries certain risks that may result in the**  
27 **need to perform corrective actions. Requiring financial assurance will assure that**  
28 **those risks are addressed and that corrective action is performed.]//**

29 *[For text of subp 2, see M.R.]*  
30

### 31 **7045.0502 COST ESTIMATE FOR FACILITY CLOSURE.**

32 Subpart 1. **Cost estimate requirements.** The owner or operator shall have a detailed  
33 written estimate, in current dollars, of the cost of closing the facility in accordance with  
34 parts 7045.0486 and 7045.0488 and applicable closure requirements in parts 7045.0526,  
35 subpart 9; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538,  
36 subpart 7; 7045.0539, subparts 2 to 4; and 7045.0542, subpart 8; and Code of Federal  
37 Regulations, title 40, section 264.1102, as incorporated in part 7045.0550. The closure  
38 cost estimate must equal the cost of final closure at the point in the facility's active life  
39 when the extent and manner of its operation would make closure the most expensive, as  
40 indicated by its closure plan. The closure cost shall be estimated as follows:

41 *[For text of items A to C, see M.R.]*

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

43 **[In subpart 1, the MPCA adds a reference to the requirements being adopted in this**  
44 **rulemaking that apply to containment buildings. The reference to this part is based**  
45 **on language from required RCRA Amendment 109.16: “Land Disposal Restrictions**

1 for Newly Listed Wastes and Hazardous Debris” = 40 CFR 264.142(a). Further  
2 information regarding the need for and reasonableness of this amendment is found in  
3 57 FR 37194-37282, August 18, 1992.]/  
4

## 5 7045.0504 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

6 *[For text of subps 1 to 3, see M.R.]*

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

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

10 B. The wording of the surety bond must be identical to the wording specified in  
11 part 7045.0524, subpart 2 3.

12 **[In item B, the MPCA corrects an error in existing language. This item previously**  
13 **referred to the wording provided in 7045.0524, subpart 2, which applies to a surety**  
14 **bond guaranteeing payment into a trust fund. Subpart 3 of that rule provides**  
15 **wording for a surety bond guaranteeing performance for corrective action, closure**  
16 **and/or post closure care. Since this subpart addresses the performance of closure, the**  
17 **wording in part 7045.0542, subpart 3, is the proper cite to apply.]/**

18 *[For text of items C to J, see M.R.]*

19 *[For text of subps 5 and 6, see M.R.]*

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

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

23 L. An owner or operator may meet the requirements of this part by obtaining a  
24 written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be  
25 the parent corporation of the owner or operator. The guarantor must meet the  
26 requirements for owners or operators in items A to J, and must comply with the terms of  
27 the corporate guarantee. The wording of the corporate guarantee must be identical to the  
28 wording specified in part 7045.0524, subpart 8. The certified copy of the corporate  
29 guarantee must accompany the items sent to the commissioner as specified in item E. The  
30 terms of the corporate guarantee must provide that:

31 **[The MPCA is amending item L by clarifying that the owner or operator must send a**  
32 **certified copy of the corporate guarantee to the commissioner. The rule formerly**  
33 **implied that the original document had to be sent to the commissioner. This part of**  
34 **the State rules is similar to the existing financial assurance requirements that apply to**  
35 **closure in 40 CFR 264.143(f)(10). In this rulemaking the MPCA is also making a**  
36 **similar clarifying amendment to parts 7045.0508, subpart 7, item M, and to part**  
37 **7045.0514, subpart 7, item L. This change is based on optional RCRA Amendment**  
38 **113: “Consolidated Liability Requirements” = 40 CFR 264.143(f)(10). The EPA’s**  
39 **justification for its financial assurance rules is found in 53 FR 33938-33960,**  
40 **September 1, 1988; as amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844,**  
41 **September 16, 1992.]/**

42 *[For text of subitems (1) and (2), see M.R.]*

43 (3) If the owner or operator fails to provide alternate financial assurance as  
44 specified in this part and obtain the written approval of alternate assurance from the  
45 commissioner within 90 days after receipt by both the owner or operator and the

1 commissioner of a notice of cancellation of the corporate guarantee from the guarantor,  
2 the guarantor ~~shall~~ must provide alternative financial assurance in the name of the owner  
3 or operator.

4 **[In item L, subitem (3), the MPCA changes “shall” to “must” to conform to State  
5 rulemaking conventions.]//**

6 *[For text of subps 8 to 10, see M.R.]*  
7

## 8 **7045.0508 FINANCIAL ASSURANCE FOR POSTCLOSURE CARE.**

9 *[For text of subps 1 to 6, see M.R.]*

10 Subp. 7. **Financial test and corporate guarantee for postclosure care.** The financial  
11 test and corporate guarantee for postclosure care is as follows:

12 *[For text of items A to L, see M.R.]*

13 M. An owner or operator may meet the requirements ~~of~~ for this part by obtaining a  
14 written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be  
15 the parent corporation of the owner or operator. The guarantor ~~shall~~ must meet the  
16 requirements for owners or operators in items A to K, and ~~shall~~ must comply with the  
17 terms of the corporate guarantee. The wording of the corporate guarantee ~~shall~~ must be  
18 identical to the wording specified in part 7045.0524, subpart 8. A certified copy of the  
19 corporate guarantee must accompany the items sent to the commissioner as specified in  
20 item E. The terms of the corporate guarantee must provide that:

21 (1) If the owner or operator fails to perform postclosure care of a facility  
22 covered by the corporate guarantee in accordance with the postclosure plan and other  
23 permit requirements whenever required to do so, the guarantor ~~shall~~ must do so or  
24 establish a trust fund as specified in subpart 2 in the name of the owner or operator.

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

26 (3) If the owner or operator fails to provide alternate financial assurance as  
27 specified in this part and to obtain the written approval of alternate assurance from the  
28 commissioner within 90 days after receipt by both the owner or operator and the  
29 commissioner of a notice of cancellation of the corporate guarantee from the guarantor,  
30 the guarantor ~~shall~~ must provide alternate financial assurance in the name of the owner or  
31 operator.

32 **[The MPCA is making several minor changes to item M, and subitems (1) and (3). As  
33 discussed above for part 7045.0504, subpart 7, item L, in item M, the MPCA has  
34 added the requirement that the copy of the corporate guarantee sent to the  
35 commissioner must be a certified copy. The MPCA is also changing the word “of” to  
36 “for” in the first sentence of item M to better clarify the meaning. Finally, in item M  
37 and also in subitems (1) and (3), the MPCA changes “shall” to “must” to conform to  
38 State rulemaking convention. None of these changes alter the effect of this item.]//**

39 *[For text of subps 8 to 10, see M.R.]*  
40

## 41 **7045.0514 FINANCIAL ASSURANCE FOR CORRECTIVE ACTION.**

42 *[For text of subps 1 to 6, see M.R.]*

43 Subp. 7. **Financial test and corporate guarantee for corrective action.** The  
44 financial test and corporate guarantee for corrective action is as follows:

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

2 L. An owner or operator may meet the requirements of this part by obtaining a  
3 written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be  
4 the parent corporation of the owner or operator. The guarantor must meet the  
5 requirements for owners or operators in items A to J and must comply with the terms of  
6 the corporate guarantee. The wording of the corporate guarantee must be identical to the  
7 wording specified in part 7045.0524, subpart 8. A certified copy of the corporate  
8 guarantee must accompany the items sent to the commissioner as specified in item E. The  
9 terms of the corporate guarantee must provide that:

10 **[In item L, the MPCA adds language using the same reasoning as discussed above for**  
11 **part 7045.0504, subpart 7, item L. The MPCA adds the requirement that the owner**  
12 **or operator must send a certified copy of the corporate guarantee to the commissioner.**  
13 **There is no direct federal counterpart to this State rule, but this requirement is**  
14 **derived from similar provisions addressed by the federal regulations for financial**  
15 **assurance for closure and post-closure care. The EPA's justification for its financial**  
16 **assurance rules are based on optional language from RCRA Amendment 113**  
17 **Bookmark not defined.: "Consolidated Liability Requirements." Further information**  
18 **can be found in 53 FR 33938-33960, September 1, 1988; as amended by 56 FR 30200,**  
19 **July 1, 1991; and 57 FR 42832-42844, September 16, 1992.]//**

20 *[For text of subitems (1) and (2), see M.R.]*

21 (3) If the owner or operator fails to provide alternate financial assurance as  
22 specified in this part and to obtain the written approval of alternate assurance from the  
23 commissioner within 90 days after receipt by both the owner or operator and the  
24 commissioner of a notice of cancellation of the corporate guarantee from the guarantor,  
25 the guarantor ~~will~~ must provide alternative financial assurance in the name of the owner  
26 or operator.

27 **[In subitem (3), the MPCA is making a minor, clarifying change to conform to the**  
28 **State rulemaking convention which requires the use of the more authoritative term**  
29 **"must" instead of the term "will." This change does not alter the effect of this**  
30 **requirement.]//**

31 *[For text of subps 8 to 10, see M.R.]*

### 32 33 **7045.0518 LIABILITY REQUIREMENTS.**

34 **[The MPCA is amending the requirements governing liability requirements for**  
35 **hazardous waste facilities to incorporate certain of the changes that have been made**  
36 **to the corresponding federal regulations. However, not all of federal requirements**  
37 **are being incorporated in these amendments. In the existing State liability rule, the**  
38 **MPCA had originally limited the owners and operators of facilities to specific options**  
39 **for providing liability coverage. The State rules currently only provide the options of**  
40 **covering liability through insurance, the use of a financial test, a corporate guarantee,**  
41 **or a combination of these three mechanisms. The federal liability regulations, found**  
42 **at 40 CFR 264.147, provide three additional options (use of a surety bond, letter of**  
43 **credit or trust fund) to provide liability coverage. In this rulemaking, the MPCA**  
44 **continues to support its previous decision to limit the options available for meeting the**  
45 **liability requirements to only those options which the MPCA believes are most**

1 effective. The MPCA is proposing in this part, in addition to restructuring the  
2 language of the requirements, to expand the list of financial assurance mechanisms to  
3 also allow the use of letters of credit and trust funds. Although the existing State rules  
4 that address financial assurance for closure and post closure care provide for the use  
5 of all of the federally available financial assurance mechanisms, (including surety  
6 bonds) the MPCA continues to decline to adopt the use of surety bonds for providing  
7 liability coverage, even though they are provided in the federal counterpart to this  
8 rule. The MPCA believes that, based on previous experience with the difficulty of  
9 accessing surety bonds, the financial assurance mechanisms of letter of credit and  
10 trust fund are the only reasonable additions to the State options. The specific  
11 reasonableness for each change, including references to the federal background  
12 discussion, is provided following each proposed change below.]/

13 Subpart 1. **Coverage for sudden accidental occurrences.** An owner or operator of a  
14 hazardous waste treatment, storage, or disposal facility, or a group of facilities, shall  
15 demonstrate financial responsibility for bodily injury and property damage to third parties  
16 caused by sudden accidental occurrences arising from operations of the facility or group  
17 of facilities. The owner or operator shall have and maintain liability coverage for sudden  
18 accidental occurrences in the amount of at least \$1,000,000 per occurrence with an  
19 annual aggregate of at least \$2,000,000, exclusive of legal defense costs. This liability  
20 coverage may be demonstrated in one of the following ways:

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

22 C. ~~An owner or operator may demonstrate the required liability coverage through~~  
23 ~~use of the financial test, insurance, the corporate guarantee, a combination of the financial~~  
24 ~~test and insurance, or a combination of the corporate guarantee and insurance, as these~~  
25 ~~mechanisms are specified in this part. The amounts of coverage demonstrated must total~~  
26 ~~at least the minimum amounts required by subpart 1 meet the requirements of this part by~~  
27 ~~obtaining a letter of credit for liability coverage as specified in subpart 8.~~

28 **[In item C, the MPCA has deleted existing language regarding combinations of**  
29 **financial assurance (which is being moved to new item E) and is adding the option of**  
30 **using a letter of credit for liability coverage. This option is provided in the federal**  
31 **counterpart found at 40 CFR 264.147(a)(3). The changes are based on optional**  
32 **language from RCRA Amendment 113: “Consolidated Liability Requirements.”**  
33 **Further information can be found in 53 FR 33938-33960, September 1, 1988, as**  
34 **amended by 56 FR 30200, July 1, 1991, and 57 FR 42832-42844, September 16,**  
35 **1992.]/**

36 D. An owner or operator may meet the requirements of this part by obtaining a  
37 trust fund for liability coverage as specified in subpart 9.

38 **[Item D is being added to provide the owner or operator of a facility with an**  
39 **additional option of a trust fund. This option is provided in the federal counterpart**  
40 **found at 40 CFR 264.147(a). This change is based on optional language from RCRA**  
41 **Amendment 113: “Consolidated Liability Requirements.” Further information can**  
42 **be found in 53 FR 33938-33960, September 1, 1988; as amended by 56 FR 30200, July**  
43 **1, 1991; and 57 FR 42832-42844, September 16, 1992.]/**

44 E. An owner or operator may demonstrate the required liability coverage through  
45 the use of combinations of insurance, financial test, corporate guarantee, letter of credit,  
46 and trust fund, except that the owner or operator may not combine a financial test



1 covering part of the liability coverage requirement with a corporate guarantee unless the  
2 financial statement of the owner or operator is not consolidated with the financial  
3 statement of the guarantor. The amounts of coverage demonstrated must total at least the  
4 minimum amounts required by this part. If the owner or operator demonstrates the  
5 required coverage through the use of a combination of financial assurances under this  
6 item, the owner or operator shall specify at least one such assurance as "primary"  
7 coverage and shall specify other assurance as "excess" coverage.

8 **[In item E, the MPCA adopts language that revises and replaces former item C, to**  
9 **establish the ability to use combinations of financial assurance options for the owner**  
10 **or operator of a facility to demonstrate its liability coverage. This item is based on the**  
11 **previous requirements of item C and optional language found at RCRA Amendment**  
12 **113: "Consolidated Liability Requirements" = 40 CFR 264.147(a)(6). Further**  
13 **information can be found in 53 FR 33938-33960; September 1, 1988; as amended by**  
14 **56 FR 30200; July 1, 1991; and 57 FR 42832-42844; September 16, 1992.]//**

15 E. An owner or operator shall notify the commissioner in writing within 30 days  
16 whenever:

17 (1) a claim results in a reduction in the amount of financial assurance for  
18 liability coverage provided by a financial instrument authorized in items A to E;

19 (2) a certification of valid claim for bodily injury or property damages caused  
20 by a sudden or nonsudden accidental occurrence arising from the operation of a  
21 hazardous waste treatment, storage, or disposal facility is entered between the owner or  
22 operator and third-party claimant for liability coverage under items A to E; or

23 (3) a final court order establishing a judgment for bodily injury or property  
24 damage caused by a sudden or nonsudden accidental occurrence arising from the  
25 operation of a hazardous waste treatment, storage, or disposal facility is issued against the  
26 owner or operator or an instrument that is providing financial assurance for liability  
27 coverage under items A to E.

28 **[In item F, subitems (1) to (3), the MPCA adopts required language from RCRA**  
29 **Amendment 113: "Consolidated Liability Requirements" = 40 CFR 264.147(a)(7).**  
30 **Further information can be found in 53 FR 33938-33960, September 1, 1988; as**  
31 **amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September 16,**  
32 **1992.]//**

33 Subp. 2. Coverage for nonsudden accidental occurrences. An owner or operator of  
34 a surface impoundment, landfill, land treatment facility, or disposal miscellaneous  
35 disposal unit ~~which~~ that is used to manage hazardous waste, or a group of such facilities,  
36 ~~shall~~ must demonstrate financial responsibility for bodily injury and property damage to  
37 third parties caused by nonsudden accidental occurrences arising from operations of the  
38 facility or group of facilities. The owner or operator ~~shall~~ must have and maintain  
39 liability coverage for nonsudden accidental occurrences in the amount of at least  
40 \$3,000,000 per occurrence with an annual aggregate of at least \$6,000,000, exclusive of  
41 legal defense costs. An owner or operator who must meet the requirements of this part  
42 may combine the required per-occurrence coverage levels for sudden and nonsudden  
43 accidental occurrences into a single per-occurrence level, and combine the required  
44 annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a  
45 single annual aggregate level. Owners or operators who combine coverage levels for  
46 sudden and nonsudden accidental occurrences must maintain liability coverage in the

1 amount of at least \$4,000,000 per occurrence and \$8,000,000 annual aggregate. This  
2 liability coverage may be demonstrated in one of the following ways:

3 **[In subpart 2, the MPCA is adopting language to make this subpart correspond to the**  
4 **federal counterpart in 40 CFR 264.147(b). The amendments to this subpart change**  
5 **the term “miscellaneous disposal units” to “disposal miscellaneous units” which is a**  
6 **more accurate term. The phrasing of this term is important because under part**  
7 **7045.0518, subpart 2, only land disposal units (such as disposal miscellaneous units)**  
8 **are required to carry non-sudden accidental liability coverage. In contrast, under**  
9 **subpart 1 of that part, all hazardous waste facilities (those that treat, store or dispose)**  
10 **are required to carry sudden accidental liability coverage. The MPCA believes it is**  
11 **reasonable to amend the rules so that the term used in this part is "disposal**  
12 **miscellaneous units" rather than "miscellaneous disposal units" since "miscellaneous**  
13 **units" is the defined term. The EPA uses the same term and the MPCA believes it is**  
14 **reasonable to maintain consistency with the federal regulations. The MPCA also**  
15 **changes “shall” to “must” choosing preferred wording to convey the intended**  
16 **meaning. At the end of subpart 2, the MPCA adds language that addresses methods**  
17 **for combining liability coverage that corresponds to equivalent federal language. The**  
18 **MPCA believes that these requirements are reasonable to address issues regarding**  
19 **combined coverage. The amended language is addressed at RCRA Amendment 113:**  
20 **“Consolidated Liability Requirements” = 40 CFR 264.147(b). Further information**  
21 **can be found in 53 FR 33938-33960, September 1, 1988; as amended by 56 FR 30200,**  
22 **July 1, 1991; and 57 FR 42832-42844, September 16, 1992.]//**

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

24 C. An owner or operator may demonstrate the required liability coverage through  
25 use of the financial test, insurance, the corporate guarantee, a combination of the financial  
26 test and insurance, or a combination of the corporate guarantee and insurance, as these  
27 mechanisms are specified in this part. The amounts of coverage must total at least the  
28 minimum amounts required by subpart 2 meet the requirements of this part by obtaining a  
29 letter of credit for liability coverage as specified in subpart 8.

30 **[In items C (and D), the MPCA is making the same type of changes to the options**  
31 **provided for coverage for non-sudden accidental occurrences as it did for sudden**  
32 **accidental occurrences, the reasonableness of which is address in the introductory**  
33 **discussion to subpart 1 above. In item C the MPCA adopts optional language from**  
34 **RCRA Amendment 113: “Consolidated Liability Requirements” = 40 CFR**  
35 **264.147(b)(3). Further information can be found in 53 FR 33938-33960, September 1,**  
36 **1988; as amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September**  
37 **16, 1992.]//**

38 ~~—— D. For existing facilities, the required liability coverage for nonsudden accidental~~  
39 ~~occurrences must be demonstrated by the dates listed below. The total sales or revenues~~  
40 ~~of the owner or operator in all lines of business, in the fiscal year preceding July 16, 1984~~  
41 ~~will determine which of the dates applies. If the owner and operator of a facility are two~~  
42 ~~different parties, or if there is more than one owner or operator, the sales or revenues of~~  
43 ~~the owner or operator with the largest sales or revenues will determine the date by which~~  
44 ~~the coverage must be demonstrated. The dates are as follows:~~

45 ~~—— (1) for an owner or operator with sales or revenues totaling \$10,000,000 or more,~~  
46 ~~six months after July 16, 1984;~~

1 ~~\_\_\_\_\_ (2) for an owner or operator with sales or revenues greater than \$5,000,000 but~~  
2 ~~less than \$10,000,000, 18 months after July 16, 1984;~~

3 ~~\_\_\_\_\_ (3) for all other owners or operators, 30 months after July 16, 1984;~~

4 ~~\_\_\_\_\_ (4) for an owner or operator subject to the requirements of Code of Federal~~  
5 ~~Regulations, title 40, section 264.147 (1983) on the date he or she is required to~~  
6 ~~demonstrate coverage under Code of Federal Regulations, title 40, section 264.147~~  
7 ~~(1983) or on July 16, 1984, whichever is later.~~

8 D. An owner or operator may meet the requirements of this part by obtaining a  
9 trust fund for liability coverage as specified in subpart 9.

10 **[In item D, the MPCA revises language to make the State rules correspond more**  
11 **closely to the federal counterparts. The requirements in existing item D are being**  
12 **deleted because the cited dates are obsolete. The new language, which adds the option**  
13 **of providing liability coverage through the establishment of a trust fund, is based on**  
14 **optional language from RCRA Amendment 113: “Consolidated Liability**  
15 **Requirements” = 40 CFR 264.147(b)(5). Further information can be found in 53 FR**  
16 **33938-33960, September 1, 1988; as amended by 56 FR 30200, July 1, 1991; and 57**  
17 **FR 42832-42844, September 16, 1992.//]**

18 E. An owner or operator may demonstrate the required liability coverage through  
19 the use of combinations of insurance, financial test, corporate guarantee, letter of credit,  
20 and trust fund, except that the owner or operator may not combine a financial test  
21 covering part of the liability coverage requirement with a corporate guarantee unless the  
22 financial statement of the owner or operator is not consolidated with the financial  
23 statement of the guarantor. The amounts of coverage demonstrated must total at least the  
24 minimum amount required by this part. If the owner or operator demonstrates the  
25 required coverage through the use of a combination of financial assurances under this  
26 item, the owner or operator shall specify at least one such assurance as "primary"  
27 coverage and shall specify other assurance as "excess" coverage.

28 **[In item E, the MPCA adopts most of the optional language from RCRA Amendment**  
29 **113: “Consolidated Liability Requirements” = 40 CFR 264.147(b)(6). Further**  
30 **information can be found in 53 FR 33938-33960, September 1, 1988; as amended by**  
31 **56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September 16, 1992. The**  
32 **exceptions to the federal counterpart are that (1) the MPCA chooses not to adopt the**  
33 **EPA’s expanded use of surety bonds for this area of financial assurance, and (2) the**  
34 **MPCA chooses not to follow the EPA in expanding the scope of who can provide the**  
35 **corporate guarantee. The reasonableness of these decisions is discussed in the**  
36 **introductory discussion for this rule part.//]**

37 F. An owner or operator must notify the commissioner in writing within 30 days  
38 whenever:

39 (1) a claim results in a reduction in the amount of financial assurance for  
40 liability coverage provided by a financial instrument authorized in items A to E;

41 (2) a certification of valid claim for bodily injury or property damage caused by  
42 a sudden or nonsudden accidental occurrence arising from the operation of a hazardous  
43 waste treatment, storage, or disposal facility is entered between the owner or operator and  
44 third-party claimant for liability coverage under items A to E; or

45 (3) a final court order establishing a judgment for bodily injury or property  
46 damage caused by a sudden or nonsudden accidental occurrence arising from the

1 operation of a hazardous waste treatment, storage, or disposal facility is issued against the  
2 owner or operator or an instrument that is providing financial assurance for liability  
3 coverage under items A to E.

4 **[In item F, the MPCA adopts required language from RCRA Amendment 113:  
5 “Consolidated Liability Requirements” = 40 CFR 264.147(b)(7)(i-iii). Further  
6 information can be found in 53 FR 33938-33960, September 1, 1988; as amended by  
7 56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September 16, 1992.]//**

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

9 Subp. 6. **Financial test for liability coverage.** The financial test for liability coverage  
10 is as follows:

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

12 H. If the owner or operator no longer meets the requirements of item A, ~~he or she~~  
13 the owner or operator shall obtain insurance, a letter of credit, a trust fund, or a corporate  
14 guarantee for the entire amount of required liability coverage as specified in this part.  
15 Evidence of ~~insurance~~ liability coverage must be submitted to the commissioner within  
16 90 days after the end of the fiscal year for which the year-end financial data show that the  
17 owner or operator no longer meets the test requirements.

18 **[In item H, the MPCA adopts language that expands the options available for  
19 providing liability coverage if the owner or operator no longer meets the  
20 requirements for the financial test. Except as previously discussed in the introduction  
21 to this part, the amendments include most of the optional language from RCRA  
22 Amendment 113: “Consolidated Liability Requirements” = 40 CFR 264.147(f)(6).  
23 Further information can be found in 53 FR 33938-33960, September 1, 1988; as  
24 amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September 16,  
25 1992.]//**

26 *[For text of item I, see M.R.]*

27 Subp. 7. **Corporate guarantee for liability coverage.** The corporate guarantee for  
28 liability coverage is as follows:

29 A. Subject to item B, an owner or operator may meet the requirements of this part  
30 by obtaining a written corporate guarantee. The guarantor must be the parent corporation  
31 of the owner or operator. The guarantor must meet the requirements for owners or  
32 operators in subpart 6. The wording of the corporate guarantee must be identical to the  
33 wording specified in part 7045.0524, subpart 8a. The corporate guarantee must be signed  
34 by two corporate officers of the parent corporation. A corporate resolution authorizing  
35 the parent corporation to provide the corporate guarantee for the subsidiary must be  
36 attached to the corporate guarantee. A certified copy of the corporate guarantee must  
37 accompany the items sent to the commissioner as ~~provided~~ specified in subpart 6, item E.  
38 The terms of the corporate guarantee must provide that:

39 *[For text of subitems (1) and (2), see M.R.]*

40 B. A corporate guarantee may be used to satisfy the requirements of this part only  
41 if:

42 (1) in the case of corporations incorporated in the United States, the attorney  
43 general or insurance commissioner of the state in which the guarantor is incorporated and  
44 of each state in which a facility covered by the corporate guarantee is located has  
45 submitted a written statement to the commissioner and the United States Environmental

1 Protection Agency that a corporate guarantee executed as described in this part and part  
2 7045.0524, subpart 8a, is a legally valid and enforceable obligation in that state; and

3 (2) in the case of corporations incorporated outside the United States, the non-  
4 United States corporation has identified a registered agent for service of process in each  
5 state in which a facility covered by the corporate guarantee is located and in the state in  
6 which it has its principal place of business, and the attorney general or insurance  
7 commissioner of each state in which a facility covered by the corporate guarantee is  
8 located and the state in which the guarantor corporation has its principal place of business,  
9 has submitted a written statement to the commissioner and to the United States  
10 Environmental Protection Agency that a corporate guarantee executed as described in this  
11 part and part 7045.0524, subpart 8a, is a legally valid and enforceable obligation in that  
12 state.

13 **[In items A and B of subpart 7, the MPCA is amending the rules to insert the term**  
14 **‘corporate’ in front of ‘guarantee’ so that meaning is clear and consistent with other**  
15 **uses of the phrase in this chapter. The MPCA is also amending the rules to change**  
16 **the term “provided” to “specified” to improve the clarity of this requirement.]/**

17 Subp. 8. Letter of credit for liability coverage.

18 A. An owner or operator may satisfy the requirements of this part by obtaining an  
19 irrevocable standby letter of credit that conforms to the requirements of this subpart and  
20 submitting a copy of the letter of credit to the commissioner.

21 B. The financial institution issuing the letter of credit must be an entity that has the  
22 authority to issue letters of credit and whose letter of credit operations are regulated and  
23 examined by a federal or state agency.

24 C. The wording of the letter of credit must be identical to the wording in part  
25 7045.0524, subpart 11.

26 D. An owner or operator who uses a letter of credit to satisfy the requirements of  
27 this part may also establish a standby trust fund. Under the terms of a letter of credit, all  
28 amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by  
29 the issuing institution into the standby trust in accordance with instructions from the  
30 trustee. The trustee of the standby trust fund must be an entity that has the authority to act  
31 as a trustee and whose trust operations are regulated and examined by a federal or state  
32 agency.

33 E. The wording of the standby trust fund must be identical to the wording in part  
34 7045.0524, subpart 13.

35 **[In subpart 8, items A to E, the MPCA adopts language addressing the use of a letter**  
36 **of credit and a standby trust fund to meet liability coverage requirements. The**  
37 **adopted language is from optional RCRA Amendment 113: “Consolidated Liability**  
38 **Requirements” = 40 CFR 264.147(h)(1-5). Further information can be found in 53**  
39 **FR 33938-33960, September 1, 1988; as amended by 56 FR 30200, July 1, 1991; and**  
40 **57 FR 42832-42844, September 16, 1992.]/**

41 Subp. 9. Trust fund for liability coverage.

42 A. An owner or operator may satisfy the requirements of this part by establishing a  
43 trust fund that conforms to the requirements of this subpart and submitting an originally  
44 signed duplicate of the trust agreement to the commissioner.

45 B. The trustee must be an entity that has the authority to act as a trustee and whose  
46 trust operations are regulated and examined by a federal or state agency.

1 C. The trust fund for liability coverage must be funded for the full amount of the  
2 liability coverage to be provided by the trust fund before it may be relied upon to satisfy  
3 the requirements of this part. If at any time after the trust fund is created the amount of  
4 funds in the trust fund is reduced below the full amount of the liability coverage to be  
5 provided, the owner or operator, by the anniversary date of the establishment of the fund,  
6 must either add sufficient funds to the trust fund to cause its value to equal the full  
7 amount of liability coverage to be provided or obtain other financial assurance as  
8 specified in this part to cover the difference. For purposes of this item, "the full amount  
9 of the liability coverage to be provided" means the amount of coverage for sudden or  
10 nonsudden occurrences required to be provided by the owner or operator under this part,  
11 less the amount of financial assurance for liability coverage that is being provided by  
12 other financial assurance mechanisms being used to demonstrate financial assurance by  
13 the owner or operator.

14 D. The wording of the trust fund must be identical to the wording in part  
15 7045.0524, subpart 13.

16 **[In subpart 9, items A to D the MPCA adopts provisions regarding the establishment**  
17 **of a trust fund to meet liability insurance requirements. The amendments are based**  
18 **on optional language from RCRA Amendment 113: "Consolidated Liability**  
19 **Requirements" = 40 CFR 264.147(j)(1-4). Further information can be found in 53 FR**  
20 **33938-33960, September 1, 1988; as amended by 56 FR 30200, July 1, 1991; and 57**  
21 **FR 42832-42844, September 16, 1992.]//**  
22

## 23 **7045.0524 WORDING OF INSTRUMENTS.**

24 **[In this part especially (and some other parts), please note that some non-heading rule**  
25 **language that appears in bold would appear as a bracketed option (e.g., [insert owner**  
26 **or operator]) in the official rule. The inadvertent replacement of bracketed language**  
27 **with bold language in this SONAR document is the result of an error in transcribing**  
28 **the official rule into an electronic extract of the rule from which this document was**  
29 **produced.]//**

30 *[For text of subps 1 to 5, see M.R.]*

31 Subp. 6. **Letter from chief financial officer for corrective action, closure, and/or**  
32 **postclosure care.** A letter from the chief financial officer as specified in part 7045.0504,  
33 subpart 7; 7045.0508, subpart 7; 7045.0514, subpart 7; 7045.0612, subpart 6; or  
34 7045.0616, subpart 6 must be worded as specified in this subpart, except that instructions  
35 in brackets must be replaced with the relevant information and the brackets deleted.

36 LETTER FROM CHIEF FINANCIAL OFFICER FOR CORRECTIVE ACTION,  
37 CLOSURE, AND/OR POSTCLOSURE CARE

38 [Agency Commissioner] Minnesota Pollution Control Agency

39 I am the chief financial officer of [name and address of firm]. This letter is in support  
40 of this firm's use of the financial test to demonstrate financial assurance for corrective  
41 action, closure, or postclosure costs, as specified in Minnesota Rules, parts 7045.0498 to  
42 7045.0524 and 7045.0608 to 7045.0624.

1 [In this paragraph of subpart 6, the MPCA revises wording of the letter from the  
2 chief financial officer for closure and/or post-closure care to match language found at  
3 40 CFR 264.151(f). This change clarifies that the cited rules in the paragraph relate  
4 to financial assurance for costs associated with corrective action, closure or post  
5 closure care. The EPA's justification for this change is based on optional RCRA  
6 Amendment 113Error! Bookmark not defined.: "Consolidated Liability Requirements."  
7 Find further information in 57 FR 42832-42844, September 16, 1992.]//

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

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

18 [In paragraph 1 of subpart 6, the MPCA corrects a typographical error by changing  
19 the word "text" to "test."]//

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

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

33 4. This firm is the owner or operator of the following hazardous waste management  
34 facilities for which financial assurance for corrective action, if required, closure, or if a  
35 disposal facility, postclosure care, is not demonstrated either to the United States  
36 Environmental Protection Agency or a state through the financial test or any other  
37 financial assurance mechanism specified in Code of Federal Regulations, title 40, parts  
38 264 or 265, subpart H, as amended, or equivalent or substantially equivalent state  
39 mechanisms. The current corrective action, closure, and/or postclosure cost estimates not  
40 covered by such financial assurance are shown for each facility: \_\_\_\_\_.

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

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

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

11 [Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item  
 12 B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; 7045.0612, subpart 6,  
 13 item B; 7045.0616, subpart 6, item B are used. Fill in Alternative II if the criteria of  
 14 Minnesota Rules, part 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C;  
 15 7045.0514, subpart 7, item C; or 7045.0612, subpart 6, item C; or 7045.0616, subpart 6,  
 16 item C are used.]

17 **ALTERNATIVE I**

- |  |          |
|--|----------|
| 1. Sum of current corrective action, closure, and postclosure cost estimate<br>[total of all cost estimates shown in the five paragraphs above]  | \$ _____ |
| *2. Total liabilities [if any portion of the corrective actions, closure, or<br>postclosure cost estimates is included in total liabilities, you may deduct the<br>amount of that portion from this line and add that amount to lines 3 and 4] | \$ _____ |
| *3. Tangible net worth   | \$ _____ |
| *4. Net worth  | \$ _____ |
| *5. Current assets   | \$ _____ |
| *6. Current liabilities  | \$ _____ |
| 7. Net working capital [line 5 minus line 6]   | \$ _____ |
| *8. The sum of net income plus depreciation, depletion, and amortization   | \$ _____ |
| *9. Total assets in United States (required only if less than 90 percent of firm's<br>assets are located in United States)   | \$ _____ |
|  | YES NO   |
| 10. Is line 3 at least \$10,000,000?   | ___ ___  |
| 11. Is line 3 at least 6 times line 1?   | ___ ___  |
| 12. Is line 7 at least 6 times line 1?   | ___ ___  |
| *13. Are at least 90 percent of firm's assets located in the United States? If not,<br>complete line 14  | ___ ___  |
| 14. Is line 9 at least 6 times line 1?   | ___ ___  |
| 15. Is line 2 divided by line 4 less than 2.0?   | ___ ___  |



16. Is line 8 divided by line 2 greater than 0.1? \_\_\_ \_\_\_  
 17. Is line 5 divided by line 6 greater than 1.5? \_\_\_ \_\_\_

1

ALTERNATIVE II

1. Sum of current corrective action, closure, and postclosure cost estimates [total of all cost estimates shown in the five paragraphs above] \$ \_\_\_\_\_  
 2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_  
 3. Date of issuance of bond \_\_\_\_\_  
 4. Date of maturity of bond \_\_\_\_\_  
 \*5. Tangible net worth [if any portion of the corrective action, closure, and postclosure costs estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ \_\_\_\_\_  
 \*6 Total assets in United States (required only if less than 90 percent of firm's assets are located in United States) \$ \_\_\_\_\_
- YES NO
7. Is line 5 at least \$10,000,000? \_\_\_ \_\_\_  
 8. Is line 5 at least 6 times line 1? \_\_\_ \_\_\_  
 \*9. Are at least 90 percent of firm's assets located in United States? If not, complete line 10 \_\_\_ \_\_\_  
 10. Is line 6 at least 6 times line 1? \_\_\_ \_\_\_

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

6 [SIGNATURE] [NAME] [TITLE] [DATE]  
 7 *[For text of subp 7, see M.R.]*  
 8

9 **Subp. 8. Corporate guarantee for corrective action, closure, or postclosure care.**  
 10 A corporate guarantee as specified in part 7045.0504, subpart 7; 7045.0508, subpart 7;  
 11 7045.0514, subpart 7; 7045.0612, subpart 6; or 7045.0616, subpart 6 must be worded as  
 12 specified in this subpart, except that instructions in brackets must be replaced with the  
 13 relevant information and the brackets deleted.

