

May 22, 2025

The Honorable Judge Megan McKenzie  
Administrative Law Judge  
Office of Administrative Hearings  
600 Robert Street N.  
St. Paul, MN 55101

**In the Matter of the Proposed Exempt Rules Relating to Solid Waste; Request for Review and Approval of Good Cause Exempt Rules Under Minnesota Statutes, Section 14.388; Revisor's ID No. 4878; OAH Docket No. 25-9003-40439**

Dear Judge McKenzie:

This letter contains the Minnesota Pollution Control Agency's (MPCA's) response to a comment and questions received on May 15, 2025.

**1. General comments**

The MPCA received one comment from Bryan Murdock, which is included here and responded to as follows.

**Comment (Murdock):** "Dear MPCA Rulemaking Coordinator, We, a group of concerned stakeholders representing interests in Minnesota's solid waste disposal facilities, support the Minnesota Pollution Control Agency's (MPCA) efforts to enhance environmental protection through Minnesota Rules 7035.2655, which requires commissioner approval to terminate postclosure care. However, the rule's vague scope, discretionary criteria in subpart 1, item B, and adoption under the good-cause exemption (Minnesota Statutes § 14.388, subd. 1(3)), as mandated by Minnesota Session Laws 2024, Chapter 116, Article 2, Section 30(b), raise concerns about its applicability, transparency, and potential for inconsistent enforcement. The rule appears to affect a small number of facilities—potentially 20–100 closed landfills and unpermitted dumps not enrolled in the MPCA's Closed Landfill Program, particularly those nearing or past 20 years of postclosure care and outside direct MPCA management. With 112 program sites already overseen and 20–30 operating landfills unaffected until future closure, this narrow scope questions the urgency of exempt rulemaking. Item B's reliance on undefined "pertinent information" and broad commissioner discretion to reevaluate closure documents risks arbitrary application, especially without clear identification of affected landfills. We request answers to the following questions by May 16, 2025, to ensure transparent and equitable implementation, particularly regarding which landfills are subject to the rule. Questions for Clarification Legislative Mandate and Exemption Rationale What specific environmental risks (e.g., methane, PFAS) or regulatory gaps prompted Section 30(b)'s mandate for commissioner

approval, and which types of landfills were the legislative focus? For a rule affecting an estimated 20–100 sites, why was the good-cause exemption deemed necessary, and why was standard rulemaking with broader public input considered “unnecessary”? Does item B’s discretionary language (e.g., “pertinent information”) align with the exemption’s requirement for non-interpretive changes, or should it have warranted public review? Scope and Affected Landfills Which landfills are subject to the rule? Does it apply solely to non-Closed Landfill Program closed landfills and unpermitted dumps (approximately 20–100 sites), or also to program sites or recently closed facilities? Provide a list or categories of affected landfills and an estimated total number. How will item B’s criteria apply to unpermitted dumps lacking historical monitoring data, and are such sites automatically subject to postclosure care requirements? Are non-program landfills that completed 20 years of postclosure care under prior agreements subject to reevaluation under item B, and how will they be identified? Exemptions and Retroactive Application Which facilities are exempt from commissioner approval? For example, are low-risk landfills (e.g., demolition debris), sites with prior termination certifications, or those in custodial care exempt? Are unpermitted dumps predating modern permitting (pre-1967) exempt unless under specific MPCA enforcement or cleanup programs? Will landfills released from postclosure obligations before March 18, 2025, face retroactive reevaluation, and what criteria will determine their inclusion? Item B Criteria and Enforcement Safeguards Define “pertinent information” and specify how compliance with parts 7035.2565 and 7035.2815–7035.2915 will be assessed. When will guidance detailing these criteria be published? What measures (e.g., standardized protocols, appeals process, public reporting of termination decisions) will ensure item B’s criteria are applied consistently across all affected landfills? How will the MPCA prevent selective enforcement against non-program landfills, particularly those with complex regulatory histories? Conclusion We support robust environmental oversight but are concerned that Minnesota Rules 7035.2655’s vague criteria, limited scope, and urgent adoption may lead to inconsistent application across a small number of non-program landfills and unpermitted dumps. Without clear identification of affected landfills and transparent criteria, the rule risks arbitrary enforcement. We urge the MPCA to provide detailed responses, publish Section 30(b) and item B guidance, and engage stakeholders to ensure equitable implementation. Please confirm receipt and consideration of these comments by May 16, 2025.”

**Response:** We appreciate the stakeholders’ support for the MPCA’s efforts to enhance environmental protection through Minnesota Rules (Minn. R.) 7035.2655, which requires commissioner approval to terminate postclosure care. As part of their lawmaking duties, the Legislature considered these issues. For reference, please see [MPCA’s Legislative Director, Tom Johnson’s testimony before the State and Local Government and Veterans Committee on Senate File 4493; March 26, 2024](#) beginning at 1:46:38.

The Legislature determined that the MPCA must amend the rules to require the commissioner’s approval to terminate the postclosure care period and that the commissioner may use the

Judge McKenzie  
Page 3  
May 19, 2025

good-cause exemption under Minnesota Statutes (Minn. Stat.) 14.388, subd. 1, clause 3 to adopt these rules.

In conclusion, the Agency has addressed the concerns raised during the comment period. We respectfully submit that the Administrative Law Judge should recommend adoption of these rules.

If you have any questions or concerns, please contact me at [erica.backstrom@state.mn.us](mailto:erica.backstrom@state.mn.us) or 218-302-6659.

Sincerely,

A handwritten signature in cursive script that reads "Erica Backstrom".

Erica Backstrom  
Rule Coordinator