14 **CORPORATE GUARANTEE FOR CORRECTIVE ACTION, CLOSURE, OR**  
 15 **POSTCLOSURE CARE**

16 Guarantee made this [date] by [name of guaranteeing entity], a business corporation  
 17 organized under the laws of the state of [insert name of state], herein referred to as  
 18 guarantor, to the Minnesota Pollution Control Agency (Agency), obligee, on behalf of  
 19 our subsidiary [owner or operator] of [business address].

1 Recitals

2 1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the  
3 reporting requirements for guarantors as specified in Minnesota Rules, parts 7045.0504,  
4 subpart 7; 7045.0508, subpart 7; 7045.0514, subpart 7; 7045.0612, subpart 6; and  
5 7045.0616, subpart 6.

6 2. [Owner or operator] owns or operates the following hazardous waste management  
7 facility(ies) covered by this guarantee: [List for each facility: identification number, name,  
8 and address. Indicate for each whether guarantee is for corrective action, closure,  
9 postclosure care, or a combination of the three.]

10 3. "Closure plans" and "postclosure plans" as used below refer to the plans maintained  
11 as required by Minnesota Rules, parts 7045.0486 to 7045.0494 and 7045.0594 to  
12 7045.0606 for the closure and postclosure care of facilities as identified above.  
13 "Corrective action plans" as used below refers to the plans maintained as required by  
14 Minnesota Rules, part 7045.0484, subpart 2, item D; and subpart 14 for corrective action  
15 for the facilities as identified above.

16 4. For value received from [owner or operator], guarantor guarantees to the Agency  
17 that in the event that [owner or operator] fails to perform [insert "corrective action,"  
18 "closure," "postclosure care," or any combination of the three] of the above facility(ies) in  
19 accordance with the corrective action, closure, or postclosure plans and other permit or  
20 interim status requirements whenever required to do so, the guarantor shall do so or  
21 establish a trust fund as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 or  
22 7045.0608 to 7045.0624 as applicable, in the name of [owner or operator] in the amount  
23 of the current corrective action, closure, or postclosure cost estimates as specified in  
24 Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

25 5. Guarantor agrees that if, at the end of any fiscal year before termination of this  
26 guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send  
27 within 90 days, by certified mail, notice to the Agency Commissioner and to [owner or  
28 operator] that he or she intends to provide alternate financial assurance as specified in  
29 Minnesota Rules, parts 7045.0498 to 7045.0524 or 7045.0608 to 7045.0624, as  
30 applicable, in the name of [owner or operator]. Within 120 days after the end of such  
31 fiscal year, the guarantor shall establish financial assurance unless [owner or operator]  
32 has done so.

33 6. The guarantor agrees to notify the Agency Commissioner by certified mail of a  
34 voluntary or involuntary proceeding under United States Code, title 11, Bankruptcy, as  
35 amended, naming guarantor as debtor, within ten days after commencement of the  
36 proceeding.

37 7. Guarantor agrees that within 30 days after being notified by the Agency  
38 Commissioner of a determination that guarantor no longer meets the financial test criteria  
39 or that he or she is disallowed from continuing as a guarantor of corrective action, closure,

1 or postclosure care, the guarantor shall establish alternate financial assurance as specified  
2 in Minnesota Rules, parts 7045.0498 to 7045.0524 or 7045.0608 to 7045.0624, as  
3 applicable, in the name of [owner or operator] unless [owner or operator] has done so.

4 8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all  
5 of the following: amendment or modification of the corrective action, closure or  
6 postclosure plan, amendment or modification of the permit, the extension or reduction of  
7 the time of performance of corrective action, closure, postclosure, or any other  
8 modification or alteration of an obligation of the owner or operator pursuant to Minnesota  
9 Rules, parts 7045.0450 to ~~7045.0642~~ 7045.0651.

10 **[In subpart 8, paragraph 8, the MPCA corrects citations to ranges of rules that**  
11 **changed as parts were added.]//**

12 9. Guarantor agrees to remain bound under this guarantee for so long as [owner or  
13 operator] must comply with the applicable financial assurance requirements of Minnesota  
14 Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624 for the above listed  
15 facilities, except that guarantor may cancel this guarantee by sending notice by certified  
16 mail to the Agency Commissioner and to [owner or operator], the cancellation to become  
17 effective no earlier than 120 days after receipt of notice by both the Agency  
18 Commissioner and [owner or operator], as evidenced by the return receipts.

19 10. Guarantor agrees that if [owner or operator] fails to provide alternate financial  
20 assurance as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 or 7045.0608 to  
21 7045.0624, as applicable, and obtain written approval of such assurance from the Agency  
22 Commissioner within 90 days after a notice of cancellation by the guarantor is received  
23 by the Agency Commissioner from guarantor, guarantor shall provide alternate financial  
24 assurance in the name of [owner or operator].

25 11. Guarantor expressly waives notice of acceptance of this guarantee by the Agency  
26 or by [owner or operator]. Guarantor also expressly waives notice of amendments or  
27 modifications of the corrective action, closure, and/or postclosure plan and of  
28 amendments or modifications of the facility permit(s).

29 I hereby certify that the wording of this guarantee is identical to the wording specified  
30 in Minnesota Rules, part 7045.0524, subpart 8, as such rules were constituted on the date  
31 first above written.

32 Effective date: \_\_\_\_\_ [NAME OF GUARANTOR] [AUTHORIZED  
33 SIGNATURE FOR GUARANTOR] [NAME OF PERSON SIGNING] [TITLE OF  
34 PERSON SIGNING] [SIGNATURE OF WITNESS OR NOTARY]

35 Subp. 8a. **Corporate guarantee for liability coverage.** A corporate guarantee as  
36 specified in part 7045.0518, subpart 7, or 7045.0620, subpart 6, must be worded as  
37 follows, except that instructions in brackets are to be replaced with the relevant  
38 information and the brackets deleted:

1 CORPORATE GUARANTEE FOR LIABILITY COVERAGE

2 Guarantee made this [date] by [name of guaranteeing entity], a business corporation  
3 organized under the laws of [if incorporated within the United States, insert "the State of  
4 \_\_\_\_\_" and insert name of state; if incorporated outside the United States,  
5 insert the name of the country in which incorporated, the principal place of business  
6 within the United States, and the name and address of the registered agent in the state of  
7 the principal place of business], referred to in this guarantee as the guarantor. This  
8 guarantee is made on behalf of our subsidiary [owner or operator] of [business address],  
9 to any and all third parties who have sustained or may sustain bodily injury or property  
10 damage caused by [sudden and/or nonsudden] accidental occurrences arising from  
11 operation of the facility(ies) covered by this guarantee.

12 Recitals

13 1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the  
14 reporting requirements for guarantors as specified in Minnesota Rules, parts 7045.0518,  
15 subpart 7, and 7045.0620, subpart 6.

16 2. [Owner or operator] owns or operates the following hazardous waste management  
17 facility(ies) covered by this guarantee: [List for each facility: Identification Number,  
18 name, and address; and if guarantor is incorporated outside the United States, list the  
19 name and address of the guarantor's registered agent in each state.] This corporate  
20 guarantee satisfies RCRA third party liability requirements for [insert "sudden" or  
21 "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above named  
22 owner or operator facilities for coverage in the amount of [insert dollar amount] for each  
23 occurrence and [insert dollar amount] annual aggregate.

24 3. For value received from [owner or operator], guarantor guarantees to any and all  
25 third parties who have sustained or may sustain bodily injury or property damage caused  
26 by [sudden and/or nonsudden] accidental occurrences arising from operations of the  
27 facility(ies) covered by this guarantee that in the event that [owner or operator] fails to  
28 satisfy a judgment or award based on a determination of liability for bodily injury or  
29 property damage to third parties caused by [sudden and/or nonsudden] accidental  
30 occurrences, arising from the operation of the above named facilities, or fails to pay an  
31 amount agreed to in settlement of a claim arising from or alleged to arise from such  
32 injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement  
33 agreement(s), up to the limits of coverage identified above.

34 4. Such obligation does not apply to any of the following:

35 (a) Bodily injury or property damage for which [insert owner or operator] is obligated  
36 to pay damages by reason of the assumption of liability in a contract or agreement. This  
37 exclusion does not apply to liability for damages that [insert owner or operator] would be  
38 obligated to pay in the absence of the contract or agreement.

1 (b) Any obligation of [insert owner or operator] under a workers' compensation,  
2 disability benefits, or unemployment compensation law, or any similar law.

3 (c) Bodily injury to:

4  
5 (1) an employee of [insert owner or operator] arising from, and in the course of,  
6 employment by [insert owner or operator]; or

7 (2) the spouse, child, parent, brother, or sister of that employee as a consequence of,  
8 or arising from, and in the course of employment by [insert owner or operator]. This  
9 exclusion applies: (A) whether [insert owner or operator] may be liable as an employer or  
10 in any other capacity; and (B) to any obligation to share damages with or repay another  
11 person who must pay damages because of the injury to persons identified in paragraphs  
12 (1) and (2). (d) Bodily injury or property damage arising out of the ownership,  
13 maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

14 (e) Property damage to:

15 (1) any property owned, rented, or occupied by [insert owner or operator];

16 (2) premises that are sold, given away, or abandoned by [insert owner or operator]  
17 if the property damage arises out of any part of those premises;

18 (3) property loaned to [insert owner or operator];

19 (4) personal property in the care, custody, or control of [insert owner or operator];  
20 or

21 (5) that particular part of real property on which [insert owner or operator] or any  
22 contractors or subcontractors working directly or indirectly on behalf of [insert owner or  
23 operator] are performing operations, if the property damage arises out of these operations.

24 **[In subpart 8a, paragraph 4, the MPCA moves the discussion of exclusions here from**  
25 **existing paragraph 12, and slightly modifies the introductory sentence to more**  
26 **accurately identify to whom the exclusions apply and to provide consistency with 40**  
27 **CFR 264.151(h)(2). Moving the content of paragraph 12 to paragraph 4 is optional,**  
28 **but the MPCA believes it is reasonable to provide consistency with corresponding**  
29 **federal language. The language in this paragraph is from RCRA Amendment 113:**  
30 **“Consolidated Liability Requirements” = 40 CFR 264.151(h)(2). Further information**  
31 **can be found in 53 FR 33938-33960, September 1, 1988; as amended by 56 FR 30200,**  
32 **July 1, 1991; and 57 FR 42832-42844, September 16, 1992.]//**

33 5. Guarantor agrees that if, at the end of any fiscal year before termination of this  
34 guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send  
35 within 90 days, by certified mail, notice to the commissioner and to [owner or operator]

1 that (s)he intends to provide alternate liability coverage as specified in Minnesota Rules,  
2 parts 7045.0518 and 7045.0620, as applicable, in the name of [owner or operator]. Within  
3 120 days after the end of that fiscal year, the guarantor shall establish the liability  
4 coverage unless [owner or operator] has done so.

5 ~~5-~~ 6. The guarantor agrees to notify the commissioner by certified mail of a voluntary  
6 or involuntary proceeding under Title 11 (bankruptcy), United States Code, as amended,  
7 naming guarantor as debtor, within ten days after commencement of the proceeding.

8 ~~6-~~ 7. Guarantor agrees that within 30 days after being notified by the commissioner of  
9 a determination that guarantor no longer meets the financial test criteria or that (s)he is  
10 disallowed from continuing as a guarantor, (s)he shall establish alternate liability  
11 coverage as specified in Minnesota Rules, part 7045.0518 or 7045.0620 in the name of  
12 [owner or operator], unless [owner or operator] has done so.

13 ~~7-~~ 8. Guarantor reserves the right to modify this agreement to take into account  
14 amendment or modification of the liability requirements established by Minnesota Rules,  
15 parts 7045.0518 and 7045.0620, but the modification becomes effective only if the  
16 commissioner does not disapprove the modification within 30 days of receipt of  
17 notification of the modification.

18 ~~8-~~ 9. Guarantor agrees to remain bound under this guarantee for so long as [owner or  
19 operator] must comply with the applicable requirements of Minnesota Rules, parts  
20 7045.0518 and 7045.0620 for the above listed facility(ies), except as provided in  
21 paragraph 9 10 of this agreement.

22 ~~9-~~ 10. Guarantor may terminate this guarantee by sending notice by certified mail to  
23 the commissioner and to [owner or operator] but this guarantee may not be terminated  
24 unless and until [owner or operator] obtains, and the commissioner approves alternate  
25 liability coverage complying with Minnesota Rules, parts 7045.0518 and/or 7045.0620.

26 ~~10-~~ 11. Guarantor hereby expressly waives notice of acceptance of this guarantee by  
27 any party.

28 ~~11-~~ 12. Guarantor agrees that this guarantee is in addition to and does not affect any  
29 other responsibility or liability of the guarantor with respect to the covered facilities.

30 **[In paragraphs 5 through 12, the MPCA is re-numbering the paragraphs. None of**  
31 **these amendments change the effect of the rules.]//**

32 ~~12.~~ Exclusions

33 ~~This corporate guarantee does not apply to:~~

34 ~~A. Bodily injury or property damage for which the owner or operator is obliged to pay~~  
35 ~~damages by reason of the assumption of liability in a contract or agreement. This~~

1 exclusion does not apply to liability for damages that the owner or operator would be  
2 obligated to pay in the absence of the contract or agreement.

3 ~~B. Any obligation of the owner or operator under a workers' compensation, disability  
4 benefits, or unemployment compensation law or any similar law.~~

5 ~~C. Bodily injury to:~~

6 ~~(1) an employee of the owner or operator arising from, and in the course of,  
7 employment by the owner or operator; or~~

8 ~~(2) the spouse, child, parent, brother, or sister of that employee as a consequence of, or  
9 arising from, and in the course of, employment by the owner or operator.~~

10 ~~This exclusion applies whether the owner or operator is liable as an employer or in  
11 any other capacity. This exclusion also applies to any obligation to share damages with or  
12 repay another person who must pay damages because of the injury to persons identified  
13 in item C.~~

14 ~~D. Bodily injury or property damage arising out of the ownership, maintenance, use,  
15 or entrustment to others of any aircraft, motor vehicle, or watercraft.~~

16 ~~E. Property damage to:~~

17 ~~(1) any property owned, rented, or occupied by the owner or operator;~~

18 ~~(2) premises that are sold, given away, or abandoned by the owner or operator if the  
19 property damage arises out of any part of those premises;~~

20 ~~(3) property loaned to the owner or operator;~~

21 ~~(4) personal property in the care, custody, or control of the owner or operator; and~~

22 ~~(5) that particular part of real property on which the owner or operator or any  
23 contractors or subcontractors working directly or indirectly on behalf of the owner or  
24 operator are performing operations, if the property damage arises out of these operations.~~

25 **In paragraph 12, the MPCA moves existing language, with slight modifications, to**  
26 **paragraph 4 above. The same types of exclusions formerly addressed in this**  
27 **paragraph are now being addressed in the amendments to paragraph 4 above.]]^**

28 13. The guarantor shall satisfy a third-party liability claim only on receipt of one of  
29 the following documents:

30 (a) Certification from the principal and the third-party claimant(s) that the liability  
31 claim should be paid. The certification must be worded as follows, except that

1 instructions in brackets are to be replaced with the relevant information and the brackets  
2 deleted:

3 Certification of Valid Claim

4 The undersigned, as parties [insert principal] and [insert name and address of third-  
5 party claimant(s)], hereby certify that the claim of bodily injury and/or property damage  
6 caused by a [sudden or nonsudden] accidental occurrence arising from operating  
7 [principal's hazardous waste treatment, storage, or disposal facility] should be paid in the  
8 amount of \$.....

9 [Signatures] Principal (Notary) Date [Signatures] Claimant(s) (Notary) Date

10 (b) A valid final court order establishing a judgment against the principal for bodily  
11 injury or property damage caused by sudden or nonsudden accidental occurrences arising  
12 from the operation of the principal's facility or group of facilities.

13 **[In subpart 8a, paragraph 13, the MPCA adopts language to address third party**  
14 **claims. This optional language is from RCRA Amendment 113: "Consolidated**  
15 **Liability Requirements" = 40 CFR 264.151(h)(2). Further information can be found**  
16 **in 53 FR 33938-33960, September 1, 1988; as amended by 56 FR 30200, July 1, 1991;**  
17 **and 57 FR 42832-42844, September 16, 1992.]//**

18 14. In the event of combination of this guarantee with another mechanism to meet  
19 liability requirements, this guarantee will be considered [insert "primary" or "excess"]  
20 coverage.

21 **[In subpart 8a, paragraph 14, the MPCA adopts language to address combined**  
22 **mechanisms for liability coverage. This is optional language from RCRA**  
23 **Amendment 113: "Consolidated Liability Requirements" = 40 CFR 264.151(h)(2).**  
24 **Further information can be found in 53 FR 33938-33960, September 1, 1988; as**  
25 **amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September 16,**  
26 **1992.]//**

27 I hereby certify that the wording of the guarantee is identical to the wording specified  
28 in Minnesota Rules, part 7045.0524, subpart 8a.

29 Effective date: \_\_\_\_\_ [Name of guarantor] [Authorized signatures for guarantor]  
30 [Names of persons signing] [Titles of persons signing (Two corporate officers must sign  
31 for parent corporation.)] Corporate resolution attached [(Attach resolution adopted by  
32 parent corporation authorizing parent corporation to provide the corporate guarantee for  
33 subsidiary)] Signature of witness or notary: \_\_\_\_\_

34 *[For text of subs 9 and 10, see M.R.]*

36 **Subp. 11. Letter of credit for liability coverage.** A letter of credit, as specified in  
37 **part 7045.0518, subpart 8, or 7045.0620, subpart 7, must be worded as follows, except**



1 that instructions in brackets are to be replaced with the relevant information and the  
2 brackets deleted:

3 IRREVOCABLE STANDBY LETTER OF CREDIT

4 [Name and Address of Issuing Institution]

5 [Agency Commissioner]

6 Minnesota Pollution Control Agency

7 Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit  
8 No. ... in the favor of ["any and all third-party liability claimants" or insert name of  
9 trustee of the standby trust fund], at the request and for the account of [owner or  
10 operator's name and address] for third-party liability awards or settlements of ..... [insert  
11 dollar amount of the letter of credit] per occurrence and the annual aggregate amount  
12 of ..... [insert dollar amount of the letter of credit] for sudden accidental occurrences  
13 and/or for third-party liability awards or settlements of ..... [insert dollar amount of the  
14 letter of credit] per occurrence, and the annual aggregate amount of ..... [insert dollar  
15 amount of the letter of credit] for nonsudden accidental occurrences available on  
16 presentation of a sight draft bearing reference to this letter of credit No. ..., and [insert the  
17 following language if the letter of credit is being used without a standby trust fund:

18 "(1) a signed certificate reading as follows:

19 CERTIFICATE OF VALID CLAIM

20 The undersigned, as parties [insert principal] and [insert name and address of third  
21 party claimant(s)], hereby certify that the claim of bodily injury and/or property damage  
22 caused by a [sudden or nonsudden] accidental occurrence arising from operations of  
23 [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the  
24 amount of \$..... We hereby certify that the claim does not apply to any of the following:

25 (a) Bodily injury or property damage for which [insert principal] is obligated to pay  
26 damages by reason of the assumption of liability in a contract or agreement. This  
27 exclusion does not apply to liability for damages that [insert principal] would be  
28 obligated to pay in the absence of the contract or agreement.

29 (b) Any obligation of [insert principal] under a workers' compensation, disability  
30 benefits or unemployment compensation law or any similar law.

31 (c) Bodily injury to:

32  
33 (1) an employee of [insert principal] arising from, and in the course of,  
34 employment by [insert principal]; or

1 (2) the spouse, child, parent, brother, or sister of that employee as a consequence of,  
2 or arising from, and in the course of employment by [insert principal].

3 This exclusion applies:

4 (A) whether [insert principal] may be liable as an employer or in any other capacity; and  
5 (B) to any obligation to share damages with or repay another person who must pay  
6 damages because of the injury to persons identified in paragraphs (1) and (2). (d) Bodily  
7 injury or property damage arising out of the ownership, maintenance, use, or entrustment  
8 to others of any aircraft, motor vehicle, or watercraft. (e) Property damage to:  
9 (1) any property owned, rented, or occupied by [insert principal];  
10 (2) premises that are sold, given away, or abandoned by [insert principal] if the  
11 property damage arises out of any part of those premises;  
12 (3) property loaned to [insert principal];  
13 (4) personal property in the care, custody, or control of [insert principal]; or  
14 (5) that particular part of real property on which [insert principal] or any  
15 contractors or subcontractors working directly or indirectly on behalf of [insert principal]  
16 are performing operations, if the property damage arises out of these operations.

17 [Signatures]

18 Grantor

19 [Signatures]

20 Claimant(s)

21 ; or

22 (2) a valid final court order establishing a judgment against the Grantor for bodily  
23 injury or property damage caused by sudden or nonsudden accidental occurrences arising  
24 from the operation of the Grantor's facility or group of facilities.

25 This letter of credit is effective as of [date] and shall expire on [date at least one year  
26 later], but such expiration date shall be automatically extended for a period of [at least  
27 one year] on [date] and on each successive expiration date, unless, at least 120 days  
28 before the current expiration date, we notify you, the commissioner, and [owner's or  
29 operator's name] by certified mail that we have decided not to extend this letter of credit  
30 beyond the current expiration date.

31 Whenever this letter of credit is drawn on under and in compliance with the terms of  
32 this credit, we shall duly honor such draft upon presentation to us.

33 [Insert the following language if a standby trust fund is not being used: "In the event  
34 that this letter of credit is used in combination with another mechanism for liability

1 coverage, this letter of credit shall be considered [insert "primary" or "excess"  
2 coverage."]

3 We certify that the wording of this letter of credit is identical to the wording specified  
4 in Minnesota Rules, part 7045.0524, subpart 11, as such rule was constituted on the date  
5 shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution]  
6 [Date].

7 This credit is subject to [insert "the most recent edition of the Uniform Customs and  
8 Practice for Documentary Credits, published and copyrighted by the International  
9 Chamber of Commerce," or "the Uniform Commercial Code"].

10 **[In subpart 11 the MPCA is adopting optional federal language regarding the**  
11 **wording of an irrevocable standby letter of credit to meet liability requirements. The**  
12 **MPCA is slightly modifying the federal wording to reduce the potential for confusion.**  
13 **The same clarifying changes are being made in subparts 12 and 13 below. The**  
14 **existing federal language calls for third party liability awards of “up to [in words] U.S.**  
15 **dollars \$ .....” The MPCA chooses to modify the phrasing in this document, as well**  
16 **as the phrasing of the same terms in Section 3 of subparts 12 and 13 to replace the**  
17 **counter-intuitive phrase “up to” in addressing liability (which normally requires “at**  
18 **least” some amount). Without understanding the larger context of the wording of this**  
19 **document, the phrase “up to” seems to set no minimum required amount of coverage.**  
20 **This is not the case and the EPA has explained to MPCA staff that it intends this**  
21 **language to apply in the larger context that any of the financial assurance instruments**  
22 **may be used in combination to provide the minimum coverage required by federal 40**  
23 **CFR 264.147(h), also found in Minnesota Rules part 7045.0518. By using the phrase**  
24 **“up to,” the EPA intends to allow the letter of credit to make up any shortage between**  
25 **the other financial assurance instruments and the required coverage. The MPCA**  
26 **does not believe that the existing federal language makes this context clear. The**  
27 **federal language fails to acknowledge the minimum amount of coverage required by**  
28 **part 7045.0518. The MPCA believes that replacing the federal “up to” phrase with**  
29 **the phrase “[insert dollar amount of the fund]” clarifies the intent of the federal**  
30 **language and removes potential confusion. The adopted language, except the change**  
31 **discussed above, is from RCRA Amendment 113: “Consolidated Liability**  
32 **Requirements” = 40 CFR 264.151(k). Further information can be found in 53 FR**  
33 **33938-33960, September 1, 1988; as amended by 56 FR 30200, July 1, 1991; and 57**  
34 **FR 42832-42844, September 16, 1992.]//**

35  
36 Subp. 12. Trust agreement for liability coverage.

37 A. A trust agreement, as specified in part 7045.0518, subpart 10, or 7045.0620,  
38 subpart 9, must be worded as follows, except that instructions in brackets are to be  
39 replaced with the relevant information and the brackets deleted:

40 TRUST AGREEMENT

1 Trust Agreement, the "Agreement," entered into as of [date] by and between [name of  
2 the owner or operator] a [name of State] [insert "corporation," "partnership,"  
3 "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert  
4 "incorporated in the State of \_\_\_\_\_" or "a national bank"], the "trustee."

5 Whereas, the Minnesota Pollution Control Agency (Agency), an agency of the state of  
6 Minnesota, has established certain rules applicable to the Grantor, requiring that an owner  
7 or operator of a hazardous waste management facility or group of facilities must  
8 demonstrate financial responsibility for bodily injury and property damage to third parties  
9 caused by sudden accidental and/or nonsudden accidental occurrences arising from  
10 operations of the facility or group of facilities.

11 Whereas, the Grantor has elected to establish a trust to assure all or part of such  
12 financial responsibility for the facilities identified herein.

13 Whereas, the Grantor, acting through its duly authorized officers, has selected the  
14 Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

15 Now, therefore, the Grantor and the Trustee agree as follows:

16 Section 1. Definitions. As used in this Agreement:

17 (a) The term "Grantor" means the owner or operator who enters into this Agreement  
18 and any successors or assigns of the Grantor.

19 (b) The term "Trustee" means the Trustee who enters into this Agreement and any  
20 successor Trustee.

21 Section 2. Identification of Facilities. This agreement pertains to the facilities  
22 identified on attached schedule A [on Schedule A, for each facility list the EPA  
23 Identification Number, name, and address of the facility(ies) and the amount of liability  
24 coverage, or portions thereof, if more than one instrument affords combined coverage as  
25 demonstrated by this Agreement].

26 Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust  
27 fund, hereinafter the "Fund," for the benefit of any and all third parties injured or  
28 damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of  
29 the facility(ies) covered by this guarantee, in the amounts of \_\_\_\_\_ [insert dollar  
30 amount of the fund] per occurrence and \_\_\_\_\_ [insert dollar amount of the fund]  
31 annual aggregate for sudden accidental occurrences and \_\_\_\_\_ [insert dollar amount  
32 of the fund] per occurrence and \_\_\_\_\_ [insert dollar amount of the fund] annual  
33 aggregate for nonsudden occurrences, except that the Fund is not established for the  
34 benefit of third parties for the following:

35 (a) Bodily injury or property damage for which [insert Grantor] is obligated to pay  
36 damages by reason of the assumption of liability in a contract or agreement. This

1 exclusion does not apply to liability for damages that [insert Grantor] would be obligated  
2 to pay in the absence of the contract or agreement.

3 (b) Any obligation of [insert Grantor] under a workers' compensation, disability  
4 benefits, or unemployment compensation law or any similar law.

5 (c) Bodily injury to:

6  
7 (1) an employee of [insert Grantor] arising from, and in the course of, employment  
8 by [insert Grantor]; or

9 (2) the spouse, child, parent, brother, or sister of that employee as a consequence of,  
10 or arising from, and in the course of employment by [insert Grantor].

11 This exclusion applies:

12 (A) whether [insert Grantor] may be liable as an employer or in any other capacity; and  
13 (B) to any obligation to share damages with or repay another person who must pay  
14 damages because of the injury to persons identified in paragraphs (1) and (2). (d) Bodily  
15 injury or property damage arising out of the ownership, maintenance, use, or entrustment  
16 to others of any aircraft, motor vehicle, or watercraft. (e) Property damage to:

17 (1) any property owned, rented, or occupied by [insert Grantor];

18 (2) premises that are sold, given away, or abandoned by [insert Grantor] if the  
19 property damage arises out of any part of those premises;

20 (3) property loaned to [insert Grantor];

21 (4) personal property in the care, custody, or control of [insert Grantor]; or

22 (5) that particular part of real property on which [insert Grantor] or any contractors  
23 or subcontractors working directly or indirectly on behalf of [insert Grantor] are  
24 performing operations, if the property damage arises out of these operations.

25 In the event of combination with another mechanism for liability coverage, the fund  
26 shall be considered [insert "primary" or "excess"] coverage.

27 The Fund is established initially as consisting of the property, which is acceptable to  
28 the Trustee, described in Schedule B attached hereto. Such property and any other  
29 property subsequently transferred to the Trustee is referred to as the Fund, together with  
30 all earnings and profits thereon, less any payments or distributions made by the Trustee  
31 pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as  
32 hereinafter provided. The Trustee shall not be responsible nor shall it undertake any  
33 responsibility for the amount or adequacy of, nor any duty to collect from the Grantor,  
34 any payments necessary to discharge any liabilities of the Grantor established by the  
35 Agency.

36 Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a  
37 third party liability claim by making payments from the Fund only upon receipt of one of  
38 the following documents:



1 (c) the Trustee is authorized to hold cash awaiting investment or distribution  
2 uninvested for a reasonable time and without liability for the payment of interest thereon.

3 Section 7. Commingling and Investment. The Trustee is expressly authorized in its  
4 discretion:

5 (a) to transfer from time to time any or all of the assets of the Fund to any common  
6 commingled, or collective trust fund created by the Trustee in which the fund is eligible  
7 to participate, subject to all of the provisions thereof, to be commingled with the assets of  
8 other trusts participating therein; and

9 (b) to purchase shares in any investment company registered under the Investment  
10 Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created,  
11 managed, underwritten, or to which investment advice is rendered or the shares of which  
12 are sold by the Trustee. The Trustee may vote such shares in its discretion.

13 Section 8. Express Powers of Trustee. Without in any way limiting the powers and  
14 discretions conferred upon the Trustee by the other provisions of this Agreement or by  
15 law, the Trustee is expressly authorized and empowered:

16 (a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it,  
17 by public or private sale. No person dealing with the Trustee shall be bound to see to the  
18 application of the purchase money or to inquire into the validity or expediency of any  
19 such sale or other disposition;

20 (b) to make, execute, acknowledge, and deliver any and all documents of transfer and  
21 conveyance and any and all other instruments that may be necessary or appropriate to  
22 carry out the powers herein granted;

23 (c) to register any securities held in the Fund in its own name or in the name of a  
24 nominee and to hold any security in bearer form or in book entry, or to combine  
25 certificates representing such securities with certificates of the same issue held by the  
26 Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such  
27 securities in a qualified central depository even though, when so deposited, such  
28 securities may be merged and held in bulk in the name of the nominee of such depository  
29 with other securities deposited therein by another person, or to deposit or arrange for the  
30 deposit of any securities issued by the United States Government, or any agency or  
31 instrumentality thereof, with a Federal Reserve bank, but the books and records of the  
32 Trustee shall at all times show that all such securities are part of the Fund;

33 (d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings  
34 certificates issued by the Trustee, in its separate corporate capacity, or in any other  
35 banking institution affiliated with the Trustee, to the extent insured by an agency of the  
36 Federal or State government; and

37 (e) to compromise or otherwise adjust all claims in favor of or against the Fund.

1       Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied  
2 against or in respect of the Fund and all brokerage commissions incurred by the Fund  
3 shall be paid from the Fund. All other expenses incurred by the Trustee in connection  
4 with the administration of this Trust, including fees for legal services rendered to the  
5 Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor,  
6 and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

7       Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the  
8 anniversary date of establishment of the Fund, furnish to the Grantor and to the Agency  
9 Commissioner a statement confirming the value of the Trust. Any securities in the Fund  
10 shall be valued at market value as of no more than 60 days prior to the anniversary date  
11 of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee  
12 within 90 days after the statement has been furnished to the Grantor and the Agency  
13 Commissioner shall constitute a conclusively binding assent by the Grantor barring the  
14 Grantor from asserting any claim or liability against the Trustee with respect to matters  
15 disclosed in the statement.

16       Section 11. Advice of Counsel. The Trustee may from time to time consult with  
17 counsel, who may be counsel to the Grantor with respect to any question arising as to the  
18 construction of this Agreement or any action to be taken hereunder. The Trustee shall be  
19 fully protected, to the extent permitted by law, in acting upon the advice of counsel.

20       Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable  
21 compensation for its services as agreed upon in writing from time to time with the  
22 Grantor.

23       Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the  
24 Trustee, but such resignation or replacement shall not be effective until the Grantor has  
25 appointed a successor trustee and this successor accepts the appointment. The successor  
26 trustee shall have the same powers and duties as those conferred upon the Trustee  
27 hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall  
28 assign, transfer, and pay over to the successor trustee the funds and properties then  
29 constituting the Fund. If for any reason the Grantor cannot or does not act in the event of  
30 the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction  
31 for the appointment of a successor trustee or for instructions. The successor trustee shall  
32 specify the date on which it assumes administration of the trust in a writing sent to the  
33 Grantor, the Agency Commissioner, and the present Trustee by certified mail ten days  
34 before such change becomes effective. Any expenses incurred by the Trustee as a result  
35 of any of the acts contemplated by this section shall be paid as provided in Section 9.

36       Section 14. Instructions to the Trustee. All orders, requests, and instructions by the  
37 Grantor to the Trustee shall be in writing, signed by such persons as are designated in the  
38 attached Exhibit A or such other designees as the Grantor may designate by amendments  
39 to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance  
40 with the Grantor's orders, requests, and instructions. All orders, requests, and instructions  
41 by the Agency Commissioner to the Trustee shall be in writing, signed by the Agency



1 Commissioner, or the Commissioner's designees, and the Trustee shall act and shall be  
2 fully protected in acting in accordance with such orders, requests, and instructions. The  
3 Trustee shall have the right to assume, in the absence of written notice to the contrary,  
4 that no event constituting a change or a termination of the authority of any person to act  
5 on behalf of the Grantor or the Agency hereunder has occurred. The Trustee shall have no  
6 duty to act in the absence of such orders, requests, and instructions from the Grantor  
7 and/or the Agency, except as provided for herein.

8 Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage  
9 is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment  
10 and the amount(s) thereof within five (5) working days. The Grantor shall, on or before  
11 the anniversary date of the establishment of the Fund following such notice, either make  
12 payments to the Trustee in amounts sufficient to cause the trust to return to its value  
13 immediately prior to the payment of claims under Section 4, or shall provide written  
14 proof to the Trustee that other financial assurance for liability coverage has been obtained  
15 equaling the amount necessary to return the trust to its value prior to the payment of  
16 claims. If the Grantor does not either make payments to the Trustee or provide the  
17 Trustee with such proof, the Trustee shall within ten working days after the anniversary  
18 date of the establishment of the Fund provide a written notice of nonpayment to the  
19 Agency Commissioner.

20 Section 16. Amendment of Agreement. This Agreement may be amended by an  
21 instrument in writing executed by the Grantor, the Trustee, and the Agency  
22 Commissioner, or by the Trustee and the Agency Commissioner if the Grantor ceases to  
23 exist.

24 Section 17. Irrevocability and Termination. Subject to the right of the parties to amend  
25 this Agreement as provided in Section 16, this Trust shall be irrevocable and shall  
26 continue until terminated at the written agreement of the Grantor, the Trustee, and the  
27 Agency Commissioner, or by the Trustee and the Agency Commissioner, if the Grantor  
28 ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust  
29 administration expenses, shall be delivered to the Grantor.

30 The Agency Commissioner will agree to termination of the Trust when the owner or  
31 operator substitutes alternate financial assurance as specified in this section.

32 Section 18. Immunity and Indemnification. The Trustee shall not incur personal  
33 liability of any nature in connection with any act or omission, made in good faith, in the  
34 administration of this Trust, or in carrying out any directions by the Grantor or the  
35 Agency Commissioner issued in accordance with this Agreement. The Trustee shall be  
36 indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and  
37 against any personal liability to which the Trustee may be subjected by reason of any act  
38 or conduct in its official capacity, including all expenses reasonably incurred in its  
39 defense in the event the Grantor fails to provide such defense.

1 Section 19. Choice of Law. This Agreement shall be administered, construed, and  
2 enforced according to the laws of the State of Minnesota.

3 Section 20. Interpretation. As used in Agreement, words in the singular include the  
4 plural and words in the plural include the singular. The descriptive headings for each  
5 section of this Agreement shall not affect the interpretation or the legal efficacy of this  
6 Agreement.

7 In Witness Whereof the parties have caused this Agreement to be executed by their  
8 respective officers duly authorized and their corporate seals to be hereunto affixed and  
9 attested as of the date first above written. The parties below certify that the wording of  
10 this Agreement is identical to the wording specified in part 7045.0524, subpart 12, as  
11 such regulations were constituted on the date first above written.

12 [Signature of Grantor]

13 [Title]

14 Attest:

15 [Title]

16 [Seal]

17 [Signature of Trustee]

18 Attest:

19 [Title]

20 [Seal]

21  
22 B. The following is an example of the certification of acknowledgment which must  
23 accompany the trust agreement for a trust fund as specified in parts 7045.0518, subpart  
24 10, or 7045.0620, subpart 9.

25 State of \_\_\_\_\_

26 County of \_\_\_\_\_

27 On this [date], before me personally came [owner or operator] to me known, who,  
28 being by me duly sworn, did depose and say that she/he resides at [address], that she/he is  
29 [title] of [corporation], the corporation described in and which executed the above  
30 instrument; that she/he knows the seal of said corporation; that the seal affixed to such

1 instrument is such corporate seal; that it was so affixed by order of the Board of Directors  
2 of said corporation, and that she/he signed her/his name thereto by like order.

3 [Signature of Notary Public]

4 **[In subpart 12, the MPCA is adopting optional federal language regarding the**  
5 **wording of a trust agreement to meet liability requirements. The MPCA is slightly**  
6 **modifying a set of four related parenthetical phrases in Section 3 to reduce the**  
7 **potential for confusion. Similar clarifying changes were made to subparts 11 and 13.**  
8 **The existing federal language calls for a fund of “[up to (\$1, 2, 3 or 6) million]”**  
9 **(towards various liability coverages). To a reasonable person, the phrase “[up to...]”**  
10 **is a counter-intuitive way to address liability which normally sets minimum amounts**  
11 **of required coverage (often “at least” some millions of dollars). Without**  
12 **understanding the larger context of the wording of this document, the phrase “up to”**  
13 **seems to set no minimum required amount of coverage. This is not the case and the**  
14 **EPA has explained to MPCA staff that it intends this language to apply in the larger**  
15 **context that any of the allowed financial assurance instruments may be used in**  
16 **combination to provide the minimum coverage required by federal 40 CFR 264.147(j),**  
17 **also found in Minnesota Rules part 7045.0518. By using the phrase “up to,” the EPA**  
18 **intends the trust fund to make up any shortage between the other financial assurance**  
19 **instruments and the required coverage. The MPCA does not believe that existing**  
20 **federal Section 3 language makes this context clear. The federal language fails to**  
21 **acknowledge the minimum amount of coverage required by part 7045.0518. The**  
22 **MPCA believes that replacing the federal “[up to ...]” phrase with the phrase “[insert**  
23 **dollar amount of the fund]” clarifies the intent of the federal language and removes**  
24 **potential confusion. The language of this subpart, except the change discussed above,**  
25 **is adopted from optional RCRA Amendment 113: “Consolidated Liability**  
26 **Requirements” = 40 CFR 264.151(m). Further information can be found in 53 FR**  
27 **33938-33960, September 1, 1988; as amended by 56 FR 30200, July 1, 1991; and 57**  
28 **FR 42832-42844, September 16, 1992.]//**

29  
30 Subp. 13. Standby trust agreement for liability coverage.

31 A. A standby trust agreement, as specified in part 7045.0518, subpart 8, or  
32 7045.0620, subpart 7, must be worded as follows, except that instructions in brackets are  
33 to be replaced with the relevant information and the brackets deleted:

34 STANDBY TRUST AGREEMENT

35 Trust Agreement, the "Agreement," entered into as of [date] by and between [name of  
36 the owner or operator] a [name of a State] [insert "corporation," "partnership,"  
37 "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert,  
38 "incorporated in the State of \_\_\_\_\_" or "a national bank"], the "trustee."

39 Whereas, the Minnesota Pollution Control Agency (Agency), an agency of the State of  
40 Minnesota, has established certain regulations applicable to the Grantor, requiring that an  
41 owner or operator of a hazardous waste management facility or group of facilities must

1 demonstrate financial responsibility for bodily injury and property damage to third parties  
2 caused by sudden accidental and/or nonsudden accidental occurrences arising from  
3 operations of the facility or group of facilities.

4 Whereas, the Grantor has elected to establish a standby trust into which the proceeds  
5 from a letter of credit may be deposited to assure all or part of such financial  
6 responsibility for the facilities identified herein.

7 Whereas, the Grantor, acting through its duly authorized officers, has selected the  
8 Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

9 Now, therefore, the Grantor and the Trustee agree as follows:

10 Section 1. Definitions. As used in this Agreement:

11 (a) The term Grantor means the owner or operator who enters into this Agreement and  
12 any successors or assigns of the Grantor.

13 (b) The term Trustee means the Trustee who enters into this Agreement and any  
14 successor Trustee.

15 Section 2. Identification of Facilities. This Agreement pertains to the facilities  
16 identified on attached Schedule A [on Schedule A, for each facility list the identification  
17 number, name, and address of the facility(ies) and the amount of liability coverage, or  
18 portions thereof, if more than one instrument affords combined coverage as demonstrated  
19 by this Agreement].

20 Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a  
21 standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured  
22 or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation  
23 of the facility(ies) covered by this guarantee, in the amounts of \_\_\_\_\_ [insert  
24 dollar amount of the fund] per occurrence and \_\_\_\_\_ [insert dollar amount of the  
25 fund] annual aggregate for sudden accidental occurrences and \_\_\_\_\_ [insert  
26 dollar amount of the fund] per occurrence and \_\_\_\_\_ [insert dollar amount of the  
27 fund] annual aggregate for nonsudden occurrences, except that the Fund is not  
28 established for the benefit of third parties for the following:

29 (a) Bodily injury or property damage for which [insert Grantor] is obligated to pay  
30 damages by reason of the assumption of liability in a contract or agreement. This  
31 exclusion does not apply to liability for damages that [insert Grantor] would be obligated  
32 to pay in the absence of the contract or agreement.

33 (b) Any obligation of [insert Grantor] under a workers' compensation, disability  
34 benefits, or unemployment compensation law or any similar law.

35 (c) Bodily injury to:

1 (1) an employee or [insert Grantor] arising from, and in the course of, employment  
2 by [insert Grantor]; or

3 (2) the spouse, child, parent, brother, or sister of that employee as a consequence of,  
4 or arising from, and in the course of employment by [insert Grantor].

5 This exclusion applies:

6 (A) whether [insert Grantor] may be liable as an employer or in any other capacity; and

7 (B) to any obligation to share damages with or repay another person who must pay  
8 damages because of the injury to persons identified in paragraphs (1) and (2). (d) Bodily  
9 injury or property damage arising out of the ownership, maintenance, use, or entrustment  
10 to others of any aircraft, motor vehicle, or watercraft. (e) Property damage to:

11 (1) any property owned, rented, or occupied by [insert Grantor];

12 (2) premises that are sold, given away, or abandoned by [insert Grantor] if the  
13 property damage arises out of any part of those premises;

14 (3) property loaned [insert Grantor];

15 (4) personal property in the care, custody, or control of [insert Grantor]; or

16 (5) that particular part of real property on which [insert Grantor] or any contractors  
17 or subcontractors working directly or indirectly on behalf of [insert Grantor] are  
18 performing operations, if the property damage arises out of these operations.

19 In the event of combination with another mechanism for liability coverage, the fund  
20 shall be considered [insert "primary" or "excess"] coverage.

21 The Fund is established initially as consisting of the proceeds of the letter of credit  
22 deposited into the Fund. Such proceeds and any other property subsequently transferred  
23 to the Trustee is referred to as the Fund, together with all earnings and profits thereon,  
24 less any payments or distributions made by the Trustee pursuant to this Agreement. The  
25 Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall  
26 not be responsible nor shall it undertake any responsibility for the amount or adequacy of,  
27 nor any duty to collect from the Grantor, any payments necessary to discharge any  
28 liabilities of the Grantor established by the Agency.

29 Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a  
30 third-party liability claim by drawing on the letter of credit described in Schedule B and  
31 by making payments from the Fund only upon receipt of one of the following documents:

32 (a) Certification from the Grantor and the third-party claimant(s) that the liability  
33 claim should be paid. The certification must be worded as follows, except that  
34 instructions in brackets are to be replaced with the relevant information and the brackets  
35 deleted: The Trustee shall satisfy a third-party liability claim by drawing on the letter of  
36 credit described in Schedule B and by making payments from the Fund only upon receipt  
37 of one of the following documents:

38 CERTIFICATION OF VALID CLAIM

1        The undersigned, as parties [insert Grantor] and [insert name and address of third  
2 party claimant(s)], hereby certify that the claim of bodily injury and/or property damage  
3 caused by a [sudden or nonsudden] accidental occurrence arising from operating  
4 [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the  
5 amount of \$[\_\_\_\_\_].

6        [Signature] Grantor

7        [Signature(s)] Claimant(s)

8        (b) A valid final court order establishing a judgment against the Grantor for bodily  
9 injury or property damage caused by sudden or nonsudden accidental occurrences arising  
10 from the operation of the Grantor's facility or group of facilities.

11        Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund  
12 shall consist of the proceeds from the letter of credit drawn upon by the Trustee in  
13 accordance with the requirements of Minnesota Rules, part 7045.0524, subpart 11, and  
14 Section 4 of this Agreement.

15        Section 6. Trustee Management. The Trustee shall invest and reinvest the principal  
16 and income, in accordance with general investment policies and guidelines which the  
17 Grantor may communicate in writing to the Trustee from time to time, subject, however,  
18 to the provisions of this Section. In investing, reinvesting, exchanging, selling, and  
19 managing the Fund, the Trustee shall discharge the trustee's duties with respect to the  
20 trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and  
21 diligence under the circumstances then prevailing which persons of prudence, acting in a  
22 like capacity and familiar with such matters, would use in the conduct of an enterprise of  
23 a like character and with like aims; except that:

24        (a) securities or other obligations of the Grantor, or any other owner or operator of the  
25 facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as  
26 amended, United States Code, title 15, section 80a-2(a), shall not be acquired or held,  
27 unless they are securities or other obligations of the Federal or State government;

28        (b) the Trustee is authorized to invest the Fund in time or demand deposits of the  
29 Trustee, to the extent insured by an agency of the Federal or a State government; and

30        (c) the Trustee is authorized to hold cash awaiting investment or distribution  
31 uninvested for a reasonable time and without liability for the payment of interest thereon.

32        Section 7. Commingling and Investment. The Trustee is expressly authorized in its  
33 discretion:

34        (a) to transfer from time to time any or all of the assets of the Fund to any common,  
35 commingled, or collective trust fund created by the trustee in which the Fund is eligible

1 to participate, subject to all of the provisions thereof, to be commingled with the assets of  
2 other trusts participating therein; and

3 (b) to purchase shares in any investment company registered under the Investment  
4 Company Act of 1940, United States Code, title 15, section 80a-1 et seq., including one  
5 which may be created, managed, underwritten, or to which investment advice is rendered  
6 or the shares of which are sold by the Trustee. The Trustee may vote such shares in its  
7 discretion.

8 Section 8. Express Powers of Trustee. Without in any way limiting the powers and  
9 discretions conferred upon the Trustee by the other provisions of the Agreement or by  
10 law, the Trustee is expressly authorized and empowered:

11 (a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it,  
12 by public or private sale. No person dealing with the Trustee shall be bound to see to the  
13 application of the purchase money or to inquire into the validity or expediency of any  
14 such sale or other disposition;

15 (b) to make, execute, acknowledge, and deliver any and all documents of transfer and  
16 conveyance and any and all other instruments that may be necessary or appropriate to  
17 carry out the powers herein granted;

18 (c) to register any securities held in the Fund in its own name or in the name of a  
19 nominee and to hold any security in bearer form or in book entry, or to combine  
20 certificates representing such securities with certificates of the same issue held by the  
21 Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such  
22 securities in a qualified central depository even though, when so deposited, such  
23 securities may be merged and held in bulk in the name of the nominee of such depository  
24 with other securities deposited therein by another person, or to deposit or arrange for the  
25 deposit of any securities issued by the United States Government, or any agency or  
26 instrumentality thereof, with a Federal Reserve Bank, but the books and records of the  
27 Trustee shall at all times show that all such securities are part of the Fund;

28 (d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings  
29 certificates issued by the Trustee, in its separate corporate capacity, or in any other  
30 banking institution affiliated with the Trustee, to the extent insured by an agency of the  
31 Federal or State government; and

32 (e) to compromise or otherwise adjust all claims in favor of or against the Fund.

33 Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied  
34 against or in respect of the Fund and all brokerage commissions incurred by the Fund  
35 shall be paid from the Fund. All other expenses incurred by the Trustee in connection  
36 with the administration of this Trust, including fees for legal services rendered to the  
37 Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor,  
38 and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

1       Section 10. Advice of Counsel. The Trustee may from time to time consult with  
2 counsel, who may be counsel to the Grantor, with respect to any question arising as to the  
3 construction of this Agreement or any action to be taken hereunder. The Trustee shall be  
4 fully protected, to the extent permitted by law, in acting upon the advice of counsel.

5       Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable  
6 compensation for its services as agreed upon in writing from time to time with the  
7 Grantor.

8       Section 12. Successor Trustee. The Trustee may reside or the Grantor may replace the  
9 Trustee, but such resignation or replacement shall not be effective until the Grantor has  
10 appointed a successor trustee and this successor accepts the appointment. The successor  
11 trustee shall have the same powers and duties as those conferred upon the Trustee  
12 hereunder. Upon the successor trustee's acceptance of the appointment; the Trustee shall  
13 assign, transfer, and pay over to the successor trustee the funds and properties then  
14 constituting the Fund. If for any reason the Grantor cannot or does not act in the event of  
15 the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction  
16 for the appointment of a successor trustee or for instructions. The successor trustee shall  
17 specify the date on which it assumes administration of the trust in a writing sent to the  
18 Grantor, the Agency Commissioner and the present Trustee by certified mail ten days  
19 before such change becomes effective. Any expenses incurred by the Trustee as a result  
20 of any of the acts contemplated by this Section shall be paid as provided in Section 9.

21       Section 13. Instructions to the Trustee. All orders, requests, certifications of valid  
22 claims, and instructions to the Trustee shall be in writing, signed by such persons as are  
23 designated in the attached Exhibit A or such other designees as the Grantor may  
24 designate by amendments to Exhibit A. The Trustee shall be fully protected in acting  
25 without inquiry in accordance with the Grantor's orders, requests, and instructions. The  
26 Trustee shall have the right to assume, in the absence of written notice to the contrary,  
27 that no event constituting a change or a termination of the authority of any person to act  
28 on behalf of the Grantor or the Agency Commissioner hereunder has occurred. The  
29 Trustee shall have no duty to act in the absence of such orders, requests, and instructions  
30 from the Grantor and/or the Agency, except as provided for herein.

31       Section 14. Amendment of Agreement. This Agreement may be amended by an  
32 instrument in writing executed by the Grantor, the Trustee, and the Agency  
33 Commissioner, or by the Trustee and the Agency Commissioner if the Grantor ceases to  
34 exist.

35       Section 15. Irrevocability and Termination. Subject to the right of the parties to amend  
36 this Agreement as provided in Section 14, this Trust shall be irrevocable and shall  
37 continue until terminated at the written agreement of the Grantor, the Trustee, and the  
38 Agency Commissioner, or by the Trustee and the Agency Commissioner, if the Grantor  
39 ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust  
40 administration expenses, shall be paid to the Grantor.



1 The Agency Commissioner will agree to termination of the Trust when the owner or  
2 operator substitutes alternative financial assurance as specified in this section.

3 Section 16. Immunity and Indemnification. The Trustee shall not incur personal  
4 liability of any nature in connection with any act or omission, made in good faith, in the  
5 administration of this Trust, or in carrying out any directions by the Grantor and the  
6 Agency Commissioner issued in accordance with this Agreement. The Trustee shall be  
7 indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and  
8 against any personal liability to which the Trustee may be subjected by reason of any act  
9 or conduct in its official capacity, including all expenses reasonably incurred in its  
10 defense in the event the Grantor fails to provide such defense.

11 Section 17. Choice of Law. This Agreement shall be administered, construed, and  
12 enforced in accordance with the laws of the State of Minnesota.

13 Section 18. Interpretation. As used in this Agreement, words in the singular include  
14 the plural and words in the plural include the singular. The descriptive headings for each  
15 Section of this Agreement shall not affect the interpretation of the legal efficacy of this  
16 Agreement.

17 In Witness Whereof, the parties have caused this Agreement to be executed by their  
18 respective officers duly authorized and their corporate seals to be hereunto affixed and  
19 attested as of the date first above written. The parties below certify that the wording of  
20 this Agreement is identical to the wording specified in Minnesota Rules, part 7045.0524,  
21 subpart 13, as such rule was constituted on the date first above written.

22 [Signature of Grantor]

23 [Title]

24 Attest:

25 [Title]

26 [Seal]

27 [Signature of Trustee]

28 Attest:

29 [Title]

30 [Seal]

31

1 B. The following is an example of the certification of acknowledgment which must  
2 accompany the trust agreement for a standby trust fund as specified in parts 7045.0518,  
3 subpart 8, or 7045.0620, subpart 7.

4 State of \_\_\_\_\_

5 County of \_\_\_\_\_

6 On this [date], before me personally came [owner or operator] to me known, who,  
7 being by me duly sworn, did depose and say that she/he resides at [address], that she/he is  
8 [title] of [corporation], the corporation described in and which executed the above  
9 instrument; that she/he knows the seal of said corporation; that the seal affixed to such  
10 instrument is such corporate seal; that it was so affixed by order of the Board of Directors  
11 of said corporation, and that she/he signed her/his name thereto by like order.

12 [Signature of Notary Public]

13 **[In subpart 13, the MPCA is adopting optional federal language regarding the**  
14 **wording of a trust agreement to meet liability requirements. The MPCA is slightly**  
15 **modifying a set of four related parenthetical phrases in Section 3 to reduce the**  
16 **potential for confusion. Similar clarifying changes were made to subparts 11 and 12**  
17 **above. The existing federal language calls for a fund of “[up to (\$1, 2, 3 or 6) million]”**  
18 **(towards various liability coverages). To a reasonable person, the phrase “[up to...]”**  
19 **is a counter-intuitive way to address liability which normally sets minimum amounts**  
20 **of required coverage (often “at least” some millions of dollars). Without**  
21 **understanding the larger context of the wording of this document, the phrase “up to”**  
22 **seems to set no minimum required amount of coverage. This is not the case and the**  
23 **EPA has explained to MPCA staff that it intends this language to apply in the larger**  
24 **context that any of the allowed financial assurance instruments may be used in**  
25 **combination to provide the minimum coverage required by federal 40 CFR 264.147(j),**  
26 **also found in Minnesota Rules part 7045.0518. By using the phrase “up to,” the EPA**  
27 **intends the trust fund to make up any shortage between the other financial assurance**  
28 **instruments and the required coverage. The MPCA does not believe that existing**  
29 **federal Section 3 language makes this context clear. The federal language fails to**  
30 **acknowledge the minimum amount of coverage required by part 7045.0518. The**  
31 **MPCA believes that replacing the federal “[up to ...]” phrase with the phrase “[insert**  
32 **dollar amount of the fund]” clarifies the intent of the federal language and removes**  
33 **potential confusion. The language of this subpart, except the change discussed above,**  
34 **is adopted from optional RCRA Amendment 113: “Consolidated Liability**  
35 **Requirements” = 40 CFR 264.151(n). Further information can be found in 53 FR**  
36 **33938-33960, September 1, 1988; as amended by 56 FR 30200, July 1, 1991; and 57**  
37 **FR 42832-42844, September 16, 1992.]//**

### 38 **7045.0526 USE AND MANAGEMENT OF CONTAINERS.**

39 Subpart 1. **Scope.** This part applies to owners and operators of all hazardous waste  
40 facilities that store containers of hazardous waste, except as part 7045.0450 provides

1 otherwise. Under ~~parts part~~ part 7045.0127 and 7045.0135, subpart 4, item C Code of Federal  
2 Regulations, title 40, section 261.33(c), as incorporated in part 7045.0135, if a hazardous  
3 waste is emptied from a container, the residue remaining in the container is not  
4 considered a hazardous waste if the container is empty, as defined in part 7045.0127. In  
5 that event, management of the container is exempt from the requirements of this part.

6 **[In subpart 1, the MPCA replaces a citation to repealed MN Rules with a citation to  
7 the equivalent federal rules as incorporated by reference.]//**

8 *[For text of subps 2 to 5, see M.R.]*

9 Subp. 6. **Containment.** Requirements for containment systems are as described in  
10 items A to E.

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

12 C. Spilled or leaked waste and accumulated precipitation must be removed from  
13 the sump or collection area in as timely a manner as is necessary to prevent overflow of  
14 the collection system. If the collected material is a hazardous waste as defined in parts  
15 7045.0102 to ~~7045.0143~~ 7045.0155, it must be managed as a hazardous waste ~~according~~  
16 ~~to all applicable requirements of~~ in accordance with parts 7045.0205 to 7045.1030. If the  
17 collected material is discharged through a point source to waters of the United States, it is  
18 subject to the requirements of section 402 of the federal Clean Water Pollution Control  
19 Act Amendments of 1972, United States Code, title 33, section 1342, as amended.

20 **[In item C, the MPCA corrects a citation to a range of rules that changed as parts  
21 were added. The MPCA also makes minor changes to simplify existing language.  
22 Finally, the MPCA updates an outdated reference to the federal Water Pollution  
23 Control Act, section 1342 that was superseded by the Clean Water Act, section 402.]//**

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

25 E. Storage areas that store containers holding wastes F020, F021, F022, F023,  
26 F026, F027, and F028 from part 7045.0135, subpart ~~2~~ 1a, item B, that do not contain free  
27 liquids must have a containment system defined by item A.

28 **[In item E, the MPCA replaces a citation to a repealed subpart with the revised  
29 citation.]//**

30 Subp. 7. **Special requirements for ignitable or reactive waste.** Containers holding  
31 ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's  
32 property line when physically possible based on the dimensions of the property. When it  
33 is not physically possible to place containers at least 50 feet from the property line, based  
34 on the dimensions of the property, the ignitable or reactive waste must be placed at least  
35 as far as the specified minimum distance from property line found in ~~Table Number~~  
36 ~~79.503 F of the Minnesota Uniform State Fire Code as incorporated by reference in part~~  
37 ~~7510.3510, chapter 7510~~. Nothing in this subpart shall relieve the facility owner or  
38 operator from the obligation to comply with any local, state, or federal law governing  
39 storage of these wastes.

40 **[In subpart 7, the MPCA corrects a reference to a previously amended State Fire  
41 Code.]//**

42 *[For text of subps 8 and 9, see M.R.]*

43 Subp. 10. Air emission standards. The owner or operator must manage all hazardous  
44 waste placed in a container in accordance with parts 7045.0540, 7045.0547, and  
45 7045.0548.

1 [In subpart 10, the MPCA adopts language referencing the air emission standards  
2 that are being applied to containers at facilities as a result of this rulemaking. The  
3 reference is from required RCRA Amendment 154, 154-1.15: "Consolidated Organic  
4 Air Emission Standards for Tanks, Surface Impoundments, and Containers," = 40  
5 CFR 264.179. Further information can be found in 59 FR 62896-62953, December 6,  
6 1994; as amended by 61 FR 59932-59997, November 25, 1996.//  
7

## 8 7045.0528 TANK SYSTEMS.

9 Subpart 1. **Scope.** This part applies to owners and operators of facilities that use tank  
10 systems, including tank systems, sumps, and other such collection devices or systems  
11 used in conjunction with drip pads, as defined in part 7045.0020 and regulated under part  
12 7045.0541, to treat or store hazardous waste, except as part 7045.0450, and items A and  
13 B provide otherwise.

14 A. Tank systems that are used to store or treat hazardous waste that contains no  
15 free liquids and are situated inside a building with an impermeable floor are exempted  
16 from the requirements in subpart 4. To demonstrate the absence or presence of free  
17 liquids in the stored or treated waste, EPA the following test must be used: Method 9095  
18 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes  
19 Waste, Physical/Chemical Methods," (EPA publication No. SW-846 ) ~~must be used,~~  
20 incorporated in part 7045.0065, item D.

21 [In item A, the MPCA corrects the name of the EPA test method for verifying the  
22 presence of liquids in order to correspond to the federal counterpart at 40 CFR  
23 264.190(a). The change is based on required RCRA Amendment 126: "Testing and  
24 Monitoring Activities." Further information can be found in 58 FR 46040-46051,  
25 August 31, 1993; as amended at 59 FR 47980-47982, September 19, 1994. The MPCA  
26 also provides language to clarify where to find the prescribed test method, which has  
27 changed as a result of these amendments.//

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

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

30 Subp. 10. **Special requirements for ignitable or reactive waste.** Ignitable or reactive  
31 waste must not be placed in a tank unless:

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

33 C. the tank is used solely for emergencies.

34 The owner or operator of a facility that treats or stores ignitable or reactive waste in a  
35 tank shall comply with the requirements for the maintenance of protective distances  
36 between the waste management area and any public ways, streets, alleys, or an adjoining  
37 property line that can be built upon, as required in the buffer zone requirements for tanks  
38 contained in ~~article 79 of the Minnesota Uniform State Fire Code, as incorporated by~~  
39 ~~reference in part 7510.3510~~ chapter 7510. As required by part 7045.0458, the waste  
40 analysis plan must include analyses needed to comply with these special requirements for  
41 ignitable or reactive waste. Additional requirements for ignitable and reactive wastes are  
42 contained in part 7045.0456, subpart 1. Part 7045.0456, subpart 3 also requires waste  
43 analysis, trial tests, or other documentation to ensure compliance with part 7045.0456,  
44 subpart 2. As required by part 7045.0478, the owner or operator shall place the results of

1 each waste analysis and trial test, and any documented information, in the operating  
2 record of the facility.

3 **[In item C, the MPCA corrects a reference to a previously amended State Fire  
4 Code.]//**

5 *[For text of subp 11, see M.R.]*

6 **Subp. 12. Air emission standards.** The owner or operator of a facility must manage  
7 all hazardous waste placed in a tank in accordance with parts 7045.0540, 7045.0547, and  
8 7045.0548.

9 **[In subpart 12, the MPCA adopts language from required RCRA Amendment 154.5,  
10 154-1.16: “Consolidated Organic Air Emission Standards for Tanks, Surface  
11 Impoundments, and Containers” = 40 CFR 264.200. Further information can be  
12 found in 59 FR 62896-62953, December 6, 1994; as amended by 61 FR 59932-59997,  
13 November 25, 1996.]//**

## 15 **7045.0532 SURFACE IMPOUNDMENTS.**

16 *[For text of subs 1 to 6, see M.R.]*

17 **Subp. 7. Closure and postclosure care.** The requirements of closure and postclosure  
18 care are as follows:

19 A. At closure, the owner or operator shall:

20 (1) remove or decontaminate all waste residues, contaminated containment  
21 system components including liners, contaminated subsoils, and structures and equipment  
22 contaminated with waste and leachate, and manage them as hazardous waste unless they  
23 are shown to not be hazardous according to in accordance with parts 7045.0102 to  
24 7045.0143 7045.0155; or

25 **[In item A, the MPCA clarifies language and corrects a citation to a range of rules  
26 that changed as parts were added.]//**

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

28 *[For text of items B to E, see M.R.]*

29 **Subp. 8. Special requirements for ignitable or reactive waste.** Ignitable or reactive  
30 waste must not be placed in a surface impoundment, unless the waste and impoundment  
31 satisfy all applicable requirements of ~~parts 7045.1300 to 7045.1380~~ part 7045.1390, and:

32 **[In subpart 8, the MPCA provides the replacement citation for a repealed range of  
33 rules being amended in this rulemaking.]//**

34 *[For text of items A to C, see M.R.]*

35 **Subp. 9. Special requirements for incompatible wastes.** Incompatible wastes, or  
36 incompatible wastes and materials, must not be placed in the same surface impoundment  
37 unless compliance with part 7045.0456, subpart 2 is maintained. For examples of  
38 potentially incompatible wastes, or incompatible waste and materials, see part 7045.0543,  
39 subpart 1, item C.

40 **[In subpart 9, the MPCA provides a citation to a rule that incorporates an appendix  
41 which lists examples of potentially incompatible wastes and materials. This citation  
42 corresponds to parenthetical information provided in the federal counterpart to this  
43 rule found at 40 CFR 264.230. The reference to part 7045.0543, subpart 1, item C is  
44 to the rule being added in this rulemaking that incorporates appendices from the  
45 federal regulations.]//**

1 Subp. 10. **Special requirements for hazardous wastes F020, F021, F022, F023,**  
2 **F026, F027, and F028.** The following requirements apply to the hazardous wastes  
3 indicated:

4 A. Hazardous waste F020, F021, F022, F023, F026, and F027 listed under part  
5 7045.0135, subpart 2 1a, item B, must not be placed in a surface impoundment.

6 **[In item A, the MPCA replaces a citation to a repealed subpart with the revised**  
7 **citation.]//**

8 B. Hazardous waste F028 and treatment residues and soils contaminated with  
9 hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part  
10 7045.0135, subpart 2 1a, item B, must not be placed in surface impoundments unless the  
11 owner or operator operates the surface impoundment in accordance with all applicable  
12 requirements of this part and in accordance with a management plan that is approved by  
13 the commissioner considering the following factors:

14 **[In item B, the MPCA replaces a citation to a repealed subpart with the revised**  
15 **citation.]//**

16 *[For text of subitems (1) to (4), see M.R.]*

17 C. The commissioner shall impose additional design, operating, and monitoring  
18 requirements if the commissioner finds that additional requirements are necessary for  
19 surface impoundments used to treat, store, or dispose of hazardous waste F028 and  
20 treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023,  
21 F026, F027, and F028 listed under part 7045.0135, subpart 2 1a, item B, in order to  
22 reduce the possibility of migration of these wastes to ground water, surface water, or air  
23 so as to protect human health and the environment.

24 **[In item C, the MPCA replaces a citation to a repealed subpart with the revised**  
25 **citation.]//**

26 Subp. 11. **Air emission standards.** The owner or operator must manage all hazardous  
27 waste placed in a surface impoundment in accordance with parts 7045.0540 and  
28 7045.0548.

29 **[In subpart 11, the MPCA adopts language from required RCRA Amendment 154.6,**  
30 **154-1.17: “Consolidated Organic Air Emission Standards for Tanks, Surface**  
31 **Impoundments, and Containers,” = 40 CFR 264.232. Further information can be**  
32 **found in 59 FR 62896-62953, December 6, 1994; as amended by 61 FR 59932-59997,**  
33 **November 25, 1996.]//**

## 35 **7045.0534 WASTE PILES.**

36 *[For text of subps 1 to 6, see M.R.]*

37  
38 Subp. 7. **Closure and postclosure care.** Closure and postclosure requirements are as  
39 follows:

40 A. At closure, the owner or operator shall remove or decontaminate all waste  
41 residues, contaminated containment system components including liners, contaminated  
42 subsoils, and structures and equipment contaminated with waste and leachate; and  
43 manage them as hazardous waste unless they are shown to not be hazardous ~~according to~~  
44 in accordance with parts 7045.0102 to 7045.0143 7054.0150.

1 [In item A, the MPCA corrects a citation to a range of rules that changed as parts  
2 were added. The MPCA also revises language to read “in accordance with” to  
3 improve clarity.]/

4 *[For text of items B to D, see M.R.]*

5 Subp. 8. **Special requirements for ignitable or reactive waste.** Ignitable or reactive  
6 waste must not be placed in a waste pile unless the waste and waste pile satisfy all  
7 applicable requirements of ~~parts 7045.1300 to 7045.1380~~ part 7045.1390, and:

8 [In subpart 8, the MPCA provides the replacement citation for a repealed range of  
9 rules.]/

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

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

12 Subp. 10. **Special requirements for hazardous wastes F020, F021, F022, F023,**  
13 **F026, F027, and F028.** The following requirements apply to the hazardous wastes  
14 indicated:

15 A. Hazardous waste F020, F021, F022, F023, F026, and F027 listed under part  
16 7045.0135, subpart 2 1a, item B, must not be placed in a surface impoundment.

17 [In item A, the MPCA replaces a citation to a repealed subpart with the revised  
18 citation.]/

19 B. Hazardous waste F028 and treatment residues and soils contaminated with  
20 hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part  
21 7045.0135, subpart 2 1a, item B, must not be placed in surface impoundments unless the  
22 owner or operator operates the surface impoundment in accordance with all applicable  
23 requirements of this part and in accordance with a management plan that is approved by  
24 the commissioner considering the following factors:

25 [In item B, the MPCA replaces a citation to a repealed subpart with the revised  
26 citation.]/

27 *[For text of subitems (1) to (4), see M.R.]*

28 C. The commissioner shall impose additional design, operating, and monitoring  
29 requirements if the commissioner finds that additional requirements are necessary for  
30 surface impoundments used to treat, store, or dispose of hazardous waste F028 and  
31 treatment residues and soils contaminated with hazardous wastes F020, F021, F022, F023,  
32 F026, F027, and F028 listed under part 7045.0135, subpart 2 1a, item B, in order to  
33 reduce the possibility of migration of these wastes to ground water, surface water, or air  
34 so as to protect human health and the environment.

35 [In item C, the MPCA replaces a citation to a repealed subpart with the revised  
36 citation.]/

37  
38 **7045.0536 LAND TREATMENT.**

39 *[For text of subps 1 to 8, see M.R.]*

40 Subp. 9. **Ignitable or reactive waste.** The owner or operator shall not apply ignitable  
41 or reactive waste to the treatment zone unless the waste and the treatment zone meet all  
42 applicable requirements of ~~parts 7045.1300 to 7045.1380~~ part 7045.1390, and:

43 [In subpart 9, the MPCA provides the replacement citation for a repealed range of  
44 rules.]/

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

1 *[For text of subp 10, see M.R.]*

2 Subp. 11. **Special requirements for hazardous wastes F020, F021, F022, F023,**  
3 **F026, F027, and F028.** The following requirements apply to the hazardous wastes  
4 indicated:

5 A. Hazardous wastes F020, F021, F022, F023, F026, and F027 listed under part  
6 7045.0135, subpart 2 1a, item B, must not be placed in a land treatment unit.

7 **[In item A, the MPCA replaces a citation to a repealed subpart with the revised**  
8 **citation.]//**

9 B. Hazardous waste F028 and treatment residues and soils contaminated with  
10 hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part  
11 7045.0135, subpart 2 1a, item B, must not be managed at land treatment units unless the  
12 owner or operator operates the land treatment unit in accordance with all applicable  
13 requirements of this part and in accordance with a management plan that is approved by  
14 the commissioner considering the following factors:

15 **[In item B, the MPCA replaces a citation to a repealed subpart with the revised**  
16 **citation.]//**

17 *[For text of subitems (1) to (4), see M.R.]*

18 C. The commissioner shall impose additional design, operating, and monitoring  
19 requirements if the commissioner finds that the additional requirements are necessary for  
20 land treatment facilities used to treat or dispose of hazardous waste F028 and treatment  
21 residues and soils contaminated with hazardous wastes F020, F021, F022, F023, F026,  
22 F027, and F028 listed under part 7045.0135, subpart 2 1a, item B, in order to reduce the  
23 possibility of migration of these wastes to ground water, surface water, or air so as to  
24 protect human health and the environment.

25 **[In item C, the MPCA replaces a citation to a repealed subpart with the revised**  
26 **citation.]//**

## 27

## 28 **7045.0538 LANDFILLS.**

29 *[For text of subps 1 to 6, see M.R.]*

30 Subp. 7. **Closure and postclosure care.** Closure and postclosure care requirements  
31 are as follows:

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

33 B. After final closure, the owner or operator shall comply with all postclosure  
34 requirements contained in parts 7045.0488 to 7045.0494 including maintenance and  
35 monitoring throughout the postclosure care period specified in the permit under part  
36 7045.0488. The owner or operator shall:

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

38 (4) maintain and monitor the leak detection system in accordance with subparts  
39 3, item C, subitems (3), unit (d), and (4); and 5, item C, and comply with all other  
40 applicable leak detection system requirements of ~~this part~~ parts 7045.0450 to 7045.0551  
41 governing facility standards;

42 **[In subitem (4), the MPCA is correcting an error in rule language that it adopted in a**  
43 **prior rulemaking. The MPCA adopted federal language that used the words ‘this**  
44 **part.’ Both State rules and federal regulations use the term ‘part,’ however, each use**  
45 **has a slightly different meaning. The MPCA corrects this rule language to clarify the**



1 **intended meaning and to address an EPA comment regarding equivalence with the**  
2 **federal rule.]]//**

3 *[For text of subitems (5) to (8), see M.R.]*

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

5 Subp. 8. **Special requirements for ignitable or reactive waste.** Special requirements  
6 for ignitable or reactive waste are as follows:

7 A. Except as provided in item B and subpart 12, ignitable or reactive waste must  
8 not be placed in a landfill, unless the waste and landfill meet all applicable requirements  
9 of ~~parts 7045.1300 to 7045.1380~~ part 7045.1390, and the resulting waste, mixture, or  
10 dissolution of material no longer meets the definition of ignitable or reactive waste under  
11 part 7045.0131, subpart 2 or 5, and compliance with part 7045.0456, subpart 2 is  
12 maintained.

13 **[In item A, the MPCA provides the replacement citation for a repealed range of**  
14 **rules.]]//**

15 B. Except for prohibited wastes which remain subject to treatment standards in  
16 ~~parts 7045.1350 to 7045.1360~~ Code of Federal Regulations, title 40, sections 268.40 to  
17 268.42, as incorporated in part 7045.1390, ignitable wastes in containers may be  
18 landfilled without meeting the requirements of item A, provided that the wastes are  
19 disposed of in such a way that they are protected from any material or conditions which  
20 may cause them to ignite. At a minimum, ignitable wastes must be disposed of in  
21 nonleaking containers which are carefully handled and placed so as to avoid heat, sparks,  
22 rupture, or any other condition that might cause ignition of the wastes; must be covered  
23 daily with soil or other noncombustible material to minimize the potential for ignition of  
24 the wastes; and must not be disposed of in cells that contain or will contain other wastes  
25 which may generate heat sufficient to cause ignition of the waste.

26 **[In item B, the MPCA replaces citations to repealed State rules with citations to**  
27 **equivalent federal rules as incorporated by reference.]]//**

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

29 Subp. 10. **Special requirements for liquid waste.** Special requirements for liquid  
30 waste are as follows:

31 A. The placement in any landfill of bulk or noncontainerized liquid hazardous  
32 waste or waste containing free liquids, whether or not ~~absorbents~~ sorbents have been  
33 added, is prohibited.

34 **[In item A, the MPCA adds the phrase “in any landfill” to make the context clear.**  
35 **The MPCA also adopts federal language regarding the use of sorbents in landfills**  
36 **from required RCRA Amendment 118: “Liquids in Landfills II,” = 40 CFR**  
37 **264.314(a). Further information can be found in 57 FR 54452-54461, November 18,**  
38 **1992. This changes the term “absorbents” to the more broadly applicable term**  
39 **“sorbents,” which includes materials that both absorb and adsorb waste. Sorbent is**  
40 **also used in the federal counterpart, 40 CFR 264.314(a).]]//**

41 B. Containers holding free liquids must not be placed in a landfill unless:  
42 (1) all free-standing liquid has been removed by decanting, or other methods;  
43 has been mixed with ~~absorbent~~ sorbent or solidified so that freestanding liquid is no  
44 longer observed; or has been otherwise eliminated;

45 **[In subitem (1), the MPCA adopts federal language from required RCRA**  
46 **Amendment 118: “Liquids in Landfills II,” = 40 CFR 264.314(b). Further**

1 information can be found in 57 FR 54452-54461, November 18, 1992. This changes  
2 the term "absorbent" to the more broadly applicable term "sorbent," which includes  
3 materials that both absorb and adsorb waste. Sorbent is the term used in the federal  
4 counterpart, 40 CFR 264.314(d)(1).]//

5 (2) the container is very small, such as an ampoule; or

6 (3) the container is a laboratory pack as defined in subpart 12 and is disposed of  
7 in accordance with subpart 12.

8 C. ~~To demonstrate the presence or absence or presence~~ of free liquids in either a  
9 containerized or a bulk waste, the following test must be demonstrated using the ~~Paint~~  
10 ~~Filter Liquids Test, used: Method 9095 (Paint Filter Liquids Test)~~ as described in "Test  
11 Methods for Evaluating Solid Wastes Waste, Physical/Chemical Methods," EPA  
12 publication number SW-846, incorporated in part 7045.0065, item D.

13 [In item C, the MPCA rephrases existing language and makes corrections to  
14 information regarding the name of the EPA test methods for determining the  
15 presence of liquids. This amendment is based on required RCRA Amendment 126:  
16 "Testing and Monitoring Activities" = 40 CFR 265.314(c). Further information can  
17 be found in 58 FR 46040-46051, August 31, 1993; as amended at 59 FR 47980-47982,  
18 September 19, 1994.]//

19 D. Sorbents used to treat free liquids to be disposed of in landfills must be  
20 nonbiodegradable. Nonbiodegradable sorbents are materials listed or described in  
21 subitem (1) or materials that pass one of the tests in subitem (2).

22 (1) Nonbiodegradable sorbents:

23 (a) inorganic minerals, other inorganic materials, and elemental carbon (for  
24 example, aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite,  
25 montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, and  
26 zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime,  
27 silica (sand), and diatomaceous earth; perlite (volcanic glass); expanded volcanic rock;  
28 volcanic ash; cement kiln dust; fly ash; rice hull ash; and activated charcoal/activated  
29 carbon);

30 (b) high molecular weight synthetic polymers (for example, polyethylene,  
31 high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane,  
32 polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked  
33 allylstyrene, and tertiary butyl copolymers). This does not include polymers derived from  
34 biological material or polymers specifically designed to be degradable; or

35 (c) mixtures of these nonbiodegradable materials.

36 (2) Tests for nonbiodegradable sorbents must use the following methods. The  
37 methods and tests in this subitem are incorporated by reference, are not subject to  
38 frequent change, and are available through the Minitex interlibrary loan system:

39 (a) the sorbent material is determined to be nonbiodegradable under ASTM  
40 Method G21-70 (1984a), Standard Practice for Determining Resistance of Synthetic  
41 Polymer Materials to Fungi;

42 (b) the sorbent material is determined to be nonbiodegradable under ASTM  
43 Method G22-76 (1984b), Standard Practice for Determining Resistance of Plastics to  
44 Bacteria; or

45 (c) the sorbent material is determined to be nonbiodegradable under OECD  
46 test 301B: CO<sub>2</sub> Evolution (Modified Sturm Test).

1 [In item C, the MPCA rephrases existing language and makes corrections to  
2 information regarding the name of the EPA test methods for determining the  
3 presence of liquids. This amendment is based on required RCRA Amendment 126:  
4 “Testing and Monitoring Activities” = 40 CFR 265.314(c). Further information can  
5 be found in 58 FR 46040-46051, August 31, 1993; as amended at 59 FR 47980-47982,  
6 September 19, 1994.]//

7 *[For text of subp 11, see M.R.]*

8 Subp. 12. **Disposal of small containers of hazardous waste in overpacked drums.**  
9 Small containers of hazardous waste in overpacked drums, or laboratory packs, may be  
10 placed in a landfill if the requirements of items A to F are met:

11 A. Hazardous waste must be packaged in nonleaking inside containers. The inside  
12 containers must be of a design and constructed of a material that will not react  
13 dangerously with, be decomposed by, or be ignited by the contained waste. Inside  
14 containers must be tightly and securely sealed. The inside containers must be of the size  
15 and type ~~specified~~ authorized in the United States Department of Transportation  
16 hazardous materials regulations under Code of Federal Regulations, title 49, parts 173,  
17 178, ~~and~~ 179, and 180, as amended, if those regulations specify a particular inside  
18 container for the waste.

19 [In item A, the MPCA is amending the State rules on the advice of Minnesota’s  
20 Department of Transportation. The amendments revise language to conform with  
21 amended U.S. Department of Transportation regulations. The language of this item is  
22 slightly different than the federal counterpart found at 40 CFR 264.316(a), but the  
23 MPCA believes it is the more accurate and current reference to the applicable United  
24 States Department of Transportation requirements.]//

25 B. The inside containers must be overpacked in ~~an open~~ a removable head metal  
26 shipping container as specified in the United States Department of Transportation  
27 regulations under Code of Federal Regulations, title 49, section 173.12 and parts 178 ~~and~~,  
28 179, and 180, as amended, ~~of no more than 415 liter (110 gallon) capacity and~~. The inside  
29 containers must be surrounded by, at a minimum, a sufficient quantity of ~~absorbent~~  
30 chemically compatible sorbent material, determined to be nonbiodegradable in  
31 accordance with subpart 10, item D, to completely absorb sorb all of the liquid contents  
32 of the inside containers. The gross weight of the complete package must not exceed 205  
33 kilograms (452 pounds). The metal outer container must be full after ~~packing~~ it has been  
34 packed with inside containers and ~~absorbent~~ sorbent materials.

35 [In item B, the MPCA is amending existing language to address changes to the  
36 corresponding federal EPA regulations regarding overpacking of containers and also  
37 to address changes made to the federal Department of Transportation regulations.  
38 The MPCA is adopting language from required RCRA Amendment 118.4: “Liquids  
39 in Landfills II,” = 40 CFR 264.316(b). Further information can be found in 57 FR  
40 54452-54461, November 18, 1992. The MPCA also revises the rule to reflect revisions  
41 in the cited U.S. Department of Transportation regulations regarding the size limits of  
42 the container. Finally, the MPCA provides a corrected citation to a range of  
43 regulations that have been amended by the U.S. Department of Transportation.]//

44 C. The ~~absorbent~~ sorbent material used must not be capable of reacting  
45 dangerously with, being decomposed by, or being ignited by the contents of the inside  
46 containers, in accordance with part 7045.0456, subpart 2.

1 **[In item C, the MPCA changes the term absorbent to the more broadly applicable**  
2 **term sorbent, following federal language from required RCRA Amendment 118:**  
3 **“Liquids in Landfills II,” = 40 CFR 264.316(c). Further information can be found in**  
4 **57 FR 54452-54461, November 18, 1992.]//**

5 *[For text of items D and E, see M.R.]*

6 F. The disposal is in compliance with ~~parts 7045.1300 to 7045.1380~~ part 7045.1390.  
7 ~~Persons who incinerate lab packs according to part 7045.1360~~ in accordance with Code  
8 of Federal Regulations, title 40, section 268.42, as incorporated in part 7045.1390, may  
9 use fiber drums in place of metal outer containers. The fiber drums must meet United  
10 States Department of Transportation specifications in Code of Federal Regulations, title  
11 49, section 173.12, as amended, and be overpacked ~~according to the requirements in~~  
12 accordance with item B.

13 **[In item F, the MPCA provides the replacement citation for a repealed range of rules**  
14 **and adds citations to equivalent federal rules as incorporated by reference. The**  
15 **MPCA also makes slight modifications to existing language to improve clarity.]//**

16 Subp. 13. **Special requirements for hazardous wastes F020, F021, F022, F023,**  
17 **F026, F027, and F028.** The following requirements apply to the hazardous wastes  
18 indicated:

19 A. Hazardous wastes F020, F021, F022, F023, F026, and F027 listed under part  
20 7045.0135, subpart ~~2~~ 1a, item B, must not be placed in a landfill.

21 **[In item A, the MPCA replaces a citation to a repealed subpart with the revised**  
22 **citation.]//**

23 B. Hazardous waste F028 and treatment residues and soils contaminated with  
24 hazardous wastes F020, F021, F022, F023, F026, F027, and F028 listed under part  
25 7045.0135, subpart ~~2~~ 1a, item B, must not be managed at landfills unless the owner or  
26 operator operates the landfill in accordance with all applicable requirements of this part  
27 and in accordance with a management plan that is approved by the commissioner  
28 considering the following factors:

29 **[In item B, the MPCA replaces a citation to a repealed subpart with the revised**  
30 **citation.]//**

31 *[For text of subitems (1) to (4), see M.R.]*

32 C. The commissioner shall impose additional design, operating, and monitoring  
33 requirements if the commissioner finds that the additional requirements are necessary for  
34 landfills used to dispose of hazardous waste F028 and treatment residues and soil  
35 contaminated with hazardous wastes F020, F021, F022, F023, F026, F027, and F028  
36 listed under part 7045.0135, subpart ~~2~~ 1a, item B, in order to reduce the possibility of  
37 migration of these wastes to ground water, surface water, or air so as to protect human  
38 health and the environment.

39 **[In item C, the MPCA replaces a citation to a repealed subpart with the revised**  
40 **citation.]//**

41  
42 **7045.0539 MISCELLANEOUS UNITS.**

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

44 Subp. 2. **Environmental performance standards.** A miscellaneous unit must be  
45 located, designed, constructed, operated, maintained, and closed in a manner that will

1 ensure protection of human health and the environment. Permits for miscellaneous units  
2 are to contain the terms and provisions necessary to protect human health and the  
3 environment, including, but not limited to, as appropriate, design and operating  
4 requirements, detection and monitoring requirements, and requirements for responses to  
5 releases of hazardous waste or hazardous constituents from the unit. Permit terms and  
6 provisions shall include those requirements of parts ~~7023.9000 to 7023.9050~~, 7045.0526  
7 to 7045.0542, 7045.0547, and 7045.0548, and chapter 7001 that are appropriate for the  
8 miscellaneous unit being permitted. Protection of human health and the environment  
9 includes, but is not limited to:

10 **[In subpart 2, the MPCA deletes a citation to chapter 7023 that was repealed in a**  
11 **previous rulemaking. The MPCA also adopts cross references to the air emission**  
12 **standards that apply to miscellaneous units. These references were added through**  
13 **amendments to the federal regulations found at required RCRA Amendment 154-**  
14 **1.18: “Consolidated Organic Air Emission Standards for Tanks, Surface**  
15 **Impoundments, and Containers,” = 40 CFR 264.601. Further information can be**  
16 **found in 59 FR 62896-62953, December 6, 1994.]//**

17 *[For text of items A to C, see M.R.]*

18 *[For text of subs 3 and 4, see M.R.]*

19  
20 **7045.0540 AIR EMISSION STANDARDS FOR TANKS, SURFACE**  
21 **IMPOUNDMENTS, AND CONTAINERS.**

22 Subpart 1. Incorporation of federal regulations. The owners and operators of  
23 facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments,  
24 or containers must comply with Code of Federal Regulations, title 40, part 264, subpart  
25 CC, air emission standards for tanks, surface impoundments, and containers, sections  
26 264.1080 to 264.1090, as amended, which are incorporated by reference subject to the  
27 exceptions in subpart 2.

28 **[The MPCA is creating a new rule part to include new requirements addressing air**  
29 **emission standards that will apply to tanks, surface impoundments and containers.**  
30 **The State rules previously provided air emission standards only for process vents**  
31 **(part 7045.0547) and equipment leaks (part 7045.0548). The new standards,**  
32 **referenced in subpart 1, are based on federal regulations found in required RCRA**  
33 **Amendment 154, 154-1, 154-2, 154-3, 154-4, 154-5, 154-6: “Consolidated Organic Air**  
34 **Emission Standards for Tanks, Surface Impoundments, and Containers,” = 40 CFR**  
35 **264.1080-1091. Further information can be found in 59 FR 62896-62953, December 6,**  
36 **1994; as amended by 60 FR 26828-26829, May 19, 1995; 60 FR 50426-50430,**  
37 **September 29, 1995; 60 FR 56952-56954, November 13, 1995; 61 FR 4903-4916,**  
38 **February 9, 1996; 61 FR 28508-28511, June 5, 1996; and 61 FR 59932-59997,**  
39 **November 25, 1996. By adopting the federal regulations by reference, the MPCA also**  
40 **adopts language from required RCRA Amendment 163.11-18: “Organic Air**  
41 **Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification**  
42 **and Technical Amendment” = 40 CFR 264.1080(b)(1); 264.1080(c); 264.1082(b);**  
43 **264.1082(c)(2)(ix)(A-B); 264.1082(c)(3); 264.1082(c)(4)(ii); 264.1083(a)(2);**  
44 **264.1083(b)(1); 264.1084(c)(2)(iii); 264.1084(c)(2)(iii)(B); 264.1084(c)(2)(iii)(B)(12);**  
45 **264.1084(e)(4); 264.1084(f)(3)(i)(D)(4); 264.1084(f)(3)(iii); 264.1084(f)(4);**  
46 **264.1084(j)(2)(iii); 264.1085(b)(2); 264.1085(d)(1)(iii); 264.1085(d)(2)(i)(B);**

1 264.1085(e)(2)(iii); 264.1086(c)(2); 264.1086(c)(4)(i); 264.1086(d)(2); 264.1086(d)(4)(i);  
2 264.1086(g); 264.1087(c)(3)(ii); 264.1087(c)(7); 264.1089(a); 264.1089(b)(1)(ii)(B);  
3 264.1089(f)(1); and 264.1089(j)(1-2). Further information about these amendments  
4 can be found in 62 FR 64636-64671, December 8, 1997. Finally, in this subpart, the  
5 MPCA adopts language from required RCRA Amendment 177: "Organic Air  
6 Emission Standards: Clarification and Technical Amendments," = 40 CFR  
7 264.1080(b)(5); 264.1083(a)(1)(i-ii); 264.1083(b)(1)(i-ii); 264.1084(h)(3)(i-ii). Further  
8 information about these amendments can be found in 64 FR 3382, January 21,  
9 1999.]]

10 **Subp. 2. Additions, modifications, or exceptions to incorporated regulations.**

11 A. The agency does not incorporate the following Code of Federal Regulations,  
12 title 40, part 264, subpart CC provisions, as amended:

13 (1) Code of Federal Regulations, title 40, section 264.1080(d) to (g), governing  
14 specific exclusions; and

15 (2) Code of Federal Regulations, title 40, section 264.1082(c)(4)(ii), governing  
16 authority that EPA cannot delegate to states.

17 **[In item A, the MPCA clarifies that it does not incorporate specific federal exclusions**  
18 **that do not apply in Minnesota. The exceptions to the adoption by reference are: (1)**  
19 **The MPCA does not adopt the exclusions for peroxide manufacturers or site specific**  
20 **exclusions for sites that are located in states other than Minnesota; and (2) The**  
21 **MPCA does not have the authority to grant variances to specific land disposal**  
22 **treatment standards.]]**

23 B. Part 7045.0090, adoption and incorporation by reference, also applies.

24 **[In item B, the MPCA clarifies that the conditions established in part 7045.0090 also**  
25 **apply to this incorporation by reference.]]**

26  
27 **7045.0542 THERMAL TREATMENT.**

28 *[For text of subps 1 to 3, see M.R.]*

29 Subp. 4. **Performance standards.** A thermal treatment facility thermally treating  
30 hazardous waste must be designed, constructed, and maintained so that, when operated in  
31 accordance with operating requirements specified under subpart 6 it will comply with all  
32 federal and state air quality rules and regulations and will meet the performance standards  
33 of items A to E, whichever are applicable:

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

35 E. A thermal treatment facility thermally treating hazardous wastes F020, F021,  
36 F022, F023, F026, and F027 listed under part 7045.0135, subpart 2 1a, item B, must  
37 achieve a destruction and removal efficiency ("DRE") of 99.9999 percent for each  
38 principal organic hazardous constituent designated in its permit. This performance must  
39 be demonstrated on principal organic hazardous constituents that are more difficult to  
40 incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE  
41 is determined for each principal organic hazardous constituent from the equation in item  
42 A. In addition, the owner or operator of the thermal treatment facility must notify the  
43 commissioner of the intent to burn waste F020, F021, F022, F023, F026, or F027.

44 **[In item E, the MPCA replaces a citation to a repealed subpart with the revised**  
45 **citation.]]**

1 *[For text of subps 5 to 9, see M.R.]*  
2

3 **7045.0543 APPENDICES TO FACILITY STANDARDS.**

4 **[The MPCA adds a new part 7045.0543.]//**

5 Subpart 1. Incorporation of federal regulations. The following appendices found in  
6 Code of Federal Regulations, title 40, part 264, as amended, are incorporated by  
7 reference:

8 **[In subpart 1, items A to E, the MPCA incorporates by reference the Appendices to**  
9 **Facility Standards that are found in 40 CFR 265. By adopting the federal appendices**  
10 **by reference as amended, the MPCA is adopting standards or tests that are**  
11 **referenced either in current rules or in rules that are being adopted or revised for**  
12 **interim status facilities in this rulemaking. By adopting these appendices by reference**  
13 **as amended, the MPCA will ensure that the most current version of these standards**  
14 **will be incorporated into the State rules. The MPCA's discussion of the**  
15 **reasonableness of incorporating federal regulations "as amended" is provided in**  
16 **Section IV of this Statement. A detailed explanation is provided below for the federal**  
17 **appendices that are being incorporated in this rulemaking.]//**

18 A. Appendix I, Recordkeeping Instructions;

19 **[In item A, the MPCA incorporates 40 CFR 264, Appendix I, which contains**  
20 **instructions on how hazardous waste records must be kept. These appendices were**  
21 **adopted by EPA as part of required RCRA Amendment 131.2: "Recordkeeping**  
22 **Instructions; Technical Amendment," = 40 CFR 264 Appendix I, Tables 1 and 2.**  
23 **Further information can be found in 59 FR 13891-13893, March 24, 1994.]//**

24 B. Appendix IV, Cochran's Approximation to the Behrens-Fisher Students' T-test;

25 **[In item B, the MPCA incorporates 40 CFR 264, Appendix IV, the Behrens Fisher T-**  
26 **test. The details of this test were formerly located in part 7045.0544 but are being**  
27 **adopted by reference in this rulemaking in order to accommodate future changes and**  
28 **also to more conveniently locate information regarding the federal Appendices in one**  
29 **rule part. However, a reference to the T-test in part 7045.0544 is being retained to**  
30 **accommodate existing cross references.]//**

31 C. Appendix V, Examples of Potentially Incompatible Waste; and

32 **[In item C, the MPCA incorporates 40 CFR 264, Appendix V, which is the list of**  
33 **examples of potentially incompatible waste. This list is referenced in an amendment**  
34 **to part 7045.0532 being added in this rulemaking. The MPCA believes it is**  
35 **reasonable to incorporate this list of examples, by reference, in order to accommodate**  
36 **future revisions.]//**

37 D. Appendix IX, Ground Water Monitoring List.

38 **[In item D, the MPCA incorporates 40 CFR 264, Appendix IX, the ground water**  
39 **monitoring list. This adoption by reference of Appendix IX replaces the list formerly**  
40 **provided in part 7045.0143. The MPCA believes, for the reasons provided in the**  
41 **discussion in part IV of this Statement, that incorporating the list by reference will**  
42 **provide better future accuracy of this list. Because the list in 7045.0143 is specifically**  
43 **referred to in two places in the existing rules (7001.0640 subpart 1, item D subitem (2)**  
44 **and subpart 13, item E), the MPCA is not repealing that existing rule part, but is**  
45 **instead deleting the existing list and providing a cross reference to the rule (7045.0543,**  
46 **item D (above) that incorporates the federal Appendix IX by reference.)//**

1        Subp. 2. Additions, modifications, or exceptions to incorporated regulations. Part  
2 7045.0090, adoption and incorporation by reference, also applies.

3 **[In subpart 2, the MPCA provides exceptions to its incorporations in subpart 1. The**  
4 **MPCA also refers readers to part 7045.0090 governing general adoption and**  
5 **incorporation by reference.]//**  
6

## 7 **7045.0544 COCHRAN'S APPROXIMATION TO THE BEHRENS-FISHER** 8 **STUDENTS' T-TEST.**

9        Subpart 1. **In general.** Subpart 2 describes Cochran's approximation to the Behrens-  
10 Fisher Students' t test. Subpart 3 presents the standard t tables at the 0.05 level of  
11 significance. Part 7045.0543, subpart 1, item B, incorporates this test by reference.

12        Subp. 2. [See repealer.]

13        Subp. 3. [See repealer.]

14 **[The MPCA amends this part by cross referencing to part 7045.0543, subp. 1, item B**  
15 **where the MPCA has incorporated the Cochran's Approximation from the federal**  
16 **rules. The MPCA retains part 7045.0544 as a reference point for existing cross**  
17 **references within the rules. The MPCA believes it is reasonable to minimize changes**  
18 **to cross references as much as possible by retaining this existing rule part.]//**  
19

## 20 **7045.0550 CONTAINMENT BUILDINGS.**

21        Subpart 1. Incorporation of federal regulations. The owners and operators of  
22 facilities that store or treat hazardous waste in containment buildings must comply with  
23 Code of Federal Regulations, title 40, part 264, subpart DD, Containment Buildings,  
24 sections 264.1100 to 264.1110, as amended, which is incorporated by reference subject to  
25 the exceptions in subpart 2.

26 **[In subpart 1, of new part 7045.0550, the MPCA incorporates by reference language**  
27 **from required RCRA Amendment 109.17: "Land Disposal Restrictions for Newly**  
28 **Listed Wastes and Hazardous Debris," = 40 CFR 264.1100-1102, Subpart DD.**  
29 **Further information regarding this amendment can be found in 57 FR 37194-37282,**  
30 **August 18, 1992.]//**

31        Subp. 2. Additions, modifications, or exceptions to incorporated regulations. Part  
32 7045.0090, adoption and incorporation by reference, also applies.

33 **[In subpart 2, the MPCA provides any exceptions to its incorporation by reference**  
34 **and refers readers to the general part governing adoption and incorporation by**  
35 **reference.]//**  
36

## 37 **7045.0552 FACILITIES GOVERNED BY INTERIM STATUS.**

38        Subpart 1. **General requirements.** Parts 7045.0552 to ~~7045.0642~~ 7045.0651 establish  
39 minimum standards for the management of hazardous waste during the period of interim  
40 status and until certification of final closure or, if the facility is subject to postclosure  
41 requirements, until postclosure responsibilities are fulfilled. Except as provided in Code  
42 of Federal Regulations, title 40, section 265.1080(b), as incorporated in part 7045.0645,  
43 the standards in parts 7045.0552 to 7045.0651, and the standards for the corrective action  
44 management units in part 7045.0545, temporary units in part 7045.0546, and staging piles



1 in part 7045.0547, apply to: (1) owners and operators of facilities that treat, store, or  
2 dispose of hazardous waste who have fully complied with the requirements for interim  
3 status under chapter 7001 and section 3005(e) of the federal Resource Conservation and  
4 Recovery Act (RCRA) until either a permit is issued under chapter 7001 and section 3005  
5 of RCRA or until applicable interim status closure and postclosure responsibilities are  
6 fulfilled and (2) those owners and operators of facilities in existence on November 19,  
7 1980, who have failed to provide timely notification as required by section 3010(a) of  
8 RCRA or failed to file Part A of the permit application in chapter 7001. These standards,  
9 and those in parts 7045.0545 to 7045.0547, apply to owners and operators of existing  
10 facilities who have fully complied with the requirements for state or federal interim status  
11 until a permit is issued or until applicable interim status closure and postclosure  
12 responsibilities are fulfilled, and those who have failed to achieve state or federal interim  
13 status.

14 **[In two places in subpart 1, the MPCA corrects citations to a range of rules that**  
15 **changed as parts were added. The MPCA also adopts language from required RCRA**  
16 **Amendment 154-1.22: “Consolidated Organic Air Emission Standards for Tanks,**  
17 **Surface Impoundments, and Containers” = 40 CFR 265.1(b). Further information**  
18 **regarding this amendment can be found in 59 FR 62896-62953, December 6, 1994.]//**

19 Parts 7045.0552 to ~~7045.0642~~ 7045.0651 apply to the owners and operators of all  
20 facilities that treat, store, or dispose of hazardous waste referred to in ~~parts 7045.1300 to~~  
21 ~~7045.1380~~ part 7045.1390, land disposal restrictions, and those restrictions are  
22 considered material conditions or requirements of parts 7045.0552 to ~~7045.0642~~  
23 7045.0651, interim status standards.

24 **[In this paragraph of subpart 1, the MPCA corrects citations to two ranges of rules**  
25 **that changed as parts were added. The MPCA also provides the correct citation,**  
26 **7045.1390, for a repealed range of rules.]//**

27 Subp. 1a. **Applicability for owners and operators of facilities not regulated as**  
28 **hazardous waste facilities by federal regulation.** Owners and operators of hazardous  
29 waste facilities that are not federally regulated as hazardous waste facilities that are, for  
30 example, regulated as facilities by state rule only, are subject to the applicable  
31 requirements of parts 7045.0552 to ~~7045.0642~~ 7045.0651 on the effective date of any  
32 rules that make the facility subject to regulation. The facility shall submit a Part B  
33 application for a hazardous waste facility permit to the commissioner within one year of  
34 the effective date of any rules that first make the facility subject to the requirement to  
35 obtain a hazardous waste facility permit.

36 **[In subpart 1a, the MPCA corrects a citation to a range of rules that changed as parts**  
37 **were added.]//**

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

39 Subp. 3. **Exemptions.** The requirements of parts 7045.0552 to ~~7045.0648~~ 7045.0651  
40 do not apply to the following specific waste management units, facilities, or activities,  
41 although all other waste management activities of the owner or operator may be  
42 regulated:

43 **[In subpart 3, the MPCA corrects a citation to a range of rules that changed as parts**  
44 **were added.]//**

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

1 B. a facility managing recyclable hazardous wastes subject to regulation under part  
2 7045.0125, 7045.0665, 7045.0675, or 7045.0685; however, this exemption does not  
3 apply where part 7045.0125, 7045.0665, 7045.0675, or 7045.0685 makes the  
4 requirements of parts 7045.0552 to ~~7045.0648~~ 7045.0651 applicable by cross-reference;

5 **[In item B, the MPCA corrects a citation to a range of rules that changed as parts**  
6 **were added.]//**

7 *[For text of items C to E, see M.R.]*

8 F. an elementary neutralization unit, a pretreatment unit, or a wastewater treatment  
9 unit, if the unit does not receive hazardous waste from generators other than the owner or  
10 operator of the unit, provided that if the owner or operator is diluting hazardous ignitable  
11 (D001) wastes (other than the D001 high TOC subcategory defined in Code of Federal  
12 Regulations, title 40, section 268.40, Table of Treatment Standards for Hazardous Wastes,  
13 as incorporated in part 7045.1390), or reactive (D003) waste, to remove the characteristic  
14 before land disposal, the owner or operator must comply with part 7045.0562, subpart 2;

15 *[For text of items G to I, see M.R.]*

16 **[In item F, the MPCA adds qualifying conditions to an existing exclusion for**  
17 **elementary neutralization units, pretreatment units and wastewater treatment units.**  
18 **The conditions only apply to units treating two specific waste characteristics**  
19 **(ignitable and reactive) and reference existing requirements in part 7045.0562,**  
20 **subpart 2 (which addresses required precautions) for managing these wastes. The**  
21 **additional conditions correspond to requirements found in RCRA Amendment**  
22 **137.13: “Universal Treatment Standards and Treatment Standards for Organic**  
23 **Toxicity Characteristic Wastes and Newly Listed Wastes” = 40 CFR 265.1(c)(10).**  
24 **Further information regarding the need for and reasonableness of this amendment**  
25 **can be found in 59 FR 47982-48110, September 19, 1994, as amended at 60 FR 242-**  
26 **302, January 3, 1995. Although the language being added at this time is essentially**  
27 **the same as the federal regulations (except for the substitution of cross references to**  
28 **State rule parts and the removal of a reference to the definitions part of the rules),**  
29 **this exclusion remains more restrictive than the federal counterpart because the**  
30 **existing language restricts this exemption to waste generated onsite. This is**  
31 **reasonable as the MPCA has consistently not allowed accepting waste from off-site at**  
32 **unpermitted facilities. This is an existing difference and is not being changed as a**  
33 **result of this rulemaking.]//**

34 J. (1) except as provided in subitem (2), treatment or containment activities during  
35 immediate response to any of the following situations: a discharge of a hazardous waste,  
36 an imminent and substantial threat of a discharge of a hazardous waste, or a discharge of  
37 a material which, when discharged, becomes a hazardous waste;

38 (2) a facility otherwise regulated by parts 7045.0552 to ~~7045.0642~~ 7045.0651  
39 shall comply with all applicable requirements of parts 7045.0395, 7045.0397, 7045.0558,  
40 and 7045.0566 to 7045.0576; or

41 **[In subitem (2), the MPCA corrects a citation to a range of rules that changed as parts**  
42 **were added.]//**

43 (3) a person who is covered by subitem (1) and who continues or initiates  
44 hazardous waste treatment or containment activities after the immediate response is over  
45 is subject to all applicable requirements of parts 7045.0552 to ~~7045.0642~~ 7045.0651 and  
46 the agency's permitting procedures for those activities;

1 **[In subitem (3), the MPCA corrects a citation to a range of rules that changed as parts**  
2 **were added.]//**

3 K. treatment of hazardous waste by the generator in the generator's accumulation  
4 tanks or containers in accordance with part 7045.0292. If the treatment involves  
5 evaporation of aqueous waste or polymerization of polyester or other chemical fixation  
6 treatment processes in open containers, the generator is exempt from parts 7045.0552 to  
7 ~~7045.0642~~ 7045.0651, but before beginning the treatment process must submit to the  
8 commissioner the information required under part 7045.0539, subpart 2, items A to C,  
9 that is relevant to the treatment activity and must be notified by the commissioner that the  
10 treatment activity is approved. The commissioner shall approve the treatment activity if  
11 the commissioner finds that the treatment activity will not endanger human health and the  
12 environment; or

13 **[In item K, the MPCA corrects a citation to a range of rules that changed as parts**  
14 **were added.]//**

15 *[For text of item L, see M.R.]*

16 Subp. 4. **Restrictions.** Hazardous wastes F020, F021, F022, F023, F026, F027, and  
17 F028 listed under part 7045.0135, subpart ~~2~~ 1a, item B, must not be managed at facilities  
18 governed by interim status unless:

19 **[In subpart 4, the MPCA replaces a citation to a repealed subpart with the revised**  
20 **citation.]//**

21 *[For text of items A to C, see M.R.]*  
22

## 23 **7045.0556 GENERAL FACILITY STANDARDS.**

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

25 Subp. 3. **Required notices.** Notices are required in the following situations:

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

27 C. Before transferring ownership or operation of a facility during its operating life,  
28 or of a disposal facility during the postclosure care period, the owner or operator shall  
29 notify the new owner or operator in writing of the requirements of parts 7045.0552 to  
30 ~~7045.0642~~ 7045.0651. An owner's or operator's failure to notify the new owner or  
31 operator of these requirements does not relieve the new owner or operator of the  
32 obligation to comply with all applicable requirements.

33 **[In item C, the MPCA corrects a citation to a range of rules that changed as parts**  
34 **were added.]//**

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

36 Subp. 4. **Security.** Security measures include the following:

37 A. The owner or operator shall prevent the unknowing entry, and minimize the  
38 possibility for the unauthorized entry, of persons or livestock onto the active portion of  
39 the facility, unless:

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

41 (2) disturbance of the waste or equipment, by the unknowing or unauthorized  
42 entry of persons or livestock onto the active portion of a facility, will not cause a  
43 violation of the requirements of parts 7045.0552 to ~~7045.0642~~ 7045.0651.

44 **[In subitem (2), the MPCA corrects a citation to a range of rules that changed as parts**  
45 **were added.]//**

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

2 Subp. 5. **General inspection requirements.** General inspection requirements are  
3 listed in items A to E.

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

5 C. The frequency of inspection may vary for the items on the schedule. However, ~~it~~  
6 the frequency must be based on the rate of possible deterioration of the equipment and  
7 the probability of an environmental or human health incident if the deterioration ~~or,~~  
8 malfunction, or any operator error goes undetected between inspections. Areas subject to  
9 spills, such as loading and unloading areas, must be inspected daily when in use. At a  
10 minimum, the inspection schedule must include the terms and frequencies called for in  
11 parts 7045.0626, subpart 5; 7045.0628, subparts 4 and 7; 7045.0630, subpart 5;  
12 7045.0632, subpart 9; 7045.0634, subpart 4; 7045.0638, subpart 2c; 7045.0640, subpart  
13 4; and 7045.0642, subpart 4; and the process vent ~~and,~~ equipment leak, ~~and tank,~~ surface  
14 impoundment, and container standards in Code of Federal Regulations, title 40, sections  
15 264.1033, 264.1052, 264.1053, and 264.1058 265.1033, 265.1052, 265.1053, and  
16 265.1058, as amended, and sections 265.1084 to 265.1090(b), as incorporated in part  
17 7045.0645.

18 **[In the first sentences of item C, the MPCA has made several changes simply to**  
19 **clarify the meaning of existing language. These changes do not alter the effect of the**  
20 **rule and are not based on federal amendments. The MPCA also adopts references to**  
21 **newly added requirements addressing air emissions from tanks, surface**  
22 **impoundments and containers that are based on required RCRA Amendment 154-**  
23 **1.25: “Consolidated Organic Air Emission Standards for Tanks, Surface**  
24 **Impoundments, and Containers” = 40 CFR 265.15(b)(4). Further information**  
25 **regarding the amendments can be found in 59 FR 62896-62953, December 6, 1994.**  
26 **This amendment also adopts language from required RCRA Amendment 163.20:**  
27 **“Organic Air Emission Standards for Tanks, Surface Impoundments, and**  
28 **Containers; Clarification and Technical Amendment” = 40 CFR 265.15(b)(4). A**  
29 **discussion of these amendments can be found in 62 FR 64636-64671, December 8,**  
30 **1997.]//**

31 [For text of items D and E, see M.R.]

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

33  
34 **7045.0564 WASTE ANALYSIS REQUIREMENTS.**

35 Subpart 1. **Waste analysis.** The analysis must comply with the requirements in items  
36 A to D.

37 A. Before an owner or operator treats, stores, or disposes of any hazardous waste,  
38 or nonhazardous waste if applicable under part 7045.0596, subpart 2a, the owner or  
39 operator shall obtain a detailed chemical and physical analysis of a representative sample  
40 of the waste. This analysis must contain all the information which must be known in  
41 order to treat, store, or dispose of the waste in accordance with the requirements of parts  
42 7045.0552 to ~~7045.0642~~ 7045.0651 and ~~7045.1300 to 7045.1380~~ 7045.1390.

43 **[In item A, the MPCA corrects a citation to a range of rules that changed as parts**  
44 **were added. The MPCA also provides the replacement citation for a repealed range**  
45 **of rules.]//**

1 B. The analysis may include data developed under parts 7045.0102 to 7045.0143  
2 7045.0155, and existing published or documented data on the hazardous waste or on  
3 hazardous waste generated from similar processes, including data obtained from the  
4 generator.

5 **[In item B, the MPCA corrects a citation to a range of rules that changed as parts  
6 were added.]//**

7 *[For text of items C and D, see M.R.]*

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

12 *[For text of items A to E, see M.R.]*

13 F. Where applicable, the methods that will be used to meet the additional waste  
14 analysis requirements for specific waste management methods as specified in parts  
15 7045.0628, subpart 12; 7045.0630, subpart 4; 7045.0632, subpart 3; 7045.0634, subpart  
16 3; 7045.0638, subpart 7; 7045.0640, subpart 2; and 7045.0642, subpart 3; ~~and 7045.1315~~  
17 Code of Federal Regulations, title 40, section 268.7, as incorporated in part 7045.1390;  
18 and the process vent ~~and~~, equipment leak, and tank, surface impoundment, and container  
19 test methods and procedures in Code of Federal Regulations, title 40, sections  
20 264.1034(d) and 264.1063(d) 265.1034(d) and 265.1063(d), as amended, and section  
21 265.1084, as incorporated in part 7045.0645.

22 **[In item F, the MPCA replaces citations to repealed land disposal restriction rules  
23 with citations to the new land disposal rules being adopted in this rulemaking. This  
24 amendment refers directly to the federal counterpart being adopted by reference in  
25 this rulemaking, because in part 7045.1390 where this information is being  
26 incorporated by reference, the incorporation does not provide the necessary level of  
27 specificity to identify the applicable section. This amendment corresponds to 40 CFR  
28 265.13(b)(6). It is based on required RCRA Amendment 154-1.23: "Consolidated  
29 Organic Air Emission Standards for Tanks, Surface Impoundments, and  
30 Containers." Further information can be found in 59 FR 62896-62953, December 6,  
31 1994.]//**

32 G. For off-site facilities, the waste analysis plan must also specify the procedures  
33 ~~which~~ that will be used to inspect and, if necessary, analyze each movement of hazardous  
34 waste received at the facility to ensure that it matches the identity of the waste designated  
35 on the accompanying manifest or shipping paper. The plan must describe:

36 (1) the procedures ~~which~~ that will be used to determine the identity of each  
37 movement of waste managed at the facility; ~~and~~

38 (2) the sampling method ~~which~~ that will be used to obtain a representative  
39 sample of the waste to be identified, if the identification method includes sampling; and

40 **[In item G, and subitems (1) and (2), the MPCA changes "which" to "that" for  
41 grammatical purposes. The MPCA also adds the word, "and" to accommodate this  
42 expanded list.]**

43 (3) the procedures that the owner or operator of an off-site landfill receiving  
44 containerized hazardous waste will use to determine whether a hazardous waste generator  
45 or treater has added a biodegradable sorbent to the waste in the container.

1 **In subitem (3) the MPCA adds a requirement for a plan to contain information about**  
2 **the use of sorbents to eliminate free liquids in waste being landfilled. This**  
3 **requirement is from required RCRA Amendment 118.2: “Liquids in Landfills II” =**  
4 **40 CFR 265.13(c)(3). Further information regarding the need for and reasonableness**  
5 **of this amendment can be found in 57 FR 54452-54461, November 18, 1992.】//**

6 H. For surface impoundments exempted from the land disposal restrictions under  
7 ~~part 7045.1310~~ Code of Federal Regulations, title 40, section 268.4, as incorporated in  
8 part 7045.1390, the procedures and schedule for:

9 (1) the sampling of impoundment contents;

10 (2) the analysis of test data; and

11 (3) the annual removal of residues which are not delisted under part 7045.0075,  
12 subpart 2, or which exhibit a characteristic of hazardous waste under part 7045.0131, and  
13 either do not meet applicable treatment standards of ~~parts 7045.1350 to 7045.1360~~ Code  
14 of Federal Regulations, title 40, sections 268.40 to 268.42, as incorporated in part  
15 7045.1390, or, where no treatment standards have been established, such residues are  
16 prohibited from land disposal under ~~parts 7045.1320 to 7045.1333~~ Code of Federal  
17 Regulations, title 40, sections 268.30 to 268.35, as incorporated in part 7045.1390, or  
18 RCRA section 3004(d).

19 **[In item H, the MPCA replaces citations to repealed rules with citations to equivalent**  
20 **federal rules as incorporated by reference.】//**

21 I. For owners and operators seeking an exemption to the air emission standards in  
22 part 7045.0540 in accordance with Code of Federal Regulations, title 40, section  
23 265.1083, as incorporated in part 7045.0645:

24 (1) if direct measurement is used for the waste determination, the procedures  
25 and schedules for waste sampling and analysis and the results of the analysis of test data  
26 to verify the exemption; and

27 (2) if knowledge of the waste is used for the waste determination, any  
28 information prepared by the facility owner or operator or by the generator of the  
29 hazardous waste, if the waste is received from off site, that is used as the basis for  
30 knowledge of the waste.

31 **[In item I, subitems (1) and (2), the MPCA is adding requirements that apply to waste**  
32 **analysis at facilities that are subject to the air emission standards being added in this**  
33 **rulemaking. The adopted language is from required RCRA Amendments 154-1.24,**  
34 **and 154-5: “Consolidated Organic Air Emission Standards for Tanks, Surface**  
35 **Impoundments, and Containers” = 40 CFR 265.13(b)(8). Further information may**  
36 **be found in 59 FR 62896-62953, December 6, 1994. The MPCA also adds language to**  
37 **clarify that air emission standards are found in part 7045.0540.】//**

### 39 **7045.0584 OPERATING RECORD.**

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

41 Subp. 3. **Record information.** The following information must be recorded, as it  
42 becomes available, and maintained in the operating record until closure of the facility:

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

44 C. A description and the quantity of each hazardous waste received, and the  
45 method and date of treatment, storage, or disposal at the facility in accordance with the

1 record-keeping instructions in Code of Federal Regulations, title 40, part 265, Appendix I,  
2 as incorporated in part 7045.0643.

3 **[In item C, the MPCA initiates adding a reference to recordkeeping requirements**  
4 **that must be followed. This language corresponds to federal provisions in 40 CFR**  
5 **265.73(b)(1).]//**

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

7 E. Records and results of waste analyses, waste determinations, and trial tests  
8 performed as specified in parts 7045.0564; 7045.0628, subpart 12; 7045.0630, subpart 4;  
9 7045.0632, subpart 3; 7045.0634, subpart 3; 7045.0638, subpart 7; 7045.0640, subpart 2;  
10 and 7045.0642, subpart 3; ~~7045.1310; and 7045.1315~~ Code of Federal Regulations, title  
11 40, sections 268.4(a) and 268.7, as incorporated in part 7045.1390; and the process vent  
12 and, equipment leak, and tank, surface impoundment, and container test methods and  
13 procedures in Code of Federal Regulations, title 40, sections ~~264.1034 and 264.1063~~  
14 265.1034 and 265.1063, as amended, and section 265.1084, as incorporated in part  
15 7045.0645.

16 **[In item E, the MPCA is adding requirements that apply to the operating records at**  
17 **facilities that are subject to the air emission standards being added in this rulemaking.**  
18 **This language is based on required RCRA Amendment 154-1.26: “Consolidated**  
19 **Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers”**  
20 **= 40 CFR 265.73(b)(3). Further information regarding this amendment can be found**  
21 **in 59 FR 62896-62953, December 6, 1994. The MPCA also replaces citations to**  
22 **repealed rules with citations to equivalent federal rules as incorporated by reference.**  
23 **Finally, the MPCA replaces two incorrect citations to two CFR sections in part 264**  
24 **with the appropriate citations in part 265.]//**

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

26 H. Monitoring, testing, or analytical data, and corrective action where required by  
27 parts 7045.0556, subpart 8; 7045.0590, subparts 1, 6, 7, and 8; 7045.0592, subparts 1 and  
28 7; 7045.0628, subparts 2, 4, and 7; 7045.0630, subparts 2a, 3, and 5; 7045.0632, subparts  
29 4b, 8, and 9; 7045.0634, subparts 4 and 6, item D, subitem (1); 7045.0636; 7045.0638,  
30 subparts 2a, 2b, and 2c; and 7045.0640, subpart 4, and the process vent ~~and,~~ equipment  
31 leak, and tank, surface impoundment, and container test methods and procedures and  
32 record keeping requirements in Code of Federal Regulations, title 40, sections ~~264.1034~~  
33 265.1034(c) to (f), ~~264.1035, 264.1063~~ 265.1035, 265.1063(d) to (i), and ~~264.1064~~  
34 265.1064, as amended, and sections 265.1083 to 265.1090, as incorporated in part  
35 7045.0645. As required by parts 7045.0590, subparts 6 and 7; and 7045.0592, subpart 7,  
36 monitoring data at disposal facilities must be kept throughout the postclosure period.

37 **[In item H, the MPCA is adding requirements that apply to the operating records at**  
38 **facilities that are subject to the air emission standards being added to this rulemaking.**  
39 **This amendment is based on required RCRA Amendment 154-1.26: “Consolidated**  
40 **Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers”**  
41 **= 40 CFR 265.73(b)(6). Further information can be found in 59 FR 62896-62953,**  
42 **December 6, 1994. This amendment also addresses changes based on required RCRA**  
43 **Amendment 163.21: “Organic Air Emission Standards for Tanks, Surface**  
44 **Impoundments, and Containers; Clarification and Technical Amendment” = 40 CFR**  
45 **265.73(b)(6). Further information may be found in 62 FR 64636-64671, December 8,**

1 **1997. Finally, the MPCA replaces incorrect citations to federal regulations found in**  
2 **part 264 with the appropriate citations to related regulations in part 265.]/**

3 *[For text of item I, see M.R.]*

4 J. Records of the quantities and date of placement of each shipment of hazardous  
5 waste placed in land disposal units under an extension to the effective date of any land  
6 disposal restriction granted ~~under part 7045.0075, subpart 8 or 9, by the United States~~  
7 Environmental Protection Agency under Code of Federal Regulations, title 40, section  
8 268.5, monitoring data required pursuant to a petition under part 7045.0075, subpart 9, or  
9 a certificate and demonstration under Code of Federal Regulations, title 40, section 268.8,  
10 as amended incorporated in part 7045.1390, and the notice required by a generator under  
11 part 7045.1315, subpart 1, item C Code of Federal Regulations, title 40, section  
12 268.7(a)(3), as incorporated in part 7045.1390.

13 **[In item J, the MPCA revises language to clarify that only the EPA can grant**  
14 **extensions to the effective dates for land disposal restrictions. In this rulemaking the**  
15 **MPCA is repealing part 7045.0075, subpart 8, and replacing citations to it with the**  
16 **applicable federal citation. The MPCA also replaces citations to other repealed rules**  
17 **with citations to equivalent federal regulations that are being incorporated in this**  
18 **rulemaking by reference.]/**

19 K. For an off-site treatment facility, the notice, and the certification and  
20 demonstration, if applicable, required by a generator or the owner or operator under Code  
21 of Federal Regulations, title 40, ~~section~~ sections 268.7(a)(1) and 268.8, as amended, and  
22 part 7045.1315, subpart 1, item A incorporated in part 7045.1390.

23 **[In item K, the MPCA replaces a citation to a repealed rule with citations to**  
24 **equivalent federal regulations as incorporated by reference.]/**

25 L. For an on-site treatment facility, the information contained in the notice and the  
26 certification and demonstration, if applicable, required by a generator or the owner or  
27 operator under Code of Federal Regulations, title 40, ~~section~~ sections 268.7(a)(1) and  
28 268.8, as amended, and part 7045.1315, subpart 1, item A incorporated in part  
29 7045.1390, except for the manifest number required under part 7045.1315, subpart 1,  
30 item A, subitem (3) Code of Federal Regulations, title 40, section 268.7(a)(1)(i), as  
31 incorporated in part 7045.1390.

32 **[In item L, the MPCA replaces citations to a repealed rule with citations to equivalent**  
33 **federal regulations as incorporated by reference.]/**

34 M. For an off-site land disposal facility, the notice, certification and demonstration,  
35 if applicable, required by the generator, owner or operator of a treatment facility under  
36 Code of Federal Regulations, title 40, section 268.7(b)(1)(2) or 268.8, as amended, or  
37 part 7045.1315, subpart 2, items A and B incorporated in part 7045.1390, for the facility  
38 or part 7045.1315, subpart 1, item B Code of Federal Regulations, title 40, section  
39 268.7(a)(3), as incorporated in part 7045.1390, for the generator, whichever is applicable.

40 **[In item M, the MPCA replaces citations to a repealed rule with citations to**  
41 **equivalent federal regulations as incorporated by reference.]/**

42 N. For an on-site land disposal facility, the information contained in the notice and  
43 the certification and demonstration, if applicable, required by a generator or the owner or  
44 operator under Code of Federal Regulations, title 40, section 268.7 or 268.8, as amended  
45 incorporated in part 7045.1390, or part 7045.1315 except for the manifest number,  
46 whichever is applicable.



1 **[In item N, the MPCA replaces citations to a repealed rule with citations to equivalent**  
2 **federal regulations as incorporated by reference.]//**

3 O. For an off-site storage facility, a copy of the notice, and the certification and  
4 demonstration if applicable, required by the generator or the owner or operator under  
5 Code of Federal Regulations, title 40, section 268.7 or 268.8, as ~~amended, or part~~  
6 ~~7045.1315~~ incorporated in part 7045.1390.

7 **[In item O, the MPCA replaces citations to a repealed rule with citations to equivalent**  
8 **federal regulations as incorporated by reference.]//**

9 P. For an on-site storage facility, the information contained in the notice, except the  
10 manifest number, and the certification and demonstration if applicable, required by the  
11 generator or the owner or operator of a treatment facility under Code of Federal  
12 Regulations, title 40, section 268.7 or 268.8, as ~~amended, or part 7045.1315~~ incorporated  
13 in part 7045.1390.

14 **[In item P, the MPCA replaces citations to a repealed rule with citations to equivalent**  
15 **federal regulations as incorporated by reference.]//**

16  
17 7045.0586 RETENTION AND DISPOSITION OF RECORDS.

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

19 Subp. 2. **Retention of records.** The retention period for all records required under  
20 parts 7045.0552 to ~~7045.0642~~ 7045.0651 is three years and is extended automatically  
21 during the course of any unresolved enforcement action regarding the facility.

22 **[In subpart 2, the MPCA corrects a citation to a range of rules that changed as parts**  
23 **were added.]//**

24 *[For text of subp 3, see M.R.]*  
25

26 **7045.0588 REQUIRED REPORTS.**

27 *[For text of subps 1 to 3, see M.R.]*

28 Subp. 4. **Additional reports.** In addition to submitting the manifest discrepancy report  
29 described in part 7045.0582, subpart 3, and the annual report and the unmanifested waste  
30 reports described in subparts 2 and 3, the owner or operator shall also report to the  
31 commissioner and the Environmental Protection Agency Region V Administrator:

32 *[For text of items A to C, see M.R.]*

33 D. as otherwise required by the process vent ~~and~~, equipment leak, and tank, surface  
34 impoundment, and container emission standards in ~~Code of Federal Regulations, title 40,~~  
35 ~~part 265, subparts AA and BB, as amended parts 7045.0645, 7045.0647, and 7045.0648.~~

36 **[In item D, the MPCA is adopting requirements that apply to the reports required**  
37 **from facilities that are subject to the air emission standards being added in this**  
38 **rulemaking. This language is based on required RCRA Amendment 154-1.27:**  
39 **“Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments,**  
40 **and Containers” = 40 CFR 265.77(d). Further information about the air emission**  
41 **standards can be found at 59 FR 62896-62953, December 6, 1994.]//**  
42

43 **7045.0594 CLOSURE.**

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

1 Subp. 2. **Closure performance standard.** The owner or operator shall close the  
2 facility in a manner minimizing the need for further maintenance. Closure procedures  
3 must result in controlling, minimizing, or eliminating, to the extent necessary to protect  
4 human health and the environment, postclosure escape of hazardous waste, hazardous  
5 constituents, leachate, contaminated runoff, or hazardous waste decomposition products  
6 to the ground or surface waters or to the atmosphere, in accordance with all closure  
7 requirements including the requirements of parts 7045.0628, subpart 9; 7045.0630,  
8 subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640,  
9 subpart 5; and 7045.0642, subpart 5; and Code of Federal Regulations, title 40, section  
10 265.1102, as incorporated in part 7045.0649.

11 **[In subpart 2, the MPCA adds a reference to closure and post closure requirements**  
12 **that apply to containment buildings. The amendment is based on required RCRA**  
13 **Amendment 109.20: “Land Disposal Restrictions for Newly Listed Wastes and**  
14 **Hazardous Debris” = 40 CFR 265.111(c). Further information can be found in 57 FR**  
15 **37194-37282, August 18, 1992. Finally, the MPCA replaces an incorrect CFR citation**  
16 **to part 264 with the appropriate citation to related regulations in part 265.]/**

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

18 A. A copy of the written closure plan and all revisions to the plan must be  
19 furnished to the commissioner upon request, including request by mail until final closure  
20 is completed and certified. For facilities without approved closure plans, the plan must  
21 also be provided to the commissioner as requested, during site inspections on the day of  
22 the inspection. The plan must identify steps necessary to perform partial and/or final  
23 closure of the facility at any point during its active life. The closure plan must include:

24 (1) A description of how each hazardous waste management unit will be closed,  
25 if applicable, and how the facility will be finally closed, in accordance with subpart 2.  
26 The description must identify the maximum extent of the operation which will be  
27 unclosed during the active life of the facility and how the facility will meet the  
28 requirements of subpart 2, part parts 7045.0590; 7045.0592; 7045.0594; 7045.0596, and  
29 the applicable closure requirements of parts; 7045.0626, subpart 8; 7045.0628, subpart 9;  
30 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4;  
31 7045.0640, subpart 5; 7045.0642, subpart 5; and 7045.0655, subpart 6, will be met and  
32 Code of Federal Regulations, title 40, section 265.1102, as incorporated in part  
33 7045.0649;

34 **[In subitem (1), the MPCA adopts cross references to specific closure requirements**  
35 **for various types of facilities. These amendments are based on required RCRA**  
36 **Amendment 109.20: “Land Disposal Restrictions for Newly Listed Wastes and**  
37 **Hazardous Debris” = 40 CFR 265.112(d)(4). Further information can be found in 57**  
38 **FR 37194-37282, August 18, 1992. The MPCA also provides a cross reference to**  
39 **federal requirements that are being incorporated in part 7045.0649.]/**

40 [For text of subitems (2) to (6), see M.R.]

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

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

#### 44 **7045.0596 CLOSURE ACTIVITIES.**

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

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

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

7 *[For text of subitems (1) and (2), see M.R.]*

8 (3) the nonhazardous waste will not be incompatible with any remaining wastes  
9 in the unit, or with the facility design and operating requirements of the unit or facility  
10 under parts 7045.0552 to ~~7045.0642~~ 7045.0651;

11 **[In subitem (3), the MPCA corrects a citation to a range of rules that changed as parts  
12 were added.]//**

13 *[For text of subitems (4) and (5), see M.R.]*

14 *[For text of items B to D, see M.R.]*

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

## 17 **7045.0600 POSTCLOSURE.**

18 Subpart 1. **Scope.** This part and parts 7045.0602 to 7045.0606 apply to the owners and  
19 operators of all hazardous waste disposal facilities, including surface impoundments and  
20 waste piles from which the owner or operator intends to remove the wastes at closure, to  
21 the extent that the owner or operator is required to provide postclosure care in part  
22 7045.0630, subpart 6, or ~~in part~~ 7045.0632, subpart 7, ~~and also~~; tank systems that are  
23 required under part 7045.0628, subpart 9, to meet the requirements for landfills; and  
24 containment buildings that are required under Code of Federal Regulations, title 40,  
25 section 265.1102, as incorporated in part 7045.0649, to meet the requirement for  
26 landfills, except as provided otherwise in part 7045.0552.

27 **[In subpart 1, the MPCA adds language to apply the post closure care requirements  
28 to the owner or operator of containment buildings. The amendment is based on  
29 required RCRA Amendment 109.19: "Land Disposal Restrictions for Newly Listed  
30 Wastes and Hazardous Debris" = 40 CFR 265.110(b)(4). Further information can be  
31 found in 57 FR 37194-37282, August 18, 1992.]//**

32 Subp. 2. **Submittal of postclosure plan.** The postclosure plan must be submitted as  
33 follows:

34 *[For text of items A to C, see M.R.]*

35 D. The commissioner shall provide the owner or operator and the public, through a  
36 newspaper notice, the opportunity to submit written comments, to request modification,  
37 or to request a public information meeting on the postclosure plan or substantive  
38 amendments to the postclosure plan within 30 days of the date of the notice. In response  
39 to a request or at his or her own discretion, the commissioner shall hold a public  
40 information meeting whenever a meeting might clarify one or more issues concerning the  
41 postclosure plan. The commissioner shall approve, modify, or disapprove postclosure  
42 plans for facilities having interim status within 90 days of the receipt of the plan. If the  
43 commissioner does not approve the plan, he or she shall provide the owner or operator  
44 with a detailed written statement of reasons for the refusal, and the owner or operator  
45 shall submit a modified or new plan for approval within 30 days after receiving this

1 written statement. The commissioner shall approve or modify this plan in writing within  
2 60 days. If the commissioner modifies the plan, this modified plan becomes the approved  
3 postclosure plan. A copy of the modified plan and a detailed statement of reasons for the  
4 modifications shall be mailed to the owner or operator. The commissioner shall ensure  
5 that the approved postclosure plan is consistent with ~~part~~ this part and with the  
6 postclosure care and use of property requirements in parts 7045.0602, 7045.0604, and  
7 7045.0606.

8 **[In item D, the MPCA revises language to add references to the requirements for**  
9 **providing notification to local land authorities (part 7045.0604) and notification in**  
10 **property deeds (part 7045.0606). Although the phrasing of this part of the State rules**  
11 **does not exactly correspond to the requirements of the final sentences in 40 CFR**  
12 **265.118(f), the MPCA believes that it addresses the same aspects of regulation. These**  
13 **additions are based on required RCRA Amendment 109.21: “Land Disposal**  
14 **Restrictions for Newly Listed Wastes and Hazardous Debris” = 40 CFR 265.118(f).**  
15 **Further information can be found in 57 FR 37194-37282, August 18, 1992.]//**

16 *[For text of subp 3, see M.R.]*  
17

## 18 **7045.0608 FINANCIAL REQUIREMENTS.**

19 **[In this rulemaking the MPCA has made a number of amendments to the**  
20 **requirements for providing financial assurance, both for permitted facilities and for**  
21 **facilities governed by the interim status requirements. A discussion of the**  
22 **reasonableness of the MPCA’s general decisions regarding the use of particular**  
23 **financial assurance mechanisms is provided in the discussion for the amendments to**  
24 **part 7045.0498 (financial assurance for permitted hazardous waste facilities) and is**  
25 **also applicable to the amendments being made to the following financial assurance**  
26 **rules for interim status hazardous waste facilities.]//**

27 Subpart 1. **Scope.** The requirements of parts 7045.0610, 7045.0612, and 7045.0620 to  
28 7045.0624 apply to owners and operators of hazardous waste facilities except as provided  
29 otherwise in this part or in part 7045.0552.

30 The requirements of parts 7045.0614 to 7045.0618 apply only to owners and operators  
31 of disposal facilities ~~and~~; tank systems that are required under part 7045.0628, subpart 9,  
32 to meet the requirements for landfills; and containment buildings that are required under  
33 Code of Federal Regulations, title 40, section 265.1102, as incorporated in part  
34 7045.0649, to meet the requirements for landfills.

35 The state and the federal government are exempt from the requirements of parts  
36 7045.0608 to 7045.0624.

37 **[In subpart 1, the MPCA applies post closure care financial assurance requirements**  
38 **to the owners and operators of containment buildings that are required to close as**  
39 **landfills. Requirements for containment buildings are being added in this rulemaking.**  
40 **These requirements are based on required RCRA Amendment 109.22: “Land**  
41 **Disposal Restrictions for Newly Listed Wastes and Hazardous Debris” = 40 CFR**  
42 **265.140(b)(1-3). Further information can be found in 57 FR 37194-37282, August 18,**  
43 **1992.]//**

44 *[For text of subp 2, see M.R.]*  
45

1 **7045.0610 COST ESTIMATE FOR FACILITY CLOSURE.**

2 Subpart 1. **Cost estimate requirements.** The owner or operator shall prepare a  
3 detailed written estimate, in current dollars, of the cost of closing the facility in  
4 accordance with the closure plan in part 7045.0594 and applicable closure requirements  
5 in parts 7045.0626, subpart 8; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634,  
6 subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; and 7045.0642, subpart 5; and  
7 Code of Federal Regulations, title 40, section 265.1102, as incorporated in part  
8 7045.0649. The closure cost estimate must equal the cost of closure at the point in the  
9 facility's operating life when the extent and manner of its operation would make closure  
10 the most expensive, as indicated by its closure plan. The closure cost shall be estimated  
11 as follows:

12 **[In subpart 1, the MPCA adds a reference to the requirements being adopted in this**  
13 **rulemaking that apply to containment buildings. The reference in this part is based**  
14 **on required RCRA Amendment 109.23: "Land Disposal Restrictions for Newly Listed**  
15 **Wastes and Hazardous Debris" = 40 CFR 265.142(a). Further information can be**  
16 **found in 57 FR 37194-37282, August 18, 1992.]//**

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

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

20 **7045.0612 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.**

21 [For text of subps 1 to 5, see M.R.]

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

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

25 L. An owner or operator may meet the requirements of this part by obtaining a  
26 written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be  
27 the parent corporation of the owner or operator. The guarantor must meet the  
28 requirements for owner or operator in items A to J; and must comply with the terms of  
29 the corporate guarantee. The wording of the corporate guarantee must be identical to the  
30 wording specified in part 7045.0524, subpart 8. A certified copy of the corporate  
31 guarantee must accompany the items sent to the commissioner as specified in item E. The  
32 terms of the corporate guarantee must provide that:

33 **[In item L, the MPCA clarifies that the owner or operator must send a certified copy**  
34 **of the corporate guarantee to the commissioner. The rule formerly implied that the**  
35 **original document had to be sent to the commissioner. This change is based on**  
36 **RCRA Amendment 113: "Consolidated Liability Requirements" = 40 CFR**  
37 **265.143(e)(10). Further information can be found in 53 FR 33938-33960, September 1,**  
38 **1988; as amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September**  
39 **16, 1992.]//**

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

41 [For text of subps 7 to 9, see M.R.]

43 **7045.0616 FINANCIAL ASSURANCE FOR POSTCLOSURE CARE.**

44 [For text of subps 1 to 5, see M.R.]

1 Subp. 6. **Financial test and corporate guarantee for postclosure care.** The  
2 following is the financial test and corporate guarantee for postclosure care:

3 *[For text of items A to L, see M.R.]*

4 M. An owner or operator may meet the requirements of this part by obtaining a  
5 written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be  
6 the parent corporation of the owner or operator. The guarantor must meet the  
7 requirements for owners or operators in items A to K, and must comply with the terms of  
8 the corporate guarantee. The wording of the corporate guarantee must be identical to the  
9 wording specified in part 7045.0524, subpart 8. A certified copy of the corporate  
10 guarantee must accompany the items sent to the commissioner as specified in item E. The  
11 terms of the corporate guarantee must provide that:

12 **[In item M, the MPCA clarifies that the owner or operator must send a certified copy**  
13 **of the corporate guarantee to the commissioner. The rule formerly implied that the**  
14 **original document had to be sent to the commissioner. This change is based on**  
15 **RCRA Amendment 113: "Consolidated Liability Requirements" = 40 CFR**  
16 **265.143(e)(10). Further information can be found in 53 FR 33938-33960, September 1,**  
17 **1988; as amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September**  
18 **16, 1992.]//**

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

20 *[For text of subps 7 to 9, see M.R.]*

## 22 **7045.0620 LIABILITY REQUIREMENTS.**

23 **[The MPCA has made a number of amendments to the requirements for liability**  
24 **coverage, both for permitted facilities and for facilities governed by the interim status**  
25 **requirements. A discussion of the reasonableness of the MPCA's general decisions**  
26 **regarding the use of particular financial assurance mechanisms is provided in the**  
27 **discussion for the amendments to part 7045.0518 (liability requirements for**  
28 **hazardous waste facilities) and is applicable to the amendments being made to the**  
29 **following rules on liability requirements for interim status hazardous waste**  
30 **facilities.]//**

31 Subpart 1. **Coverage for sudden accidental occurrences.** An owner or operator of a  
32 hazardous waste treatment, storage, or disposal facility, or a group of ~~these~~ such facilities,  
33 ~~shall~~ must demonstrate financial responsibility for bodily injury and property damage to  
34 third parties caused by sudden accidental occurrences arising from operations of the  
35 facility or group of facilities. The owner or operator ~~shall~~ must have and maintain  
36 liability coverage for sudden accidental occurrences in the amount of at least \$1,000,000  
37 per occurrence with an annual aggregate of at least \$2,000,000, exclusive of legal defense  
38 costs. This liability coverage may be demonstrated ~~in one of three ways,~~ as specified in  
39 items ~~A, B, and C~~ A to F:

40 A. An owner or operator may demonstrate the required liability coverage by having  
41 liability insurance as specified in subitems (1) and (2):

42 (1) Each insurance policy must be amended by attachment of the hazardous  
43 waste facility liability endorsement or evidenced by a certificate of liability insurance.  
44 The wording of the endorsement must be identical to the wording specified in part  
45 7045.0524, subpart 9. The wording of the certificate of insurance must be identical to the

1 wording specified in part 7045.0524, subpart 10. The owner or operator ~~shall~~ must submit  
2 a signed duplicate original of the endorsement or the certificate of insurance to the  
3 commissioner. If requested by the commissioner, the owner or operator shall provide a  
4 signed duplicate original of the insurance policy.

5 (2) Each insurance policy must be issued by an insurer which is licensed to  
6 transact the business of insurance or eligible to provide insurance as an excess or surplus  
7 lines insurer in one or more states.

8 B. An owner or operator may meet the requirements of this part by passing a  
9 financial test or using the corporate guarantee for liability coverage as specified in  
10 subparts 5 and 6.

11 C. An owner or operator may meet the requirements of this part by obtaining a  
12 letter of credit for liability coverage as specified in subpart 7.

13 D. An owner or operator may meet the requirements of this part by obtaining a  
14 trust fund for liability coverage as specified in subpart 8.

15 E. An owner or operator may demonstrate the required liability coverage through  
16 the use of ~~the combinations of insurance, financial test, insurance, the corporate~~  
17 ~~guarantee, a combination of the financial test and insurance, or a combination of the~~  
18 ~~corporate guarantee and insurance as these mechanisms are specified in this part~~  
19 corporate guarantee, letter of credit, and trust fund, except that the owner or operator may  
20 not combine a financial test covering part of the liability coverage requirement with a  
21 guarantee unless the financial statement of the owner or operator is not consolidated with  
22 the financial statement of the guarantor. The amounts of coverage demonstrated must  
23 total at least the minimum amounts required by ~~subpart 4~~ this part. If the owner or  
24 operator demonstrates the required coverage through the use of a combination of  
25 financial assurances under this item, the owner or operator must specify other assurance  
26 as "excess" coverage.

27 F. An owner or operator must notify the commissioner in writing within 30 days  
28 whenever:

29 (1) a claim results in a reduction in the amount of financial assurance for  
30 liability coverage provided by a financial instrument authorized in items A to E;

31 (2) a certification of valid claim for bodily injury or property damage caused by  
32 a sudden or nonsudden accidental occurrence arising from the operation of a hazardous  
33 waste treatment, storage, or disposal facility is entered between the owner or operator and  
34 third-party claimant for liability coverage under items A to E; or

35 (3) a final court order establishing a judgment for bodily injury or property  
36 damage caused by a sudden or nonsudden accidental occurrence arising from the  
37 operation of a hazardous waste treatment, storage, or disposal facility is issued against the  
38 owner or operator or an instrument that is providing financial assurance for liability  
39 coverage under items A to E.

40 **[In subpart 1, the MPCA amends the rule to clearly identify the expanded range of**  
41 **options being provided in this rulemaking for demonstrating liability coverage for**  
42 **sudden, accidental occurrences and to add new requirements for liability coverage**  
43 **based on the corresponding federal regulations in 40 CFR 265.147(a). The changes**  
44 **are based on RCRA Amendment 113: "Consolidated Liability Requirements" = 40**  
45 **CFR 265.147(a). Further information can be found in 53 FR 33938-33960, September**  
46 **1, 1988; as amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844,**

1 **September 16, 1992. The MPCA has also made minor, clarifying changes that do not**  
2 **change the effect of this provision. The MPCA has also changed “shall” to “must,”**  
3 **and “these” to “such.”]//**

4 Subp. 2. **Coverage for nonsudden accidental occurrences.** An owner or operator of  
5 a surface impoundment, landfill, or land treatment facility which is used to manage  
6 hazardous waste, or a group of ~~these~~ such facilities, ~~shall~~ must demonstrate financial  
7 responsibility for bodily ~~damage~~ injury and property damage to third parties caused by  
8 nonsudden accidental occurrences arising from operations of the facility or group of  
9 facilities. The owner or operator ~~shall~~ must have and maintain liability coverage for  
10 nonsudden accidental occurrences in the amount of at least \$3,000,000 per occurrence  
11 with an annual aggregate of at least \$6,000,000, exclusive of legal defense costs. An  
12 owner or operator who must meet the requirements of this part may combine the required  
13 per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a  
14 single per-occurrence level, and combine the required annual aggregate coverage levels  
15 for sudden and nonsudden accidental occurrences into a single annual aggregate level.  
16 Owners or operators who combine coverage levels for sudden and nonsudden accidental  
17 occurrences must maintain liability coverage in the amount of at least \$4,000,000 per  
18 occurrence and \$8,000,000 annual aggregate. This liability coverage may be  
19 demonstrated ~~in one of three ways as specified in items A, B, and C to F:~~

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

21 B. An owner or operator may meet the requirements of this part by passing a  
22 financial test or using the corporate guarantee for liability coverage as specified in  
23 subparts 5 and 6.

24 C. An owner or operator may meet the requirements of this part by obtaining a  
25 letter of credit for liability coverage as specified in subpart 7.

26 D. An owner or operator may meet the requirements of this part by obtaining a  
27 trust fund for liability coverage as specified in subpart 8.

28 E. An owner or operator may demonstrate the required liability coverage through  
29 use of ~~the combinations of insurance, financial test, insurance, the corporate guarantee, a~~  
30 ~~combination of the financial test and insurance, or a combination of the corporate~~  
31 ~~guarantee and insurance as these mechanisms are specified in this part~~ corporate  
32 guarantee, letter of credit, and trust fund, except that the owner or operator may not  
33 combine a financial test covering part of the liability coverage requirement with a  
34 guarantee unless the financial statement of the owner or operator is not consolidated with  
35 the financial statement of the guarantor. The amounts of coverage demonstrated must  
36 total at least the minimum amounts required by ~~subpart 4~~ this part. If the owner or  
37 operator demonstrates the required coverage through the use of a combination of  
38 financial assurances under this item, the owner or operator shall specify at least one such  
39 assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

40 ~~D. The required liability coverage for nonsudden accidental occurrences must be~~  
41 ~~demonstrated by the dates specified in subitems (1), (2), (3), and (4). The total sales or~~  
42 ~~revenues of the owner or operator in all lines of business, in the fiscal year preceding July~~  
43 ~~16, 1984, will determine which of the dates applies. If the owner and operator of a facility~~  
44 ~~are two different parties, or if there is more than one owner or operator, the sales or~~  
45 ~~revenues of the owner or operator with the largest sales or revenues determines the date~~  
46 ~~by which the coverage must be demonstrated. The following dates apply:~~



1 (1) for an owner or operator not subject to the requirements of Code of Federal  
2 Regulations, title 40, section 265.147 (1983) with sales or revenues totaling \$10,000,000  
3 or more, six months after July 16, 1984;

4 (2) for an owner or operator not subject to the requirements of Code of Federal  
5 Regulations, title 40, section 265.147 (1983) with sales or revenues greater than  
6 \$5,000,000 but less than \$10,000,000, 18 months after July 16, 1984;

7 (3) all other owners or operators not subject to the requirements of Code of  
8 Federal Regulations, title 40, section 265.147 (1983) 30 months after July 16, 1984;

9 (4) for an owner or operator subject to the requirements of Code of Federal  
10 Regulations, title 40, section 265.147 (1983) on the date he or she is required to  
11 demonstrate coverage under Code of Federal Regulations, title 40, section 265.147  
12 (1983).

13 E. By the date six months after July 16, 1984, an owner or operator who is within  
14 either of the categories in subitem (2) or (3) shall, unless he or she has demonstrated  
15 liability coverage for nonsudden accidental occurrences, send a letter to the commissioner,  
16 stating the date by which he or she plans to establish the coverage.

17 F. An owner or operator shall notify the commissioner in writing within 30 days  
18 whenever:

19 (1) a claim results in a reduction in the amount of financial assurance for  
20 liability coverage provided by a financial instrument authorized in items A to E;

21 (2) a certification of valid claim for bodily injury or property damage caused by  
22 a sudden or nonsudden accidental occurrence arising from the operation of a hazardous  
23 waste treatment, storage, or disposal facility is entered between the owner or operator and  
24 third-party claimant for liability coverage under items A to E; or

25 (3) a final court order establishing a judgment for bodily injury or property  
26 damage caused by a sudden or nonsudden accidental occurrence arising from the  
27 operation of a hazardous waste treatment, storage, or disposal facility is issued against the  
28 owner or operator or an instrument that is providing financial assurance for liability  
29 coverage under items A to E.

30 **[In subpart 2, the MPCA amends the rule to clearly identify the expanded range of**  
31 **options being provided in this rulemaking for demonstrating liability coverage for**  
32 **non-sudden, accidental occurrences and to add new requirements for liability**  
33 **coverage based on the corresponding federal regulations in 40 CFR 147(b). The**  
34 **changes are based on adopts optional language from RCRA Amendment 113:**  
35 **“Consolidated Liability Requirements” = 40 CFR 265.147(b). Further information**  
36 **can be found in 53 FR 33938-33960, September 1, 1988; as amended by 56 FR 30200,**  
37 **July 1, 1991; and 57 FR 42832-42844, September 16, 1992. The MPCA has also made**  
38 **minor, clarifying changes to change “shall” to “must” that do not change the effect of**  
39 **this provision.]/**

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

41 Subp. 5. **Financial test for liability coverage.** The financial test for liability coverage  
42 is as follows:

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

44 H. If the owner or operator no longer meets the requirements of item A, he or she  
45 shall must obtain insurance, a letter of credit, a trust fund, or a corporate guarantee for the  
46 entire amount of required liability coverage as specified in this part. Evidence of

1 insurance liability coverage must be submitted to the commissioner within 90 days after  
2 the end of the fiscal year for which the year-end financial data show that the owner or  
3 operator no longer meets the test requirements.

4 **[In item H, the MPCA makes minor changes to change “shall” to “must” and to**  
5 **address the types of insurance that will be allowed for liability coverage. The**  
6 **amendments addressing the changes to the liability insurance options are based on**  
7 **RCRA Amendment 113: “Consolidated Liability Requirements” = 40 CFR**  
8 **265.147(f)(6). Further information can be found in 53 FR 33938-33960, September 1,**  
9 **1988; as amended by 56 FR 30200, July 1, 1991; and 57 FR 42832-42844, September**  
10 **16, 1992.]//**

11 *[For text of item I, see M.R.]*

12 Subp. 6. **Corporate guarantee for liability coverage.** The corporate guarantee for  
13 liability coverage is as follows:

14 A. Subject to item B, an owner or operator may meet the requirements of this part  
15 by obtaining a written corporate guarantee. The guarantor must be the parent corporation  
16 of the owner or operator. The guarantee guarantor must meet the requirements for owners  
17 or operators in subpart 5. The wording of the corporate guarantee must be identical to the  
18 wording specified in part 7045.0524, subpart 8a. The guarantee must be signed by two  
19 corporate officers of the parent corporation. A corporate resolution authorizing the parent  
20 corporation to provide the corporate guarantee for the subsidiary must be attached to the  
21 guarantee. A certified copy of the corporate guarantee must accompany the items sent to  
22 the commissioner as specified in subpart 5, item E. The terms of the corporate guarantee  
23 must provide that:

24 **[In subpart 6, the MPCA makes a minor correction to use the correct term**  
25 **‘guarantor,’ rather than ‘guarantee.’ This is the same term used in parallel**  
26 **provisions for liability requirements for facility standards in part 7045.0518, subpart**  
27 **7.]//**

28 *[For text of subitems (1) and (2), see M.R.]*

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

30 **Subp. 7. Letter of credit for liability coverage.**

31 A. An owner or operator may satisfy the requirements of this part by obtaining an  
32 irrevocable standby letter of credit that conforms to the requirements of this subpart and  
33 submitting a copy of the letter of credit to the commissioner.

34 B. The financial institution issuing the letter of credit must be an entity that has the  
35 authority to issue letters of credit and whose letter of credit operations are regulated and  
36 examined by a federal or state agency.

37 C. The wording of the letter of credit must be identical to the wording in part  
38 7045.0524, subpart 11.

39 D. An owner or operator who uses a letter of credit to satisfy the requirements of  
40 this part may also establish a standby trust fund. Under the terms of a letter of credit, all  
41 amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by  
42 the issuing institution into the standby trust in accordance with instructions from the  
43 trustee. The trustee of the standby trust fund must be an entity that has the authority to act  
44 as a trustee and whose trust operations are regulated and examined by a federal or state  
45 agency.

1 E. The wording of the standby trust fund must be identical to the wording in part  
2 7045.0524, subpart 13.

3 **[In subpart 7, the MPCA adds a new subpart that provides the option of using a letter**  
4 **of credit for liability coverage. This option is based on federal language for use by**  
5 **interim status facilities. The MPCA believes this is a reasonable financial assurance**  
6 **mechanism. The adopted language is based on optional RCRA Amendment 113:**  
7 **“Consolidated Liability Requirements” = 40 CFR 265.147(h). Further information**  
8 **can be found in 53 FR 33938-33960, September 1, 1988; as amended by 56 FR 30200,**  
9 **July 1, 1991; and 57 FR 42832-42844, September 16, 1992.]/**

10 **Subp. 8. Trust fund for liability coverage.**

11 A. An owner or operator may satisfy the requirements of this part by establishing a  
12 trust fund that conforms to the requirements of this subpart and submitting an originally  
13 signed duplicate of the trust agreement to the commissioner.

14 B. The trustee must be an entity that has the authority to act as a trustee and whose  
15 trust operations are regulated and examined by a federal or state agency.

16 C. The trust fund for liability coverage must be funded for the full amount of the  
17 liability coverage to be provided by the trust fund before it may be relied upon to satisfy  
18 the requirements of this part. If at any time after the trust fund is created, the amount of  
19 funds in the trust fund is reduced below the full amount of the liability coverage to be  
20 provided, the owner or operator, by the anniversary date of the establishment of the fund,  
21 must either add sufficient funds to the trust fund to cause its value to equal the full  
22 amount of liability coverage to be provided or obtain other financial assurance as  
23 specified in this part to cover the difference. For purposes of this subpart, "the full  
24 amount of the liability coverage to be provided" means the amount of coverage for  
25 sudden or nonsudden occurrences required to be provided by the owner or operator by  
26 this part, less the amount of financial assurance for liability coverage that is being  
27 provided by other financial assurance mechanisms being used to demonstrate financial  
28 assurance by the owner or operator.

29 D. The wording of the trust fund must be identical to the wording in part  
30 7045.0524, subpart 13.

31 **[In subpart 8, the MPCA adds a new subpart that provides the option of using a trust**  
32 **fund for liability coverage. This option is based on federal language for use by**  
33 **interim status facilities. The MPCA believes this is a reasonable financial assurance**  
34 **mechanism. The adopted language is based on optional RCRA Amendment 113:**  
35 **“Consolidated Liability Requirements” = 40 CFR 265.147(j). Further information**  
36 **can be found in 53 FR 33938-33960, September 1, 1988; as amended by 56 FR 30200,**  
37 **July 1, 1991; and 57 FR 42832-42844, September 16, 1992.]/**

39 **7045.0626 USE AND MANAGEMENT OF CONTAINERS.**

40 Subpart 1. **Scope.** This part applies to owners and operators of hazardous waste  
41 facilities that store containers of hazardous waste, except as part 7045.0552 provides  
42 otherwise. Under ~~parts part~~ 7045.0127, subparts 2 to 4, and ~~7045.0135, subpart 4, item C~~  
43 Code of Federal Regulations, title 40, section 261.33(c), as incorporated in part  
44 7045.0135, if a hazardous waste is emptied from a container, the residue remaining in the  
45 container is not considered a hazardous waste if the container is empty, as defined in part

1 7045.0127, subparts 2 to 4. In that event, management of the container is exempt from  
2 the requirements of this part.

3 **[In subpart 1, the MPCA replaces citations to repealed rules with citations to**  
4 **equivalent federal rules as incorporated by reference.]//**

5 *[For text of subps 2 to 6, see M.R.]*

6 Subp. 7. **Special requirements for ignitable or reactive waste.** Containers holding  
7 ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's  
8 property line, when physically possible based on the dimensions of the property. When it  
9 is not physically possible to place containers at least 50 feet from the property line, based  
10 on the dimensions of the property, the ignitable or reactive waste must be placed at least  
11 as far as the specified minimum distance from property line found in ~~Table Number~~  
12 ~~79.503 F~~ of the Minnesota ~~Uniform State Fire Code as incorporated by reference in part~~  
13 ~~7510.3510, chapter 7510~~. Nothing in this subpart shall relieve the facility owner or  
14 operator from the obligation to comply with any local, state, or federal law governing  
15 storage of these wastes.

16 **[In subpart 7, the MPCA corrects a reference and cite to a State Fire Code that has**  
17 **been amended by another rulemaking since originally adopted.]//**

18 *[For text of subp 8, see M.R.]*

19 Subp. 9. **Air emission standards.** The owner or operator must manage all hazardous  
20 waste placed in a container in accordance with the applicable requirements of parts  
21 7045.0645, 7045.0647, and 7045.0648.

22 **[In subpart 9, the MPCA adopts language referring to the air emission standards that**  
23 **are being applied to containers at interim status facilities as a result of this**  
24 **rulemaking. The reference is from required RCRA Amendment 154, 154-1.28:**  
25 **“Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments,**  
26 **and Containers” = 40 CFR 265.178. Further information regarding the air emission**  
27 **standards can be found in 59 FR 62896-62953, December 6, 1994; as amended by 61**  
28 **FR 59932-59997, November 25, 1996.]//**

## 30 **7045.0628 TANK SYSTEMS.**

31 Subpart 1. **Scope.** This part applies to owners and operators of facilities that use tank  
32 systems, including tank systems, sumps, and other such collection devices or systems  
33 used in conjunction with drip pads, as defined in part 7045.0020 and regulated under part  
34 7045.0644, to treat or store hazardous waste, except as items A and B and part 7045.0552  
35 provide otherwise.

36 A. Tank systems that are used to store or treat hazardous waste containing no free  
37 liquids and that are located inside a building with an impermeable floor are exempt from  
38 the requirements of subpart 4. To demonstrate the absence or presence of free liquids in  
39 the stored or treated waste, ~~EPA the following test must be used:~~ Method 9095 (Paint  
40 Filter Liquids Test) as described in "Test Methods for Evaluating Solid ~~Wastes Waste,~~  
41 Physical/Chemical Methods," (EPA publication ~~No. SW-846~~) ~~must be used,~~  
42 incorporated by reference in part 7045.0065, item D.

43 **[In item A, the MPCA corrects the name of the EPA test method for verifying the**  
44 **presence of liquids in order to correspond to the federal counterpart in 40 CFR**  
45 **265.190(a). The amendment is based on required RCRA Amendment 126.15:**

1 **“Testing and Monitoring Activities.” Further information can be found in 58 FR**  
2 **46040-46051, August 31, 1993; as amended at 59 FR 47980-47982, September 19, 1994.**  
3 **The MPCA also provides language to clarify where to find the prescribed test method,**  
4 **which has changed as a result of these amendments.】//**

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

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

7 Subp. 10. **Special requirements for ignitable or reactive waste.** Ignitable or reactive  
8 waste must not be placed in a tank unless:

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

10 C. the tank is used solely for emergencies.

11 The owner or operator of a facility which treats or stores ignitable or reactive waste in  
12 a tank shall comply with the requirements for the maintenance of protective distances  
13 between the waste management area and any public ways, streets, alleys, or an adjoining  
14 property line that can be built upon, as required in the buffer zone requirements for tanks,  
15 contained in ~~article 79 of the Minnesota Uniform State Fire Code, as incorporated by~~  
16 ~~reference in part 7510.3510 chapter 7510.~~

17 **[In item C, the MPCA corrects a reference to a previously amended State Fire**  
18 **Code.】//**

19 *[For text of subps 11 and 12, see M.R.]*

20 Subp. 13. **Air emission standards.** The owner or operator of a facility must manage  
21 all hazardous waste placed in a tank in accordance with parts 7045.0645, 7045.0647, and  
22 7045.0648.

23 **[In subpart 13, the MPCA adopts language referring to the air emission standards**  
24 **that are being applied to tanks at interim status facilities as a result of this rulemaking.**  
25 **The reference is from required RCRA Amendment 154, 154-1.29: “Consolidated**  
26 **Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers”**  
27 **= 40 CFR 265.202. Further information can be found in 59 FR 62896-62953,**  
28 **December 6, 1994; as amended by 61 FR 59932-59997, November 25, 1996.】//**  
29

30 **7045.0629 REQUIREMENTS FOR SMALL QUANTITY AND VERY**  
31 **SMALL QUANTITY GENERATORS THAT ACCUMULATE**  
32 **HAZARDOUS WASTE IN TANKS.**

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

34 Subp. 5. **Ignitable and reactive wastes.** Generators regulated under this part must  
35 comply with the following special requirements for ignitable or reactive waste:

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

37 B. The owner or operator of a facility which treats or stores ignitable or reactive  
38 waste in covered tanks must comply with the buffer zone requirements for tanks  
39 contained in ~~article 79 of the Minnesota Uniform State Fire Code, as incorporated by~~  
40 ~~reference in part 7510.3510 chapter 7510.~~

41 **[In item B, the MPCA corrects a reference to a previously amended State Fire**  
42 **Code.】//**

43 *[For text of subp 6, see M.R.]*  
44

1 **7045.0630 SURFACE IMPOUNDMENTS.**

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

3 Subp. 2. **General operating requirements.**

4 A. A surface impoundment must maintain enough freeboard to prevent any  
5 overtopping of the dike by overfilling, wave action or a storm. There must be at least 60  
6 centimeters (two feet) of freeboard. Any point source discharge from a surface  
7 impoundment to waters of the United States is subject to the requirements of the Federal  
8 Water Pollution Control Act Amendments of 1972, United States Code, title 33, section  
9 1342, as amended. Spills may be subject to the Federal Water Pollution Control Act  
10 Amendments of 1972, United States Code, title 33, section 1312, as amended.

11 B. Surface impoundments that are newly subject to RCRA section 3005(j)(1) due  
12 to the promulgation of additional listings or characteristics for the identification of  
13 hazardous waste must be in compliance with subpart 1a not later than 48 months after the  
14 promulgation of the additional listing or characteristic. This compliance period shall not  
15 be cut short as the result of the promulgation of land disposal prohibitions under Code of  
16 Federal Regulations, title 40, part 268, as amended, or the granting of an extension to the  
17 effective date of a prohibition pursuant to Code of Federal Regulations, title 40, section  
18 268.5, as incorporated in part 7045.1390, within this 48-month period.

19 **[In item A, the MPCA adopts language to address wastes that are newly regulated**  
20 **under the land disposal restrictions. The adopted language is based on required**  
21 **RCRA Amendment 109.24: “Land Disposal Restrictions for Newly Listed Wastes and**  
22 **Hazardous Debris” = 40 CFR 265.221(h). Further information about the land**  
23 **disposal restrictions can be found in 57 FR 37194-37282, August 18, 1992.]//**

24 *[For text of subps 2a to 5, see M.R.]*

25 Subp. 6. **Closure and postclosure care.** The requirements of closure and postclosure  
26 care are as follows:

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

28 B. If the owner or operator removes or decontaminates all the impoundment  
29 materials described in item A, the impoundment is not further subject to the requirements  
30 of parts 7045.0552 to ~~7045.0642~~ 7045.0651. At closure and throughout the operating  
31 period, unless the owner or operator can demonstrate that any waste removed from the  
32 surface impoundment is not a hazardous waste, he or she becomes a generator of  
33 hazardous waste and must manage it in accordance with all applicable requirements of  
34 parts 7045.0205 to 7045.0397 and 7045.0552 to ~~7045.0642~~ 7045.0651.

35 **[In item B, the MPCA corrects citations to ranges of rules that changed as parts were**  
36 **added.]//**

37 *[For text of items C and D, see M.R.]*

38 Subp. 7. **Special requirements for ignitable or reactive wastes.** Ignitable or reactive  
39 waste must not be placed in a surface impoundment unless the waste and the  
40 impoundment satisfy all applicable requirements of ~~parts 7045.1300 to 7045.1380~~ part  
41 7045.1390, and:

42 **[In subpart 7, the MPCA provides the replacement citation for a repealed range of**  
43 **rules.]//**

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

45 Subp. 8. **Special requirements for incompatible wastes.** Incompatible waste, or  
46 incompatible wastes and materials, must not be placed in the same surface impoundment

1 unless part 7045.0562, subpart 2, is followed. For examples of potentially incompatible  
2 wastes, or incompatible waste and materials, see part 7045.0643, subpart 1, item D.

3 **[In subpart 8, the MPCA initiates providing a citation to a rule that incorporates an**  
4 **appendix which lists examples of potentially incompatible wastes and materials. This**  
5 **citation corresponds to parenthetical information provided in the federal counterpart**  
6 **to this rule found at 40 CFR 265.230. The reference to part 7045.0643, subpart 1,**  
7 **item D is to the rule being added in this rulemaking that incorporates appendices**  
8 **from the federal regulations.]//**

9 Subp. 9. Air emission standards. The owner or operator must manage all hazardous  
10 waste placed in a surface impoundment in accordance with parts 7045.0645 and  
11 7045.0648.

12 **[In subpart 9, the MPCA requires surface impoundments to comply with the**  
13 **requirements for air emissions being adopted in this rulemaking. The language is**  
14 **based on required RCRA Amendment 154, 154-1.30: “Consolidated Organic Air**  
15 **Emission Standards for Tanks, Surface Impoundments, and Containers” = 40 CFR**  
16 **265.231. Further information can be found in 59 FR 62896-62953, December 6, 1994;**  
17 **as amended by 61 FR 59932-59997, November 25, 1996.]//**

#### 19 **7045.0632 WASTE PILES.**

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

21 Subp. 5. **Special requirements for ignitable or reactive waste.** Ignitable or reactive  
22 waste must not be placed in a pile unless the waste and pile satisfy all applicable  
23 requirements of ~~parts 7045.1300 to 7045.1380~~ part 7045.1390:

24 **[In subpart 5, the MPCA provides the replacement citation for a repealed range of**  
25 **rules.]//**

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

27 *[For text of subps 6 to 9, see M.R.]*

#### 29 **7045.0634 LAND TREATMENT.**

30 *[For text of subps 1 to 6, see M.R.]*

31 Subp. 7. **Special requirements for ignitable or reactive waste.** Ignitable or reactive  
32 wastes must not be land treated, unless the waste and treatment zone meet all applicable  
33 requirements of ~~parts 7045.1300 to 7045.1380~~ part 7045.1390, and the waste is  
34 immediately incorporated into the soil so that the resulting waste, mixture, or dissolution  
35 of material no longer meets the definition of ignitable or reactive waste under parts  
36 7045.0131, subpart 2 or 5; and 7045.0562, subpart 2 is complied with.

37 **[In subpart 7, the MPCA provides the replacement citation for a repealed range of**  
38 **rules.]//**

39 *[For text of subp 8, see M.R.]*

#### 41 **7045.0638 LANDFILLS.**

42 *[For text of subps 1 to 3, see M.R.]*

1 Subp. 4. **Closure and postclosure.** Closure and postclosure requirements are as  
2 follows:

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

4 B. After final closure, the owner or operator shall comply with all postclosure  
5 requirements contained in parts 7045.0600 to 7045.0606 including maintenance and  
6 monitoring throughout the postclosure care period. The owner or operator must:

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

8 (2) maintain and monitor the leak detection system in accordance with part  
9 7045.0538, subparts 3, item C, subitems (3), unit (d), and (4); and 2c, item B, and comply  
10 with all other applicable leak detection system requirements of ~~this part~~ parts 7045.0552  
11 to 7045.0651 governing interim status facility standards;

12 **[In subitem (2), the MPCA adopts language referring to the leak detection system**  
13 **requirements that can be found in the entire range of interim status rules. The**  
14 **existing language referred only to the leak detection requirements that apply to**  
15 **landfills. However, in an EPA program authorization review, the EPA identified the**  
16 **fact that the corresponding federal regulations in 40 CFR 264.310(b)(2) reference the**  
17 **entire part of the federal regulations that regulate interim status. The MPCA is**  
18 **making the changes in this subpart to correct this error. The language of this**  
19 **amendment is based on required RCRA Amendment 100: “Linens and Leak**  
20 **Detection Systems for Hazardous Waste Land Disposal Units” = 40 CFR**  
21 **264.310(b)(2). Further information can be found in 57 FR 3462-3497, January 29,**  
22 **1992.]//**

23 *[For text of subitems (3) to (5), see M.R.]*

24 Subp. 5. **Special requirements for ignitable or reactive waste.** Special requirements  
25 for ignitable or reactive waste are as follows:

26 A. Except as provided in item B, and subparts 7 and 9, ignitable or reactive waste  
27 must not be placed in a landfill unless the waste and landfill meet all applicable  
28 requirements of ~~parts 7045.1300 to 7045.1380~~ part 7045.1390, and the resulting waste,  
29 mixture, or dissolution of material no longer meets the definition of ignitable or reactive  
30 waste under part 7045.0131, subpart 2 or 5, and compliance with part 7045.0562, subpart  
31 2, is maintained.

32 **[In item A, the MPCA provides the replacement citation for a repealed range of**  
33 **rules.]//**

34 B. Except for prohibited wastes which remain subject to treatment standards in  
35 ~~parts 7045.1350 to 7045.1360~~ Code of Federal Regulations, title 40, sections 268.40 to  
36 268.42, as incorporated in part 7045.1390, ignitable wastes in containers may be  
37 landfilled without meeting the requirements of item A if the wastes are disposed so that  
38 they are protected from any material or conditions which may cause them to ignite.  
39 Ignitable wastes must be disposed in nonleaking containers which are carefully handled  
40 and placed so as to avoid heat, sparks, rupture, or any other condition that might cause  
41 ignition of the wastes; must be covered daily with soil or other noncombustible material  
42 to minimize the potential for ignition of the wastes; and must not be disposed in cells that  
43 contain or will contain other wastes which may generate heat sufficient to cause ignition  
44 of the wastes.

45 **[In item B, the MPCA replaces citations to repealed rules with citations to equivalent**  
46 **federal rules as incorporated by reference.]//**



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

2 Subp. 7. **Special requirements for liquid waste.** Bulk or noncontainerized liquid  
3 waste or waste containing free liquids, whether or not ~~absorbents~~ sorbents have been  
4 added, must not be placed in a landfill.

5 A. A container holding liquid waste or waste containing free liquids must not be  
6 placed in a landfill, unless:

7 (1) all free standing liquid has been removed by decanting, or other methods;  
8 has been mixed with ~~absorbent~~ sorbent or solidified so that free standing liquid is no  
9 longer observed; or has been otherwise eliminated;

10 *[For text of subitems (2) to (4), see M.R.]*

11 B. To demonstrate the presence or absence or presence of free liquids in either a  
12 containerized or a bulk waste, the following test must be demonstrated using the Paint  
13 Filter Liquids Test, used: Method 9095 (Paint Filter Liquids Test) as described in "Test  
14 Methods for Evaluating Solid Wastes Waste, Physical/Chemical Methods," EPA  
15 publication number SW-846, incorporated in part 7045.0065, item D.

16 **[In item B, the MPCA rephrases existing language and makes corrections to**  
17 **information regarding the name of the EPA test methods for determining the**  
18 **presence of free liquids. The amendment is based on required RCRA Amendment**  
19 **126.15: "Testing and Monitoring Activities" = 40 CFR 265.314(d). Further**  
20 **information can be found in 58 FR 46040-46051, August 31, 1993; as amended at 59**  
21 **FR 47980-47982, September 19, 1994.]]**

22 C. Sorbents used to treat free liquids to be disposed of in landfills must be  
23 nonbiodegradable. Nonbiodegradable sorbents are materials listed or described in  
24 subitem (1) or materials that pass one of the tests in subitem (2).

25 (1) Nonbiodegradable sorbents:

26 (a) inorganic minerals, other inorganic materials, and elemental carbon (for  
27 example, aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite,  
28 montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, and  
29 zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime,  
30 silica (sand), and diatomaceous earth; perlite (volcanic glass); expanded volcanic rock;  
31 volcanic ash; cement kiln dust; fly ash; rice hull ash; and activated charcoal/activated  
32 carbon);

33 (b) high molecular weight synthetic polymers (for example, polyethylene,  
34 high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane,  
35 polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked  
36 allylstyrene and tertiary butyl copolymers). This does not include polymers derived from  
37 biological material or polymers specifically designed to be degradable; or

38 (c) mixtures of these nonbiodegradable materials.

39 (2) Tests for nonbiodegradable sorbents must use the following methods. The  
40 methods are incorporated by reference under part 7045.0538, subpart 10, item D, subitem  
41 (2):

42 (a) the sorbent material is determined to be nonbiodegradable under ASTM  
43 Method G21-70 (1984a), Standard Practice for Determining Resistance of Synthetic  
44 Polymer Material to Fungi;

1 (b) the sorbent material is determined to be nonbiodegradable under ASTM  
2 Method G22-76 (1984b), Standard Practice for Determining Resistance of Plastics to  
3 Bacteria; or

4 (c) the sorbent material is determined to be nonbiodegradable under OECD  
5 test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

6 **[In subpart 7, the MPCA makes a number of changes to the regulations governing**  
7 **landfills. At several points, the MPCA changes the word “absorbent” to the broader**  
8 **term “sorbent,” based on federal language. The MPCA also adopts specific**  
9 **requirements regarding the use of sorbents to treat free liquids. These changes are**  
10 **reasonable for the reasons discussed in part 7045.0538, subpart 10 and are based on**  
11 **language from required RCRA Amendment 118.3: “Liquids in Landfills II” = 40**  
12 **CFR 265.314. Further information can be found in 57 FR 54452-54461, November 18,**  
13 **1992.]//**

14 *[For text of subp 8, see M.R.]*

15 Subp. 9. **Special requirements for disposal of laboratory packs.** Small containers of  
16 hazardous waste in overpacked drums, or laboratory packs, may be placed in a landfill if  
17 the requirements of items A to F are met:

18 A. Hazardous waste must be packaged in nonleaking inside containers. The inside  
19 containers must be of a design and constructed of a material that will not react  
20 dangerously with, be decomposed by, or be ignited by the waste held therein. Inside  
21 containers must be tightly and securely sealed. The inside containers must be of the size  
22 and type ~~specified~~ authorized in the United States Department of Transportation  
23 hazardous materials regulations under Code of Federal Regulations, title 49, parts 173,  
24 178, ~~and~~ 179, and 180, as amended, if those regulations specify a particular inside  
25 container for the waste.

26 **[In item A, the MPCA is amending the State rules on the advice of Minnesota’s**  
27 **Department of Transportation. The amendments revise language to conform with**  
28 **amended U.S. Department of Transportation regulations. The language of this item is**  
29 **slightly different than the federal counterpart found at 40 CFR 265.316, but the**  
30 **MPCA believes it is the more accurate and current reference to the applicable United**  
31 **States Department of Transportation requirements.]//**

32 B. The inside containers must be overpacked in ~~an open~~ a removable head metal  
33 shipping container as specified in United States Department of Transportation regulations  
34 under Code of Federal Regulations, title 49, section 173.12 and parts 178 ~~and~~, 179, and  
35 180, as amended, ~~of no more than 416 liter (110 gallon) capacity, and.~~ The inside  
36 containers must be surrounded by a sufficient quantity of ~~absorbent~~ chemically  
37 compatible sorbent material, determined to be nonbiodegradable in accordance with  
38 subpart 7, item C, to completely ~~absorb~~ sorb all of the liquid contents of the inside  
39 containers. The gross weight of the complete package must not exceed 205 kilograms  
40 (452 pounds). The metal outer container must be full after ~~packing~~ it has been packed  
41 with inside containers and ~~absorbent~~ sorbent material.

42 **[In item B, the MPCA adopts language addressing changes to the corresponding**  
43 **federal EPA regulation regarding overpacking of containers and also to address**  
44 **changes made to the federal Department of Transportation regulations. The changes**  
45 **are based on required RCRA Amendment 118.4: “Liquids in Landfills II” = 40 CFR**  
46 **265.316(b). Further information can be found in 57 FR 54452-54461, November 18,**

1 **1992. The MPCA is revising the federal language slightly to reflect revisions in the**  
2 **cited U.S. Department of Transportation regulations. The MPCA believes that these**  
3 **differences, taken on the advice of the Minnesota Department of Transportation, are**  
4 **a more accurate reference to the rules that actually apply.]]]**

5 C. The ~~absorbent~~ sorbent material used must not be capable of reacting  
6 dangerously with, being decomposed by, or being ignited by the contents of the inside  
7 containers, in accordance with part 7045.0562, subpart 2.

8 **[In item C, the MPCA changes “absorbent” to “sorbent” for the same reasons**  
9 **discussed in subpart 7 of this part.]]]**

10 *[For text of items D and E, see M.R.]*

11 F. The disposal complies with ~~parts 7045.1300 to 7045.1380~~ part 7045.1390.  
12 Persons who incinerate lab packs ~~according to part 7045.1360~~ in accordance with Code  
13 of Federal Regulations, title 40, section 268.42(c)(1), as incorporated in part 7045.1390,  
14 may use fiber drums in place of metal outer containers. The fiber drums must meet the  
15 United States Department of Transportation specifications in Code of Federal Regulation,  
16 title 49, section 173.12, as amended, and be overpacked ~~according to~~ in accordance with  
17 item B.

18 **[In item F, the MPCA replaces a reference to a repealed range of rules with the**  
19 **correct citation being adopted or incorporated by reference in this rulemaking. The**  
20 **MPCA also is amending the rules at this time to include the phrase “as amended” in**  
21 **regard to future changes to Department of Transportation specifications. This type of**  
22 **prospective adoption is reasonable for the reasons discussed in part IV of this**  
23 **Statement of Need and Reasonableness. Finally, the MPCA revises language at the**  
24 **end of the item for grammatical purposes.]]]**

## 25 **7045.0643 APPENDICES TO INTERIM STATUS FACILITY STANDARDS.**

26 Subpart 1. Incorporation of federal regulations. The following appendices found in  
27 Code of Federal Regulations, title 40, part 265, as amended, are incorporated by  
28 reference:  
29

30 **[In subpart 1, items A to E, the MPCA incorporates by reference the appendices to**  
31 **Interim Facility Standards that are found in 40 CFR 265. In these appendices, the**  
32 **MPCA is adopting standards or tests that are referenced either in current rules or in**  
33 **rules that are being adopted or revised for interim status facilities in this rulemaking.**  
34 **By adopting these appendices by reference as amended, the MPCA will ensure that**  
35 **the most current standards are incorporated into the State rules. The MPCA’s**  
36 **discussion of the reasonableness of incorporating federal regulations “as amended” is**  
37 **provided in Section IV of this Statement of Need and Reasonableness. Note: the EPA**  
38 **repealed its former Appendix II from the federal regulations which is why it is not**  
39 **included the these incorporated appendices.]]]**

40 A. Appendix I, Recordkeeping Instructions;

41 **[In item A, the MPCA incorporates Appendix I, regarding recordkeeping. This**  
42 **Appendix was amended as described in required RCRA Amendment 131.2:**  
43 **“Recordkeeping Instructions; Technical Amendment” = 40 CFR 265 Appendix I,**  
44 **Tables 1 and 2. Further information can be found in 59 FR 13891-13893, March 24,**  
45 **1994.]]]**

46 B. Appendix III, EPA Interim Primary Drinking Water Standards;

1 [In item B, the MPCA incorporates Appendix III, a listing of drinking water  
2 standards. The MPCA believes it is reasonable to incorporate these standards, which  
3 are referred to in part 7045.0590, subpart 6, by reference in order to accommodate  
4 future revisions.]//

5 C. Appendix IV, Tests for Significance;

6 [In item C, the MPCA incorporates Appendix IV, which establishes tests to determine  
7 significance. The MPCA believes it is reasonable to incorporate this test, which is  
8 referred to in part 7045.0592, subpart 2, by reference in order to accommodate future  
9 revisions.]//

10 D. Appendix V, Examples of Potentially Incompatible Waste; and

11 [In item D, the MPCA incorporates Appendix V, which provides examples of  
12 incompatible wastes. The MPCA believes it is reasonable to incorporate this list of  
13 examples, which are referred to in part 7045.0630, subpart 8, by reference in order to  
14 accommodate future revisions.]//

15 E. Appendix VI, Compounds with Henry's Law Constant Less Than 0.1 Y/X.

16 [In item E, the MPCA adopts language regarding the use of Henry's Law Constant.  
17 This Appendix was amended as described in required RCRA Amendment 163.38:  
18 "Organic Air Emission Standards for Tanks, Surface Impoundments, and  
19 Containers; Clarification and Technical Amendment" = 40 CFR 265 Appendix VI.  
20 Further information can be found in 62 FR 64636-64671, December 8, 1997.  
21 Appendix VI is referenced in 265.1081 which the MPCA is incorporating in this  
22 rulemaking as part of the air emission standards.]//

23 Subp. 2. Additions, modifications, or exceptions to incorporated regulations. Part  
24 7045.0090, adoption and incorporation by reference, also applies.

25 [In subpart 2, the MPCA provides a reference to part 7045.0090 which applies  
26 whenever regulations are incorporated by reference. Part 7045.0090, subpart 1f,  
27 specifically applies when federal interim status facility standards are incorporated by  
28 reference.]//

## 30 **7045.0645 AIR EMISSION STANDARDS FOR TANKS, SURFACE** 31 **IMPOUNDMENTS, AND CONTAINERS.**

32 Subpart 1. Incorporation of federal regulations. The owners and operators of  
33 interim status facilities that treat, store, or dispose of hazardous waste in tanks, surface  
34 impoundments, or containers must comply with Code of Federal Regulations, title 40,  
35 part 265, subpart CC, air emission standards for tanks, surface impoundments, and  
36 containers, sections 265.1080 to 265.1091, as amended, which are incorporated by  
37 reference subject to the exceptions in subpart 2.

38 [In part 7045.0645, the MPCA incorporates federal requirements addressing air  
39 emission standards that apply to interim status facilities that treat, store or dispose of  
40 hazardous waste in tanks, surface impoundments or containers. The State rules  
41 previously only provided air emission standards for process vents and equipment  
42 leaks. The new standards, referenced in subpart 1 are based on federal regulations  
43 found in 40 CFR 265, subpart CC (40 CFR 265.1080 through 265.1090), "Air  
44 Emission Standards for Tanks, Surface Impoundments, and Containers." By  
45 incorporating these standards by reference, the MPCA also effectively incorporates  
46 language from these related RCRA Amendments:

- 1 • RCRA Amendments 154, 154-1.26, 154-2, 154-3, 154-4, 154-5, 154-6:  
2 “Consolidated Organic Air Emission Standards for Tanks, Surface  
3 Impoundments, and Containers” = 40 CFR 265.1080-1091. Further information  
4 can be found in 59 FR 62896-62953, December 6, 1994; as amended by 60 FR  
5 26828-26829, May 19, 1995; 60 FR 50426-50430, September 29, 1995; 60 FR  
6 56952-56954, November 13, 1995; 61 FR 4903-4916, February 9, 1996; 61 FR  
7 28508-28511, June 5, 1996; and 61 FR 59932-59997, November 25, 1996.]
- 8 • RCRA Amendment 177: “Organic Air Emission Standards: Clarification and  
9 Technical Amendments” = 40 CFR 265.1080(b)(5); 265.1084(a)(1)(i-ii);  
10 265.1084(a)(3)(ii)(B,D); 265.1084(a)(3)(iii); 265.1084(b)(1)(i-ii);  
11 265.1084(b)(3)(ii)(B,D); 265.1084(b)(3)(iii); 265.1085(h)(3)(i-ii); and 265.1087(e)(6).  
12 Further information can be found in 64 FR 3382, January 21, 1999.
- 13 • RCRA Amendment 163.28-37: “Organic Air Emission Standards for Tanks,  
14 Surface Impoundments, and Containers; Clarification and Technical  
15 Amendment” = 40 CFR 265.1080; 265.1081; 265.1082; 265.1083; 265.1084;  
16 265.1085; 265.1086; 265.1087; 265.1088; and 265.1090. Further information can  
17 be found in 62 FR 64636-64671, December 8, 1997.//

18 Subp. 2. Additions, modifications, or exceptions to incorporated regulations.

19 A. The agency does not incorporate the following Code of Federal Regulations,  
20 title 40, part 265, subpart CC, provisions, as amended:

21 (1) Code of Federal Regulations, title 40, section 265.1080(d) to (g), governing  
22 specific exclusions; and

23 (2) Code of Federal Regulations, title 40, section 265.1083(c)(4)(ii), governing  
24 authority that EPA cannot delegate to states.

25 [In item A, the MPCA clarifies that it does not incorporate parts of the federal  
26 regulations governing specific exclusions and authority that does not apply in  
27 Minnesota. The exceptions to the adoption by reference are: (1) the MPCA does not  
28 adopt specific exclusions relating to peroxide manufacturers (described in 265.1080  
29 (d)), and sites located in other states (described in 265.1080 (e) to (g)); and (2) the  
30 MPCA does not have the authority to grant variances to specific land disposal  
31 treatment standards (described in 265.1083 (c )(4)(ii)). See the discussion of the  
32 similar exclusion in part 7045.1390, subpart 5, item A of this document.//

33 B. Part 7045.0090, adoption and incorporation by reference, also applies.

34 [In item B, the MPCA refers readers to the general State rule part governing  
35 adoption and incorporation by reference.//

36  
37 **7045.0649 CONTAINMENT BUILDINGS.**

38 Subpart 1. Incorporation of federal regulations. The owners and operators of  
39 interim status facilities that store or treat hazardous waste in containment buildings must  
40 comply with Code of Federal Regulations, title 40, part 265, subpart DD, Containment  
41 Buildings, sections 265.1100 to 265.1110, as amended, which are incorporated by  
42 reference subject to the exceptions in subpart 2.

43 [In part 7045.0649, the MPCA incorporates the requirements of 40 CFR 265, subpart  
44 DD, “Containment Buildings” by reference, as amended. The MPCA believes that it  
45 is efficient and reasonable to adopt this section of the federal regulations by reference  
46 as amended. In the incorporated federal regulations, sections 265.1103-1110 are

1 “reserved.” Since the MPCA incorporates these sections of RCRA as amended, if the  
2 EPA incorporates regulations into these reserved sections, they would be  
3 automatically incorporated into the State rules unless the MPCA amends its rules to  
4 provide exceptions to particular provisions. By adopting this rule, the MPCA also  
5 adopts amendments based on required RCRA Amendment 109.25: “Land Disposal  
6 Restrictions for Newly Listed Wastes and Hazardous Debris” = 40 CFR 265.1100-  
7 1110. Further information can be found in 57 FR 37194-37282, August 18, 1992.】//

8 Subp. 2. Additions, modifications, or exceptions to incorporated regulations. Part  
9 7045.0090, adoption and incorporation by reference, also applies.

10 [In subpart 2, the MPCA provides exceptions to its incorporation by reference in  
11 subpart 1 by referring readers to the general State rule part governing adoption and  
12 incorporation by reference.】//

#### 14 7045.0652 FACILITIES GOVERNED BY FACILITY STANDARDS.

15 Subpart 1. **General requirements.** Parts 7045.0652 and 7045.0655 apply in lieu of  
16 parts 7045.0450 to ~~7045.0642~~ 7045.0651 to the owner or operator of the following types  
17 of units or facilities:

18 [In subpart 1, the MPCA corrects a citation to a range of rules that changed as parts  
19 were added.】//

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

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

#### 23 7045.0655 GENERAL FACILITY STANDARDS.

24 *[For text of subps 1 to 5, see M.R.]*

25 Subp. 6. **Closure.** At closure, the owner or operator of an elementary neutralization  
26 unit, pretreatment unit, or wastewater treatment unit shall remove all hazardous waste and  
27 hazardous waste residues from the unit.

28 At closure, the owner or operator of a combustion waste facility shall analyze the  
29 waste present in the facility ~~according to~~ in accordance with parts 7045.0102 to  
30 ~~7045.0143~~ 7045.0155 and shall submit the waste analysis results and proposed closure  
31 methods to the commissioner. Based on the waste analysis and proposed closure methods,  
32 the agency shall determine which closure standards from parts 7045.0450 to 7045.0551,  
33 if any, apply to the facility.

34 [In subpart 6, the MPCA makes a grammatical change that does not alter the  
35 meaning of the rules. The MPCA also corrects citations to ranges of rules that  
36 changed as parts were added.】//

37 *[For text of subp 7, see M.R.]*

#### 39 7045.0665 USE HAZARDOUS WASTES USED IN A MANNER 40 CONSTITUTING DISPOSAL.

41 [In part 7045.0665, the MPCA revises the title to clarify the subject of this part.】//

42 Subpart 1. **Scope.** ~~Items A and B apply~~ This part applies to hazardous wastes that are  
43 used in a manner constituting disposal.

44 [In subpart 1, the MPCA revises language to clarify to what this entire part applies.】//

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

2 B. Hazardous wastes are not used in a manner constituting disposal if:

3 [For text of subitems (1) and (2), see M.R.]

4 (3) the products meet the applicable treatment standards in ~~parts 7045.1350 to~~  
5 ~~7045.1360~~ or applicable prohibition levels in ~~part 7045.1330~~ Code of Federal  
6 Regulations, title 40, sections 268.40 to 268.49, as incorporated in part 7045.1390, or, if  
7 no treatment standards have been established, meet the applicable prohibition levels in  
8 Code of Federal Regulations, title 40, section 268.32, as incorporated in part 7045.1390,  
9 or RCRA section 3004(d) where no treatment standards have been established, for each  
10 ~~recyclable material~~ hazardous waste that they contain.

11 **[In subitem (3), the MPCA is deleting citations to repealed State rules and replacing**  
12 **them with citations to equivalent federal rules that are being incorporated by**  
13 **reference in this rulemaking. The references to the deleted and replaced citations**  
14 **refer to the land disposal restrictions that are discussed in more detail in this**  
15 **Statement at part 7045.1390. This language in subpart 1, item B, now corresponds to**  
16 **40 CFR 266.20(b) with the following exception. In the last sentence the MPCA has**  
17 **changed the term “recyclable material,” which is used in the federal counterpart, to**  
18 **“hazardous waste.” The MPCA believes that the treatment standards referred to**  
19 **only apply to hazardous wastes and would not necessarily apply to recyclable**  
20 **materials that may or may not be hazardous wastes. The term “hazardous waste” is**  
21 **more accurate and appropriate to this application.]]**

22 ~~Commercial fertilizers that are produced for the general public's use that contain~~  
23 ~~recyclable materials also are not presently subject to regulation provided they meet the~~  
24 ~~same treatment standards or prohibition levels for each recyclable material that they~~  
25 ~~contain. However, zinc-containing fertilizers using hazardous waste K061 that are~~  
26 ~~produced for the general public's use are not presently subject to regulation.~~

27 **[The MPCA is deleting the last paragraph of item B addressing the regulation of**  
28 **fertilizers and is providing new requirements addressing fertilizers in item D,**  
29 **subitems (1) and (2) below.]]**

30 C. Antiskid/deicing uses of slags, which are generated from high temperature  
31 metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a  
32 manner constituting disposal are not covered by the exemption in item B and remain  
33 subject to regulation.

34 **[In item C, the MPCA adopts language from required RCRA Amendment 136.2:**  
35 **“Removal of the Conditional Exemption for Certain Slag Residues” = 40 CFR**  
36 **266.20(c); Further information about the Amendment can be found at 59 FR 43496-**  
37 **43500, August 24, 1994.]]**

38 D. Fertilizers that contain recyclable materials are not subject to regulation  
39 provided that:

40 (1) they are zinc fertilizers that meet the requirements in Code of Federal  
41 Regulations, title 40, section 261.4(a)(21), as amended; or

42 (2) they meet the applicable treatment standards in Code of Federal Regulations,  
43 title 40, sections 268.40 to 268.49, as incorporated in part 7045.1390, for each hazardous  
44 waste that they contain.

45 **[Item D, addressing the use of fertilizers, is added to incorporate a paragraph that**  
46 **was formerly at the end of item B, subitem (3), along with certain modifications to**

1 make it consistent with the federal counterpart found at 40 CFR 266.20(d). The  
2 change is based on RCRA Amendment 200: “Zinc Fertilizers Made from Recycled  
3 Hazardous Secondary Materials” = 40 CFR 266.20(d). Further information can be  
4 found at 67 FR 48393-48415, July 24, 2002.】//

5 *[For text of subps 1a to 3, see M.R.]*

6 Subp. 4. **Standards applicable to facilities managing wastes that are to be used in**  
7 **a manner that constitutes disposal.** Facilities managing wastes in a manner that  
8 constitutes disposal are subject to the following requirements:

9 A. owners or operators of facilities that store recyclable wastes that are to be used  
10 in a manner that constitutes disposal, but who are not the ultimate users of the wastes are  
11 subject to all applicable provisions of parts ~~7023.9000 to 7023.9050~~, 7045.0450 to  
12 ~~7045.0534, 7045.0544~~ 7045.0551, and 7045.0552 to 7045.0632 7045.0651, and chapter  
13 7001; and

14 **[In item A, the MPCA deletes a citation to chapter 7023 that the MPCA repealed in a**  
15 **prior rulemaking. The MPCA also corrects citations to ranges of rules that changed**  
16 **as parts were added.】//**

17 B. owners or operators of facilities that use recyclable wastes that are to be used in  
18 a manner that constitutes disposal are subject to all applicable provisions of parts  
19 ~~7023.9000 to 7023.9050~~, 7045.0450 to ~~7045.0538, 7045.0544~~ 7045.0551, 7045.0552 to  
20 ~~7045.0638~~ 7045.0651, and 7045.1390 and chapter 7001.

21 **[In item B, the MPCA makes several changes. First, the MPCA deletes a citation to**  
22 **chapter 7023 that the MPCA repealed in a prior rulemaking. Second, the MPCA**  
23 **corrects a citation to a range of rules that changed as parts were added in this**  
24 **rulemaking. Finally, the MPCA adopts a reference to the land disposal restrictions**  
25 **that would also apply to facilities managing wastes to be used in a manner that**  
26 **constitutes disposal using the cite revised in this rulemaking.】//**

## 28 **7045.0686 SPECIAL REQUIREMENTS FOR MANAGEMENT OF SPENT** 29 **OR WASTE HOUSEHOLD BATTERIES.**

30 Subpart 1. **Scope.** The requirements of this part apply to operators who collect, store,  
31 transport, or reclaim spent or waste household batteries as a part of a household battery  
32 management program.

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

34 B. Operators who collect, transport, or store spent or waste household batteries  
35 which are sent for recycling but who do not reclaim them are subject to regulation under  
36 subparts 2 and 3, but are not otherwise subject to regulation under parts ~~7023.9000 to~~  
37 ~~7023.9050~~, 7045.0205 to ~~7045.1380~~ 7045.1390, and chapter 7001 for such collection,  
38 transportation, and storage.

39 **[In item B, the MPCA deletes a citation to chapter 7023 that the MPCA repealed in a**  
40 **prior rulemaking. The MPCA also corrects a citation to a range of rules that changed**  
41 **as parts were added.】//**

42 *[For text of items C and D, see M.R.]*

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



1 **7045.0692 HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY.**

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

3 Subp. 5. **Standards applicable to marketers of hazardous waste fuel.** Marketers are  
4 subject to the requirements in items A to F.

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

6 C. If a marketer is a generator, or becomes a generator by initiating a shipment of  
7 hazardous waste fuel, the marketer must comply with parts 7045.0205 to 7045.0320. If  
8 the marketer operates a facility, the marketer must comply with parts 7045.0450 to  
9 ~~7045.0534~~ 7045.0551. If the marketer is operating a facility under interim status, the  
10 marketer must comply with parts 7045.0552 to ~~7045.0632~~ 7045.0651. If the marketer  
11 stores hazardous waste, the marketer must comply with the agency's permitting  
12 procedures in chapter 7001 and parts ~~7023.9000 to 7023.9050~~ for storage of hazardous  
13 waste.

14 **[In item C, the MPCA corrects two citations to ranges of rules that changed as parts  
15 were added. The MPCA also deletes a citation to chapter 7023 that the MPCA  
16 repealed in a prior rulemaking.]//**

17 *[For text of items D and E, see M.R.]*

18 F. In addition to the applicable record keeping requirements of parts 7045.0205 to  
19 7045.0320, 7045.0450 to ~~7045.0534~~ 7045.0551, and 7045.0552 to ~~7045.0632~~ 7045.0651,  
20 a marketer must keep a copy of each certification notice received or sent for three years  
21 from the date the marketer last engaged in a hazardous waste fuel marketing transaction  
22 with the person who sent or received the certification notice.

23 **[In item F, the MPCA corrects citations to ranges of rules that changed as parts were  
24 added.]//**

25 Subp. 6. **Standards applicable to burners of hazardous waste fuel.** Owners and  
26 operators of industrial furnaces and boilers identified in subpart 2, item B, that burn  
27 hazardous fuel are subject to the requirements in items A to F.

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

29 E. Generators who accumulate waste for longer than the time periods in item D,  
30 and burners who receive waste from off-site and store it, must comply with the following  
31 requirements:

32 (1) the agency's permitting procedures in chapter 7001 and parts ~~7023.9000 to~~  
33 ~~7023.9050~~ for hazardous waste storage facilities, parts 7045.0205 to 7045.0536,  
34 7045.0544, 7045.0552 to 7045.0632, 7045.1000 to 7045.1030, and ~~7045.1300 to~~  
35 ~~7045.1380~~ 7045.1390; and

36 **[In subitem (1), the MPCA deletes a citation to chapter 7023 that the MPCA repealed  
37 in a prior rulemaking. The MPCA also provides the replacement citation for a  
38 repealed range of rules.]//**

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

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

41 **7045.0800 MIXTURES OF USED OIL AND HAZARDOUS WASTE.**

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

43 Subp. 3. **Rebuttable presumption of mixing.** Except as provided in items A to C,  
44 used oil containing more than 1,000 ppm total halogens is presumed to have been mixed  
45 with a halogenated hazardous waste listed in part 7045.0135, and thus is subject to

1 regulation as a listed hazardous waste. Persons may rebut this presumption by  
2 demonstrating that the used oil does not contain hazardous waste. Demonstration must  
3 either involve applying knowledge of the source of halogens or the use of an analytical  
4 method from Environmental Protection Agency document SW-846, Edition III, (such as  
5 method 8010A or 8021) as incorporated by reference in part 7045.0065, item D, to show  
6 that the used oil does not contain greater than 100 ppm of any individual halogenated  
7 hazardous constituent listed in part 7045.0139.

8 **[In subpart 3, the MPCA revises language to more accurately identify the prescribed**  
9 **analytic method. The MPCA also provides a clearer reference to where it is**  
10 **incorporated into these rules.]//**

11 *[For text of items A to C, see M.R.]*

12 Subp. 4. **Characteristic waste.** Mixtures of used oil and hazardous waste that solely  
13 exhibits one or more of the hazardous waste characteristics identified in part 7045.0131  
14 and mixtures of used oil and hazardous waste that is listed in part 7045.0135 solely  
15 because it exhibits one or more of the characteristics of hazardous waste identified in part  
16 7045.0131 are subject to:

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

18 B. except as provided in item C, regulation as used oil under parts 7045.0790 to  
19 7045.0990 and regulation under the land disposal restrictions of ~~parts 7045.1300 to~~  
20 ~~7045.1380~~ part 7045.1390, if the resultant mixture does not exhibit any characteristic of  
21 hazardous waste identified in part 7045.0131; or

22 **[In item B, the MPCA provides the replacement citation for a repealed range of**  
23 **rules.]//**

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

## 26 **7045.0805 WASTE CONTAINING OR CONTAMINATED WITH USED** 27 **OIL.**

28 A. Waste contaminated with used oil that is destined for disposal is subject to  
29 evaluation under parts 7045.0102 to ~~7045.0143~~ 7045.0155 to determine if it is hazardous  
30 waste, and the appropriate solid or hazardous waste management standards based on the  
31 results of the evaluation, unless the waste is:

32 **[In item A, the MPCA corrects a citation to a range of rules that changed as parts**  
33 **were added.]//**

34 *[For text of subitems (1) and (2), see M.R.]*

35 *[For text of items B to E, see M.R.]*

## 37 **7045.0855 STANDARDS FOR USED OIL GENERATORS.**

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

### 39 Subp. 2. **Storage.**

40 A. Used oil generators shall comply with all applicable spill prevention, control,  
41 and countermeasures requirements of Code of Federal Regulations, title 40, part 112, as  
42 amended, in addition to the requirements of this part. Used oil generators shall also  
43 comply with the underground storage tank standards of ~~Code of Federal Regulations, title~~  
44 ~~40, part 280, chapter 7150~~ for used oil stored in underground tanks, whether or not the

1 used oil exhibits any characteristic of hazardous waste, in addition to the requirements of  
2 this part.

3 **[In item A, the MPCA deletes a reference to the federal underground storage tank**  
4 **standards and replaces it with language to clarify that the State rules governing**  
5 **storage tank standards found in chapter 7150 apply to used oil generators who store**  
6 **used oil in underground tanks. The federal regulations governing underground tanks**  
7 **were in effect before the adoption of the State rules governing underground tanks and**  
8 **a reference to the federal regulations was reasonable. However, now that the State**  
9 **rules are in effect, it is reasonable to delete the redundant reference to the federal**  
10 **regulations. None of these references to existing rules and statutes change the effect of**  
11 **this item.]//**

12 B. Used oil generators who store used oil ~~for more than seven days~~ in aboveground  
13 tanks ~~of at least 110 gallons in size~~ are subject to ~~parts 7100.0010 to 7100.0090~~ chapter  
14 7151, in addition to the requirements of this part. Used oil generators who store at least  
15 10,000 gallons of used oil at one time are subject to the requirements of Minnesota  
16 Statutes, chapter 115E, to prepare and maintain a discharge prevention and response plan,  
17 in addition to the requirements of this part. All used oil generators shall comply with the  
18 storage and use requirements of ~~article 79~~ of the Minnesota Uniform State Fire Code, as  
19 ~~incorporated by reference in part 7510.3510~~ chapter 7510, in addition to the requirements  
20 of this part.

21 **[In item B, the MPCA removes obsolete and superfluous time and size limits.**  
22 **Appropriate limits are provided in applicable chapter 7151 rules. The MPCA also**  
23 **corrects a citation to repealed chapter 7100 rules that were previously changed and**  
24 **moved to chapter 7151. The MPCA also corrects an obsolete reference to provide the**  
25 **current State Fire Code. These changes maintain the original intent of the rule that**  
26 **above ground storage tank rules, spill prevention and response rules, and State Fire**  
27 **Codes apply to those storing used oil.]//**

28 *[For text of items C and D, see M.R.]*

29 Subp. 3. **On-site burning in small burning units designed to burn used oil.**  
30 Generators who store used oil in vessels directly connected to burning units shall comply  
31 with ~~article 61~~ of the Minnesota Uniform State Fire Code, as ~~incorporated by reference in~~  
32 ~~part 7510.3510~~ chapter 7510. Generators may burn used oil in burning units designed to  
33 burn used oil provided that:

34 **[In subpart 3, the MPCA corrects a reference to the State Fire Code.]//**

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

36 E. the unit is ~~used in accordance~~ and its operation comply with the Minnesota  
37 Statutes, section 299F.015 Fire Code.

38 *[For text of subps 4 and 5, see M.R.]*

39 Subp. 6. **Closure.**

40 A. Generators who store or process used oil in aboveground tanks must to the  
41 extent practical, at closure of the tank system, remove or decontaminate visible residues  
42 in tanks, contaminated containment system components, contaminated soils, and  
43 structures and equipment contaminated with used oil and manage them as hazardous  
44 waste unless the materials are not hazardous waste under parts 7045.0102 to ~~7045.0143~~  
45 7045.0155.

1 **[In item A, the MPCA corrects a citation to a range of rules that changed as parts**  
2 **were added.]//**

3 B. Owners and operators who store used oil in containers must, at closure, remove  
4 containers holding used oils or residues of used oil from the site. The owner or operator  
5 must remove or decontaminate used oil residues, contaminated containment system  
6 components, contaminated soils, and structures and equipment contaminated with used  
7 oil, and manage them as hazardous waste unless the materials are not hazardous waste  
8 under parts 7045.0102 to ~~7045.0143~~ 7045.0155.

9 **[In item B, the MPCA corrects a citation to a range of rules that changed as parts**  
10 **were added.]//**

11 *[For text of subp 7, see M.R.]*  
12

### 13 **7045.0865 STANDARDS FOR USED OIL TRANSPORTERS AND** 14 **TRANSFER FACILITIES.**

15 *[For text of subps 1 to 6, see M.R.]*

#### 16 Subp. 7. **Used oil discharges.**

17 *[For text of items A to C, see M.R.]*

18 D. An air, rail, highway, or water transporter who has discharged used oil must  
19 give notice, if required by Code of Federal Regulations, title 49, section 171.15, as  
20 amended, to the National Response Center (800) 424-8802, and report in writing as  
21 required by Code of Federal Regulations, title 49, section 171.16, as amended, to the  
22 ~~Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau~~  
23 Information Systems Manager, PHH-63, Pipeline and Hazardous Materials Safety  
24 Administration, Department of Transportation, Washington, D.C. 20590-0001, or submit  
25 an electronic hazardous materials incident report to the Information Systems Manager,  
26 DHM-63, Pipeline and Hazardous Materials Safety Administration, Department of  
27 Transportation, Washington, D.C. 20590-0001 at <http://hazmat.dot.gov>.

28 **[In item D, the MPCA follows advice from Minnesota's Department of**  
29 **Transportation to revise language to conform with amended U.S. Department of**  
30 **Transportation regulations.]//**

31 *[For text of subp 8, see M.R.]*

32 Subp. 9. **Used oil storage at transfer facilities.** This subpart applies to used oil  
33 transfer facilities where used oil is stored for more than 24 hours and no more than 35  
34 days. Transfer facilities where used oil is stored for more than 35 days are subject to  
35 regulation under part 7045.0875.

36 A. Used oil transporters shall comply with all applicable spill prevention, control,  
37 and countermeasures requirements of Code of Federal Regulations, title 40, part 112, as  
38 amended, in addition to the requirements of this part. Used oil transporters shall also  
39 comply with the underground storage tank standards of ~~Code of Federal Regulations, title~~  
40 ~~40, part 280, as amended, chapter 7150~~ for used oil stored in underground tanks, whether  
41 or not the used oil exhibits any characteristic of hazardous waste, in addition to the  
42 requirements of this part.

43 **[In item A, the MPCA deletes a reference to the federal underground storage tank**  
44 **standards and replaces it with language to clarify that the State rules governing**  
45 **storage tank standards found in chapter 7150 apply to used oil transporters who store**

1 used oil in underground tanks. The federal regulations governing underground tanks  
2 were in effect before the adoption of the State rules governing underground tanks and  
3 a reference to the federal regulations was reasonable. However, now that the State  
4 rules are in effect, it is reasonable to delete the redundant reference to the federal  
5 regulations. None of these references to existing rules and statutes change the effect of  
6 this item.】//

7 B. Used oil transporters who store used oil for more than seven days in  
8 aboveground tanks of at least 110 gallons in size are subject to parts 7100.0010 to  
9 7100.0090 chapter 7151, in addition to the requirements of this part. Used oil transporters  
10 who store at least 10,000 gallons of used oil at one time are subject to the requirements of  
11 Minnesota Statutes, chapter 115E, to prepare and maintain a discharge prevention and  
12 response plan, in addition to the requirements of this part. All used oil transporters shall  
13 comply with the storage and use requirements of article 79 of the Minnesota Uniform  
14 State Fire Code, as incorporated by reference in part 7510.3510 chapter 7510, in addition  
15 to the requirements of this part.

16 **【In item B, the MPCA removes obsolete and superfluous time and size limits.  
17 Appropriate limits are provided in applicable chapter 7151 rules. The MPCA also  
18 corrects a citation to repealed chapter 7100 rules that were previously changed and  
19 moved to chapter 7151. The MPCA also corrects an obsolete reference to provide the  
20 current State Fire Code. These changes maintain the original intent of the rule that  
21 above ground storage tank rules, spill prevention and response rules, and State Fire  
22 Codes apply to transporters who store used oil.】//**

23 C. Used oil transporters shall not store used oil in units other than containers or  
24 tanks and shall ensure that the following requirements for containers and tanks are met.  
25 Containers and tanks used to store used oil at transfer facilities must be in good condition,  
26 not leaking, and closed. Containers must be equipped with a secondary containment  
27 system consisting of dikes, berms, or retaining walls and a floor that covers the entire  
28 area within the dikes, berms, or retaining walls, or an equivalent secondary containment  
29 system. The entire containment system, including walls and floors, must be sufficiently  
30 impervious to used oil to prevent any used oil released into the containment system from  
31 migrating out of the system to the soil, groundwater, or surface water. Containers,  
32 aboveground tanks, and fill pipes of underground tanks used to store used oil at transfer  
33 facilities must be marked with the words "Used Oil." Aboveground tanks used to store  
34 used oil at transfer facilities ~~are~~ may also be subject to the secondary containment  
35 requirements of parts 7100.0010 to 7100.0090 and other requirements in chapter 7151.  
36 ~~Double walled tanks meet this secondary containment requirement.~~

37 **【In item C, the MPCA clarifies that the storage tank standards found in chapter 7151  
38 apply to transfer facilities that store used oil in aboveground tanks. This change does  
39 not add new regulation but only clarifies that certain requirements of the above  
40 ground tank standards may also apply. The MPCA also is removing a statement that  
41 double walled tanks meet the secondary containment requirement for above ground  
42 tanks. The requirements for the application of secondary containment are addressed  
43 in more detail in chapter 7151 and the MPCA believes it is more appropriate to refer  
44 readers to that chapter rather than to simply identify double walled tanks, which is  
45 only one of the options allowed for secondary containment.】//**

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

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

2 Subp. 13. **Closure.**

3 A. Owners and operators who store or process used oil in aboveground tanks must,  
4 at closure of the tank system, remove or decontaminate residues in tanks, contaminated  
5 containment system components, contaminated soils, and structures and equipment  
6 contaminated with used oil and manage them as hazardous waste unless the materials are  
7 not hazardous waste under parts 7045.0102 to ~~7045.0143~~ 7045.0155. If the owner or  
8 operator demonstrates that not all contaminated soils can be practicably removed or  
9 decontaminated as required in this item, then the owner or operator must close the tank  
10 system and perform postclosure care in accordance with the closure and postclosure care  
11 requirements of part 7045.0638, subpart 4, that apply to hazardous waste landfills.

12 **[In item A, the MPCA corrects a citation to a range of rules that changed as parts**  
13 **were added.]//**

14 B. Owners and operators who store used oil in containers must, at closure, remove  
15 containers holding used oils or residues of used oil from the site. The owner or operator  
16 must remove or decontaminate used oil residues, contaminated containment system  
17 components, contaminated soils, and structures and equipment contaminated with used  
18 oil, and manage them as hazardous waste unless the materials are not hazardous waste  
19 under parts 7045.0102 to ~~7045.0143~~ 7045.0155.

20 **[In item B, the MPCA corrects a citation to a range of rules that changed as parts**  
21 **were added.]//**

22 *[For text of subp 14, see M.R.]*

23  
24 **7045.0875 STANDARDS FOR USED OIL PROCESSORS AND**  
25 **REREFINERS.**

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

27 Subp. 5. **Used oil storage and management.**

28 A. Used oil processors/rerefiners shall comply with all applicable spill prevention,  
29 control, and countermeasures requirements of Code of Federal Regulations, title 40, part  
30 112, as amended, in addition to the requirements of this part. Used oil  
31 processors/rerefiners shall also comply with the underground storage tank standards of  
32 ~~Code of Federal Regulations, title 40, part 280, as amended, chapter 7150~~ for used oil  
33 stored in underground tanks, whether or not the used oil exhibits any characteristic of  
34 hazardous waste, in addition to the requirements of this part.

35 **[In item A, the MPCA deletes a reference to the federal underground storage tank**  
36 **standards and replaces it with language to clarify that the State rules governing**  
37 **storage tank standards found in chapter 7150 apply to used oil processors and**  
38 **rerefiners who store used oil in underground tanks. The federal regulations**  
39 **governing underground tanks were in effect before the adoption of the State rules**  
40 **governing underground tanks and a reference to the federal regulations was**  
41 **reasonable. However, now that the State rules are in effect, it is reasonable to delete**  
42 **the redundant reference to the federal regulations. None of these references to**  
43 **existing rules and statutes change the effect of this item.]//**

44 B. Used oil processors/rerefiners who store used oil for ~~more than seven days~~ in  
45 aboveground tanks of ~~at least 110 gallons in size~~ are subject to ~~parts 7100.0010 to~~

1 7100.0090 chapter 7151, in addition to the requirements of this part. Used oil  
2 processors/rerefiners who store at least 10,000 gallons of used oil at one time are subject  
3 to the requirements of Minnesota Statutes, chapter 115E, to prepare and maintain a  
4 discharge prevention and response plan, in addition to the requirements of this part. All  
5 used oil processors/rerefiners shall comply with the storage and use requirements of  
6 ~~article 79 of the Minnesota Uniform State Fire Code, as incorporated by reference in part~~  
7 ~~7510.3510~~ chapter 7510, in addition to the requirements of this part.

8 **[In item B, the MPCA removes obsolete and superfluous time and size limits.**  
9 **Appropriate limits are provided in applicable chapter 7151 rules. The MPCA also**  
10 **corrects a citation to repealed chapter 7100 rules that were previously changed and**  
11 **moved to chapter 7151. The MPCA also corrects an obsolete reference to provide the**  
12 **current State Fire Code. These changes maintain the original intent of the rule that**  
13 **above ground storage tank rules, spill prevention and response rules, and State Fire**  
14 **Codes apply to those storing used oil.]/**

15 C. Used oil processors/rerefiners shall not store used oil in units other than  
16 containers or tanks and shall ensure that the following requirements for containers and  
17 tanks are met. Containers and tanks used to store used oil at processing/rerefining  
18 facilities must be in good condition, not leaking, and closed. Containers must be equipped  
19 with a secondary containment system. The secondary containment system must consist of,  
20 at a minimum, dikes, berms, or retaining walls, and a floor which covers the entire area  
21 within the dike, berm, or retaining wall. An equivalent secondary containment system  
22 may be used for containers. The entire containment system, including walls and floor,  
23 must be sufficiently impervious to used oil to prevent any used oil released into the  
24 containment system from migrating out of the system to the soil, groundwater, or surface  
25 water. Containers, aboveground tanks, and fill pipes of underground tanks used to store  
26 used oil at transfer facilities must be marked with the words "Used Oil." Aboveground  
27 tanks used to store used oil at transfer facilities ~~are~~ may also be subject to the secondary  
28 containment requirements of ~~parts 7100.0010 to 7100.0090~~ and other requirements in  
29 chapter 7151. Double-walled tanks meet this secondary containment requirement.

30 **[In item C, the MPCA clarifies that the storage tank standards found in chapter 7151**  
31 **apply to used oil processors and rerefiners that store used oil in aboveground tanks.**  
32 **This change does not add new regulation but only clarifies that certain requirements**  
33 **of the aboveground tank standards may also apply in accordance with the**  
34 **requirements of those rules. The MPCA also is removing a statement that double**  
35 **walled tanks meet the secondary containment requirement for above ground tanks.**  
36 **The requirements for the application of secondary containment are addressed in**  
37 **more detail in chapter 7151 and the MPCA believes it is more appropriate to refer**  
38 **readers to that chapter rather than to list just one of the options.]/**

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

40 E. Closure:

41 (1) Owners and operators who store or process used oil in aboveground tanks  
42 must, at closure of the tank system, remove or decontaminate residues in tanks,  
43 contaminated containment system components, contaminated soils, and structures and  
44 equipment contaminated with used oil, and manage them as hazardous waste unless the  
45 materials are not hazardous waste under parts 7045.0102 to ~~7045.0143~~ 7045.0155. If the  
46 owner or operator demonstrates that not all contaminated soils can be practicably

1 removed or decontaminated as required in this subitem, then the owner or operator must  
2 close the tank system and perform postclosure care in accordance with the closure and  
3 postclosure care requirements of part 7045.0638, subpart 4, that apply to hazardous waste  
4 landfills.

5 **[In subitem (1), the MPCA corrects a citation to a range of rules that changed as parts**  
6 **were added.]//**

7 (2) Owners and operators who store used oil in containers must, at closure,  
8 remove containers holding used oils or residues of used oil from the site. The owner or  
9 operator must remove or decontaminate used oil residues, contaminated containment  
10 system components, contaminated soils, and structures and equipment contaminated with  
11 used oil, and manage them as hazardous waste unless the materials are not hazardous  
12 waste under parts 7045.0102 to ~~7045.0143~~ 7045.0155.

13 **[In subitem (2), the MPCA corrects a citation to a range of rules that changed as parts**  
14 **were added.]//**

15 *[For text of subps 6 to 11, see M.R.]*  
16

## 17 **7045.0885 STANDARDS FOR USED OIL BURNERS WHO BURN OFF-** 18 **SPECIFICATION USED OIL FOR ENERGY RECOVERY.**

19 *[For text of subps 1 to 5, see M.R.]*

### 20 **Subp. 6. Used oil storage.**

21 A. Applicability of federal storage regulations. Used oil burners must comply with  
22 all applicable spill prevention, control, and countermeasures requirements of Code of  
23 Federal Regulations, title 40, part 112, as amended, in addition to the requirements of this  
24 subpart. Used oil burners must comply with the underground storage tank standards of  
25 ~~Code of Federal Regulations, title 40, part 280, as amended, chapter 7150~~ for used oil  
26 stored in underground tanks, whether or not the used oil exhibits any characteristic of  
27 hazardous waste, in addition to the requirements of this part.

28 **[In item A, the MPCA deletes a reference to the federal underground storage tank**  
29 **standards and replaces it with language to clarify that the State rules governing**  
30 **storage tank standards found in chapters 7150 apply to used oil burners who store**  
31 **off-specification used oil for energy recovery in underground tanks. The federal**  
32 **regulations governing underground tanks were in effect before the adoption of the**  
33 **State rules governing underground tanks and a reference to the federal regulations**  
34 **was reasonable. However, now that the State rules are in effect, it is reasonable to**  
35 **delete the redundant reference to the federal regulations. None of these references to**  
36 **existing rules and statutes change the effect of this item.]//**

37 B. Used oil burners who store used oil ~~for more than seven days~~ in aboveground  
38 tanks ~~of at least 110 gallons in size~~ are subject to ~~parts 7100.0010 to 7100.0090~~ chapter  
39 7151, in addition to the requirements of this subpart. Used oil burners who store at least  
40 10,000 gallons of used oil at one time are subject to the requirements of Minnesota  
41 Statutes, chapter 115E, to prepare and maintain a discharge prevention and response plan,  
42 in addition to the requirements of this part. All used oil burners shall comply with the  
43 storage and use requirements of ~~article 79 of the Minnesota Uniform State Fire Code, as~~  
44 ~~incorporated by reference in part 7510.3510~~ chapter 7510, in addition to the requirements  
45 of this part.



1 **[In item B, the MPCA removes obsolete and superfluous time and size limits.**  
2 **Appropriate limits are provided in applicable chapter 7151 rules. The MPCA also**  
3 **corrects a citation to repealed chapter 7100 rules that were previously changed and**  
4 **moved to chapter 7151. The MPCA also corrects an obsolete reference to provide the**  
5 **current State Fire Code. These changes maintain the original intent of the rule that**  
6 **above ground storage tank rules, spill prevention and response rules, and State Fire**  
7 **Codes apply to those storing used oil.]]**

8 C. Used oil burners shall not store used oil in units other than containers or tanks  
9 and must ensure that the following requirements for containers and tanks are met.  
10 Containers and tanks used to store used oil at burning facilities must be in good condition,  
11 not leaking, and closed. Containers must be equipped with a secondary containment  
12 system. The secondary containment system must consist of, at a minimum, dikes, berms,  
13 or retaining walls, and a floor which covers the entire area within the dike, berm, or  
14 retaining wall. An equivalent secondary containment system may be used for containers.  
15 The entire containment system, including walls and floor, must be sufficiently  
16 impervious to used oil to prevent any used oil released into the containment system from  
17 migrating out of the system to the soil, groundwater, or surface water. Containers,  
18 aboveground tanks, and fill pipes of underground tanks used to store used oil at transfer  
19 facilities must be marked with the words "Used Oil." Aboveground tanks used to store  
20 used oil at burning facilities ~~are~~ may also be subject to the secondary containment  
21 requirements of ~~parts 7100.0010 to 7100.0090~~ and other requirements in chapter 7151.  
22 ~~Double walled tanks meet this secondary containment requirement.~~

23 **[In item C, the MPCA clarifies that the storage tank standards found in chapter 7151**  
24 **apply to used oil burners who store used oil in aboveground tanks. This change does**  
25 **not add new regulation but only clarifies that certain requirements of the**  
26 **aboveground tank standards may also apply in accordance with the requirements of**  
27 **those rules. The MPCA also is removing a statement that double walled tanks meet**  
28 **the secondary containment requirement for above ground tanks. The requirements**  
29 **for the application of secondary containment are addressed in more detail in chapter**  
30 **7151 and the MPCA believes it is more appropriate to refer readers to that chapter**  
31 **rather than to simply identify double walled tanks, which is only one of the options**  
32 **allowed for secondary containment.]]**

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

34 *[For text of subps 7 to 9, see M.R.]*

35 Subp. 10. Closure.

36 A. Owners and operators who store or process used oil in aboveground tanks must,  
37 at closure of the tank system, remove or decontaminate residues in tanks, contaminated  
38 containment system components, contaminated soils, and structures and equipment  
39 contaminated with used oil, and manage them as hazardous waste unless the materials are  
40 not hazardous waste under parts 7045.0102 to ~~7045.0143~~ 7045.0155. If the owner or  
41 operator demonstrates that not all contaminated soils can be practicably removed or  
42 decontaminated as required in this item, then the owner or operator must close the tank  
43 system and perform postclosure care in accordance with the closure and postclosure care  
44 requirements of part 7045.0638, subpart 4, that apply to hazardous waste landfills.

45 **[In item A, the MPCA corrects a citation to a range of rules that changed as parts**  
46 **were added.]]**

1 B. Owners and operators who store used oil in containers must, at closure, remove  
2 containers holding used oils or residues of used oil from the site. The owner or operator  
3 must remove or decontaminate used oil residues, contaminated containment system  
4 components, contaminated soils, and structures and equipment contaminated with used  
5 oil, and manage them as hazardous waste unless the materials are not hazardous waste  
6 under parts 7045.0102 to ~~7045.0143~~ 7045.0155.

7 **[In item B, the MPCA corrects a citation to a range of rules that changed as parts  
8 were added.]//**

9 *[For text of subp 11, see M.R.]*

10  
11 **7045.1390 LAND DISPOSAL RESTRICTIONS.**

12 Subpart 1. Incorporation of federal land disposal restrictions. Code of Federal  
13 Regulations, title 40, part 268, as amended, land disposal restrictions, is incorporated by  
14 reference, except as provided in subparts 2 to 5.

15 **[In subpart 1, the MPCA incorporates 40 CFR 268, Land Disposal Restrictions, by  
16 reference, as amended. The MPCA has gone through a long process of addressing the  
17 federal land disposal restrictions in the State rules. The MPCA has amended the  
18 rules several times over many years to add new elements of the federal land disposal  
19 restrictions to the State rules as they were issued by EPA. Up to this point the MPCA  
20 has used a combination of incorporation by references and adopting the federal  
21 language into the State rules. In this rulemaking, the MPCA has decided to repeal the  
22 previously adopted land disposal restriction language and to simply incorporate all of  
23 the federal land disposal restrictions by reference. The MPCA believes this is  
24 reasonable for three reasons.//**

25  
26 **First, the MPCA is required to adopt the land disposal restrictions to maintain  
27 hazardous waste program authorization. The land disposal restrictions are more  
28 stringent elements of the hazardous waste program and therefore required (while the  
29 MPCA may decline to adopt federal amendments that reduce the stringency of  
30 existing land disposal restrictions, the main body of land disposal restrictions is a  
31 required element). Secondly, the federal land disposal restrictions are at this time  
32 essentially complete. Although the EPA will continue to amend and refine the  
33 requirements, there are no longer any major elements that remain to be adopted.  
34 The MPCA's piecemeal process of addressing different elements of the land disposal  
35 restrictions can now be more appropriately replaced by a single incorporation by  
36 reference to the full set of federal land disposal restrictions. Finally, for the reasons  
37 discussed in Part IV of this Statement, the MPCA believes that incorporating by  
38 reference is a reasonable and effective way to keep the State rules consistent with  
39 those aspects of the federal regulations that the MPCA does not anticipate modifying  
40 to meet State only concerns.//**

41  
42 **One significant exception to the MPCA's incorporating the land disposal restrictions  
43 by reference is that the MPCA considered and rejected the federal language found at  
44 40 CFR 268.2(g) and 268.2(h), the definitions of debris and hazardous debris, and in  
45 other sections of 40 CFR part 268 that would allow hazardous debris to be disposed in  
46 landfills. The MPCA is concerned that hazardous debris may easily be contaminated**

1 with mercury that would be listed or TCLP hazardous waste and that disposal of such  
2 mercury contaminated debris in landfills is not adequately protective. Minnesota's  
3 environment is sensitive to mercury contamination. The MPCA has placed a high  
4 priority on efforts to reduce mercury in the environment. The MPCA believes that it  
5 is reasonable to decline to adopt these federal amendments that would reduce the  
6 management standards for hazardous debris which could easily be contaminated with  
7 mercury. Even though the federal regulations that address the management of  
8 hazardous debris are not optional provisions, RCRA allows authorized states to be  
9 more stringent than EPA. Since the MPCA finds unacceptable the potential risk for  
10 releasing mercury allowed by the EPA's hazardous debris exclusion, it is choosing not  
11 to incorporate that exclusion.//

12  
13 In this rulemaking to amend the land disposal restrictions, the MPCA is  
14 incorporating language from the following RCRA Amendments except as described  
15 in subparts 2-5 (note that later RCRA amendments has supplanted certain content of  
16 earlier amendments):

- 17 • Required RCRA Amendment 95: "Land Disposal Restrictions for Electric Arc  
18 Furnace Dust (K061)" = 40 CFR 268.41(a)/Table CCWE, 268.41(b), and  
19 268.42(a)/Table 2; regarding the need for and reasonableness of this amendment,  
20 the MPCA agrees with and is relying on the EPA's rationale found in 56 FR  
21 41164-41178, August 19, 1991. Some tables and other content from this  
22 amendment have been supplanted by subsequent amendments. For example, the  
23 information formerly in 40 CFR 268.41 is now in 40 CFR 268.40. Also, some  
24 tables have since been repealed.//
- 25 • Required RCRA Amendment 109: "Land Disposal Restrictions for Newly Listed  
26 Wastes and Hazardous Debris" = 40 CFR 268.5(h)(2)(ii, iv-vi); 268.7(a)(1)(iii-v);  
27 268.7(a)(2); 268.7(a)(3)(iv-vi); 268.7(a)(4); 268.7(b)(4); 268.7(b)(5); 268.7(d);  
28 268.7(d)(1); 268.7(d)(1)(i-iii); 268.7(d)(2); 268.7(d)(3); 268.7(d)(3)(i-iii); 268.9(d);  
29 268.9(d)(1)(i-iii); 268.9(d)(2); 268.14(a-c); 268.36(a-h); 268.36(h)(1-4); 268.36(i);  
30 268.40(b, d); 268.41(a); 268.41(a)/Table CCWE; 268.41(c); 268.42/Table 2;  
31 268.42(b-d); 268.43/Table CCW; 268.45(a); 268.45(a)(1-5); 268.45(b); 268.45(b)(1-  
32 3); 268.45(c); 268.45(d)(1); 268.45(d)(1)(i-ii); 268.45(d)(2-5); 268.45/Table 1;  
33 268.46; 268.46/Table 1; 268.50(a)(1-2); 268 Appendix II. Further information can  
34 be found in 57 FR 37194-37282, August 18, 1992.//
- 35 • Required RCRA Amendment 116: "Hazardous Soil Case-By-Case Capacity  
36 Variance" = 40 CFR 268.35(c-e) and 268.35(e)(1-2). Further information can be  
37 found in 57 FR 47772-47776, October 20, 1992.//
- 38 • Required RCRA Amendment 123: "Land Disposal Restrictions; Renewal of the  
39 Hazardous Waste Debris Case-by-Case Capacity Variance" = 40 CFR 268.35(e)(1-  
40 5); 268.35(e)(5)(i-ii); and 268.35(e)(5)(ii)(A-H). Further information can be found  
41 in 58 FR 28506-28511, May 14, 1993.//
- 42 • Required RCRA Amendment 124: "Land Disposal Restrictions for Ignitable and  
43 Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated" =  
44 40 CFR 268.1(e)(4-5); 268.2(i); 268.7(a); 268.7(a)(1)(ii); 268.7(b)(4)(ii); 268.9(a);  
45 268.37(a); 268.37(b); 268.40(b); 268.41(a)/Table CCWE; 268.42(a)/Table 2; and  
46 268.43(a) Table CCW. Further information can be found in; 58 FR 29860-29887,

1 May 24, 1993.//

- 2 • Required RCRA Amendment 126: “Testing and Monitoring Activities” = 40 CFR  
3 268.7(a); 268.40(a); 268.41(a); 268 Appendix I; and 268 Appendix IX. Further  
4 information can be found in 58 FR 46040-46051, August 31, 1993.//
- 5 • Required RCRA Amendment 134: “Correction of Beryllium Powder (P015)  
6 Listing” = 40 CFR 268.42(a)/Table 2. Further information can be found in 59 FR  
7 31551-31552, June 20, 1994.//
- 8 • Required RCRA Amendment 136: “Removal of the Conditional Exemption for  
9 Certain Slag Residues” = 40 CFR 268.41(a)/Table CCWE. Further information  
10 can be found in 59 FR 43496-43500, August 24, 1994.//
- 11 • Required RCRA Amendment 137: “Universal Treatment Standards and  
12 Treatment Standards for Organic Toxicity Characteristic Wastes and Newly  
13 Listed Wastes” = 40 CFR 268.1(c)(3)(ii-iii); 268.1(e)(4-5); 268.2(g, i); 268.7(a);  
14 268.7(a)(1); 268.7(a)(1)(i-vi); 268.7(a)(2)(i); 268.7(a)(2)(i)(A-D); 268.7(a)(2)(ii);  
15 268.7(a)(3); 268.7(a)(3)(i-v); 268.7(a)(3)(v)(A-B); 268.7(a)(3)(vii-vii); 268.7(a)(4);  
16 268.7(a)(4)(i-iii); 268.7(a)(5-10); 268.7(b)(4)(ii); 268.7(b)(5)(iv); 268.7(d);  
17 268.7(d)(1); 268.9(a); 268.9(d)(1)(i-ii); 268.9(d)(2)(i-ii); 268.38(a-d); 268.38(d)(1-4);  
18 268.38(e); 268.40(a); 268.40(a)(1-3); 268.40(b-d); 268.40(d)(1-3); 268.40(e-f);  
19 268.40/Table; 268.41 and Table CCWE; 268.42 note; 268.42(a); 268.42(a)/Tables  
20 1-3; 268.42(c)(2); 268.42(d); 268.43; 268.43/Table CCW; 268.45(b)(2); 268.46;  
21 268.48(a); 268.48/Table UTS; 268/Appendix IV; 268/Appendix V; and  
22 268/Appendix X. Further information can be found in 59 FR 47982-48110,  
23 September 19, 1994 as amended at 60 FR 242-302, January 3, 1995.//
- 24 • Required RCRA Amendment 151, 151-1, 151-2, 151-3, 151-4, 151-5, and 151-6:  
25 “Land Disposal Restrictions Phase III—Decharacterized Wastewaters,  
26 Carbamate Wastes, and Spent Potliners” = 40 CFR 268.1(c)(3); 268.1(c)(3)(i-iii);  
27 268.1(c)(4); 268.1(c)(4)(i-iv); 268.1(e)(3-4); 268.1(e)(4)(i-ii); 268.1(e)(5); 268.2(f);  
28 268.2(f)(1-3); 268.2(i-1); 268.3(a-c); 268.3(c)(1-6); 268.7(a); 268.7(a)(1)(ii);  
29 268.7(a)(1)(iv-vi); 268.7(a)(2)(i)(B); 268.7(a)(3)(ii); 268.7(b)(4)(ii); 268.7(b)(5)(iv-v);  
30 268.8; 268.9(a); 268.9(d); 268.9(d)(1)(i)-(ii); 268.9(d)(3); 268.9(d)(3)(i)-(iv); 268.9(e-  
31 g); 268.39(a-f); 268.39(f)(1-4); 268.39(g); 268.40(a, e); 268.40(e)(1-4); 268.40(g);  
32 268.40/Table; 268.42 Table 1; 268.44(a); 268.48(a)/Table UTS; and 268 Appendix  
33 XI. Further information can be found in 61 FR 15566-15660, April 8, 1996; as  
34 amended at 61 FR 15660-15668, April 8, 1996; 61 FR 19117, April 30, 1996; 61 FR  
35 33680-33690, June 28, 1996; 61 FR 36419-36421, July 10, 1996; 61 FR 43924-  
36 43931, August 26, 1996; and 62 FR 7502-7600, February 19, 1997.//
- 37 • Required RCRA Amendment 155Error! Bookmark not defined.: “Land Disposal  
38 Restrictions Phase III -- Emergency Extension of the K088 National Capacity  
39 Variance” = 40 CFR 268.39(c). Further information can be found in 62 FR 1992-  
40 1997, January 14, 1997.//
- 41 • Required RCRA Amendment 160: “Land Disposal Restrictions Phase III --  
42 Emergency Extension of the K088 National Capacity Variance, Amendment” = 40  
43 CFR 268.39(c). Further information can be found in 62 FR 37694-37699, July  
44 14, 1997.//
- 45 • Required RCRA Amendment 161: “Emergency Revision of the Carbamate Land  
46 Disposal Restrictions” = 268.40(g) and 268.48(a)/Table. Further information can

1 be found in 62 FR 45568, August 28, 1997.//

- 2 • **Optional RCRA Amendment 162: “Clarification of Standards for Hazardous**  
3 **Waste LDR Treatment Variances” = 40 CFR 268.44(a) intro and 268.44(a)(1);**  
4 **268.44(a)(2) intro and (i-ii); 268.44(h) intro; 268.44(h)(1); 268.44(h)(2) intro;**  
5 **268.44(h)(2)(i-ii); 268.44(h)(3); 268.44(m); and 268.44(p). Further information can**  
6 **be found in 62 FR 64504-64509, December 5, 1997.//**
- 7 • **Required RCRA Amendment 167a: “Land Disposal Restrictions Phase IV –**  
8 **Treatment Standards for Metal Wastes and Mineral Processing Wastes” = 40**  
9 **CFR 268.2(i); 268.3(d); 268.34(a); 268.34(b); 268.34(c); 268.34(d) intro;**  
10 **268.34(d)(1-4); 268.40(e); 268.40(h); 268.40/Table Treatment Standards for**  
11 **Hazardous Wastes; and 268.48(a)/Table UTS. Further information can found in**  
12 **63 FR 28556-28753, May 26, 1998. The revised numerical Universal Treatment**  
13 **Standards (UTS) for metal constituents Barium, Lead, Selenium, Beryllium,**  
14 **Nickel, Thallium, and Vanadium are less stringent than existing standards and**  
15 **are optional for State adoption. The revised UTS for Cadmium, Chromium,**  
16 **Silver, Antimony and Zinc are more stringent so are required. In this rulemaking**  
17 **the MPCA is adopting both the required and optional treatment standards.//**
- 18 • **Optional RCRA Amendment 167b: “Land Disposal Restrictions Phase IV –**  
19 **Hazardous Soils Treatment Standards and Exclusions” = 40 CFR 268.2(k);**  
20 **268.7(a)(1); 268.7(a)(2); 268.7(a)(2)(i); 268.7(a)(2)(ii); 268.7(a)(3) intro;**  
21 **268.7(a)(3)(ii); 268.7(a)(4); 268.7(a)(4)/table; 268.7(a)(5); 268.7(a)(6); 268.7(b)(1-3);**  
22 **268.7(b)(3)(ii)/Table; 268.7(b)(4) intro; 268.7(e) intro; 268.7(e)(1-2); 268.44(h)(3)**  
23 **intro; 268.44(h)(3)(i); 268.44(h)(3)(i)(A-B); 268.44(h)(3)(ii); 268.44(h)(4-5);**  
24 **268.49(a-b); 268.49(c) intro; 268.49(c)(1) intro; 268.49(c)(1)(A-C); 268.49(c)(2);**  
25 **268.49(c)(3) intro; 268.49(c)(3)(A-B); 268.49(d); 268.49(e) intro; 268.49(e)(1);**  
26 **268.49(e)(2) intro; and 268.49(e)(2)(A-B). Further information can be found in 63**  
27 **FR 28556-28753, May 26, 1998.//**
- 28 • **Conditionally required RCRA Amendment 167c: “Land Disposal Restrictions**  
29 **Phase IV – Corrections” = 40 CFR 268.4(a)(2)(ii-iii); 268.7(a)(4)/table; 268.7(a)(7);**  
30 **268.7(b)(3)(ii)/Table; 268.7(b)(4)(iv); 268.7(b)(4)(v); 268.7(b)(5-6); 268.40(e);**  
31 **268.40/table Treatment Standards for Hazardous Wastes; 268.42(a); 268.42(a)(1–**  
32 **3); 268.45(a) intro; 268.45(d)(3); 268.45(d)(4); 268.48(a)/table UTS; Appendix VII**  
33 **Table 1-2; and Appendix VIII. Further information can be found in 63 FR 28556-**  
34 **28753, June 8, 1998. These changes are conditionally required. If, as Minnesota**  
35 **has done, the State has adopted the optional revisions to the recordkeeping and**  
36 **paperwork requirements in Revision Checklist 157, then the State is required to**  
37 **adopt the changes to 40 CFR 268.7 in this checklist with the exception of adding**  
38 **the entries for contaminated soils in the Tables at 268.7(a)(4) and 268.7(b)(3)(iii).//**
- 39 • **Optional RCRA Amendment 170: “Land Disposal Restrictions Phase IV -- Zinc**  
40 **Micronutrient Fertilizers, Amendment” = 40 CFR 268.40(i) (first entry). Further**  
41 **information can be found in 63 FR 46332-46334, August 31, 1998.//**
- 42 • **Required RCRA Amendment 171: “Emergency Revision of the Land Disposal**  
43 **Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from**  
44 **Carbamate Production” = 40 CFR 268.40(g), 268.40(i), 268.40/Table, and**  
45 **268.48(a)/Table. Further information can be found in 63 FR 47410-47418,**  
46 **September 4, 1998.//**

- 1 • **Optional RCRA Amendment 172: “Land Disposal Restrictions Phase IV --**  
2 **Extension of Compliance Date for Characteristic Slags” = 40 CFR 268.34(b)-(f).**  
3 **Further information can be found in 63 FR 48124-48127, September 9, 1998.//**
- 4 • **Required RCRA Amendment 173: “Land Disposal Restrictions; Treatment**  
5 **Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final**  
6 **Rule” = 40 CFR 268.39(c) and 268.40/Table. Further information can be found in**  
7 **63 FR 51254-51267, September 24, 1998.//**
- 8 • **Required RCRA Amendment 179: “Land Disposal Restrictions Phase IV --**  
9 **Technical Corrections and Clarifications to Treatment Standards” = 40 CFR**  
10 **268.2(h, k); 268.7(a)(4)/Table; 268.7(b)(3)(ii)/Table; 268.7(b)(4)(iv); 268.9(d)(2)**  
11 **intro; 268.9(d)(2)(i); first 268.40(i-j); 268.40/Table; 268.48(a)/Table; 268.49(c)(3)**  
12 **intro; 268.49(c)(3)(A); 268.49(c)(3)(B). Further information can be found in 64**  
13 **FR 25408-25417, May 11, 1999.//**
- 14 • **Optional RCRA Amendment 183: “Land Disposal Restrictions Phase IV --**  
15 **Technical Corrections” = 40 CFR 268.7(a)(3)(iii); 268.40(j); 268.40/Table; and**  
16 **268.49(c)(1)(A-B). Further information can be found in 64 FR 56469-56472,**  
17 **October 20, 1999.//**
- 18 • **Optional RCRA Amendment 185: “Organobromine Production Wastes Vacatur”**  
19 **= 40 CFR 268.33; 268.40/table; and 268.48(a)/table. Further information can be**  
20 **found in 65 FR 14472-14475, March 17, 2000.//**
- 21 • **Required RCRA Amendment 187: “Petroleum Refining Process Wastes –**  
22 **Clarification” = 40 CFR 268 Appendix VII. Further information can be found in**  
23 **64 FR 36365-36367, June 8, 2000.//**
- 24 • **Required RCRA Amendment 189: “Chlorinated Aliphatics Listing and LDRs for**  
25 **Newly Identified Wastes” = 40 CFR 268.33(a); 268.33(b) intro; 268.33(b)(1-5);**  
26 **268.33(c); 268.33(d) intro; 268.33(d)(1-2); 268.40/Table; and 268.48(a)/Table.**  
27 **Further information can be found in 65 FR 67068-67133, November 8, 2000.//**
- 28 • **Optional RCRA Amendment 190: “Land Disposal Restrictions Phase IV --**  
29 **Deferral for PCBs in Soil” = 40 CFR 268.32(a); 268.32(b) intro; 268.32(b)(1)(i-ii);**  
30 **268.32(b)(2)(i-ii); 268.32(b)(3-4); 268.48(a)/Table UTS; 268.49(d); and 268**  
31 **Appendix III. Further information can be found in 65 FR 81373-81381,**  
32 **December 26, 2000.//**
- 33 • **Required RCRA Amendment 192b: “Land Disposal Restrictions Correction” =**  
34 **40 CFR 268 Appendix VII, Table 1. Further information can be found in 66 FR**  
35 **27266-27297, May 16, 2001.//**

36 **Subp. 2. General additions, modifications, or exceptions to incorporation of**  
37 **regulations.**

38 **[In subpart 2, the MPCA provides general exceptions to its incorporations in subpart**  
39 **1.//**

40 **A. Part 7045.0090, adoption and incorporation by reference, also applies.**

41 **[In item A, the MPCA refers readers to the general rule part that governs adoption**  
42 **and incorporation by reference.//**

43 **B. The agency does not incorporate the definitions of debris or hazardous debris in**  
44 **Code of Federal Regulations, title 40, section 268.2, or the regulations related to debris**  
45 **and hazardous debris throughout Code of Federal Regulations, title 40, part 268,**  
46 **including the treatment standards for hazardous debris in section 268.45. Wastes that**

1 would be federally regulated as debris or hazardous debris are regulated as hazardous  
2 waste.

3 **[In item B, as discussed in the introduction to this part, the MPCA is specifically**  
4 **declining to incorporate the land disposal restrictions relating to hazardous debris.**  
5 **The effect of this will be that hazardous debris will not be excluded from land disposal**  
6 **treatment standards in Minnesota.]//**

7 Subp. 3. Exceptions or additions to Code of Federal Regulations, title 40, subpart  
8 A.

9 A. The agency does not incorporate Code of Federal Regulations, title 40, section  
10 268.1(c)(3), allowing disposal into an injection well.

11 **[In item A, the MPCA is declining to allow the subsurface injection of hazardous**  
12 **waste because of Minnesota's existing laws banning disposal of waste into the**  
13 **saturated or unsaturated zones (see the discussion in Part 7045.0071). The use of an**  
14 **injection well for waste disposal is not allowed in Minnesota. Thus, it is reasonable to**  
15 **clarify that although injection is referenced in the EPA's land disposal restrictions,**  
16 **Minnesota prohibits this practice and is not adopting the EPA regulations in 40 CFR**  
17 **part 268 related to injection wells.]//**

18 B. References to "EPA" in Code of Federal Regulations, title 40, sections  
19 268.1(e)(3) and 268.2(j) mean the federal Environmental Protection Agency.

20 **[In item B, the MPCA clarifies that in the cited sections, 40 CFR 267.1(e)(3), Wastes**  
21 **identified or listed as hazardous after November 8, 1984 for which EPA has not**  
22 **promulgated land disposal prohibitions or treatment standards, and 40 CFR 268.2(j),**  
23 **Inorganic metal-bearing waste is one for which EPA has established treatment**  
24 **standards for metal hazardous constituents, and which does not otherwise contain**  
25 **significant organic or cyanide content which are referenced in 40 CFR 268.3(c)(1),**  
26 **and is specifically listed in appendix XI of this part. In these sections, the term 'EPA'**  
27 **will continue to refer to the EPA and will not, through operation of part 7045.0090, be**  
28 **considered to refer to the MPCA. This is reasonable because the activities referenced**  
29 **at each of these two provisions (establishing treatment standards) are EPA actions**  
30 **that cannot be conducted by a state.]//**

31 C. The agency does not incorporate the definitions found in Code of Federal  
32 Regulations, title 40, section 268.2, paragraph a, c, d, e, f, g, or h.

33 **[In item C, the MPCA is not adopting certain definitions found in 40 CFR 268.2. For**  
34 **the definitions in 268.2(a-f), the MPCA already has definitions of these terms in part**  
35 **7045.0020. In some instances, those definitions differ from the EPA'S definitions in**  
36 **40 CFR 268.2. The MPCA believes that it is appropriate to continue to use in the land**  
37 **disposal restrictions the same definitions that the MPCA uses for its other hazardous**  
38 **waste rules to ensure that the same types of waste are consistently regulated. The**  
39 **MPCA is also not adopting the EPA's definitions for the terms "debris" or**  
40 **"hazardous debris," in 40 CFR 268.2 (g) and (h). As noted in subpart 2 above, the**  
41 **MPCA is not adopting the EPA's exclusions related to debris and hazardous debris.**  
42 **The MPCA is incorporating the EPA's definitions of the terms in 40 CFR 268.2(i-k)**  
43 **because the MPCA does not have definitions for these terms. These definitions are**  
44 **related to required RCRA Amendment 151: "Land Disposal Restrictions Phase III-**  
45 **Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners" = 40 CFR**  
46 **268.2; as supported at 61 FR 15566-15660, April 8, 1996; as amended at 61 FR 15660-**

1 15668, April 8, 1996; 61 FR 19117, April 30, 1996; 61 FR 33680-33690, June 28, 1996;  
2 61 FR 36419-36421, July 10, 1996; 61 FR 43924-43931, August 26, 1996; and 62 FR  
3 7502-7600, February 19, 1997.]]//

4 D. References in Code of Federal Regulations, title 40, section 268.7(a)(9)(iii), to  
5 D001 to D043 do not include D009.

6 [In item D, the MPCA follows the EPA's advice to states incorporating federal  
7 regulations by reference to correct an error that appeared in 40 CFR 268.7(s)(9)(iii).  
8 The EPA is in the process of correcting a number of errors in the CFR. Until that  
9 process is completed, this simply clarifies the EPA's intent for this range or waste  
10 codes in this provision.]]//

11 E. The agency does not incorporate Code of Federal Regulations, title 40, section  
12 268.5, governing procedures for case-by-case extensions to an effective date. That section  
13 is administered by the EPA.

14 [In item E, the MPCA cannot incorporate 40 CFR 268.5, because the RCRA does not  
15 allow the EPA to delegate to the states its authority to issue these extensions.]]//

16 F. The agency does not incorporate Code of Federal Regulations, title 40, section  
17 268.6, governing petitions to allow land disposal of a waste prohibited under subpart C.  
18 Part 7045.0075, subpart 9, applies.

19 [In item F, the MPCA cannot incorporate 40 CFR 268.6, because the RCRA does not  
20 allow the EPA to delegate to the states its authority to issue no-migration petitions.  
21 While the EPA approves federal petitions, State rules require that no-migration  
22 petitions also be approved by the MPCA through a petition process found in part  
23 7045.0075, subpart 12.]]//

24 G. The agency does not incorporate Code of Federal Regulations, title 40, section  
25 268.4(a)(3)(ii) and (iii), relating to waivers or modifications of surface impoundment  
26 requirements.

27 [In item G, the MPCA chooses not to incorporate 40 CFR 268.4(a)(3)(ii) to allow  
28 waivers or modifications of the liner requirements applicable to surface  
29 impoundments. The MPCA believes that existing part 7045.0532, subpart 3, provides  
30 an equivalent standards to those offered under 268.4(3)(ii). The MPCA does not want  
31 to establish a new process by which it will issue waivers to those requirements. In  
32 Minnesota, a person can seek a variance to hazardous waste rule requirements  
33 through the process established in part 7045.0060. Similarly, the MPCA chooses not  
34 to incorporate 40 CFR 268.4(a)(3)(iii) which allows waivers based on a demonstration  
35 of no migration. Existing State rules provide the owners or operators of any land  
36 disposal facility the ability to demonstrate no migration through the petition process  
37 in part 7045.0075, subpart 12. The MPCA finds it unnecessary to duplicate this  
38 existing mechanism, so is declining to incorporate 40 CFR 268.4(a)(3)(iii) by  
39 reference.]]//

40 Subp. 4. Exceptions or additions to Code of Federal Regulations, title 40, subpart  
41 B. The agency does not incorporate the EPA schedule in Code of Federal Regulations,  
42 title 40, section 268.13, for wastes identified or listed after November 8, 1984. That  
43 section is administered by the Environmental Protection Agency.

44 [In subpart 4, the MPCA cannot incorporate 40 CFR 268.13, because the RCRA does  
45 not allow the EPA to delegate to the states its authority to provide the schedule by  
46 which the EPA must evaluate wastes for land disposal restrictions.]]//



1 Subp. 5. Exceptions or additions to Code of Federal Regulations, title 40, subpart  
2 D.

3 A. The agency does not incorporate Code of Federal Regulations, title 40, section  
4 268.42(b), governing the demonstration of an alternative treatment method. That section  
5 is administered by the EPA.

6 **[In item A, the MPCA cannot incorporate 40 CFR 268.42(b), because the RCRA does**  
7 **not allow the EPA to delegate to the states its authority to review and approve**  
8 **alternative treatment methods.]//**

9 B. The agency does not incorporate Code of Federal Regulations, title 40, section  
10 268.44, paragraphs (a) to (g) or (o), governing variance from a treatment standard and  
11 wastes excluded in various states. That section is administered by the EPA.

12 **[In item B, the MPCA cannot incorporate 40 CFR 268.44(a)-(g), because the RCRA**  
13 **does not allow the EPA to delegate to the states its authority to provide generators the**  
14 **option of seeking a variance from a specific treatment standard. The MPCA chooses**  
15 **not to incorporate 40 CFR part 268.44(o) relating to other state activities because it is**  
16 **not relevant to any MPCA function.]//**

17  
18 **REPEALER.** Minnesota Rules, parts 7045.0020, subpart 45a; 7045.0075, subparts 8  
19 and 10; 7045.0135, subparts 1, 2, 2a, 3, and 4; 7045.0139, subpart 2; 7045.0141, subparts  
20 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23; 7045.0143,  
21 subparts 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 17, 20, 21, 23, 25, and 27; 7045.0544,  
22 subparts 2 and 3; 7045.1300; 7045.1305; 7045.1309; 7045.1310; 7045.1315; 7045.1320;  
23 7045.1325; 7045.1330; 7045.1333; 7045.1334; 7045.1335; 7045.1339; 7045.1350;  
24 7045.1355; 7045.1358; 7045.1360; and 7045.1380, are repealed.

25 **[Finally, in the REPEALER, the Revisor of Minnesota Statutes, who's office is**  
26 **responsible for keeping the official source of Minnesota Rules, provides a compilation**  
27 **of the provisions removed during the course of this rulemaking.]//**  
28