

CHAPTER 7044

**MINNESOTA POLLUTION CONTROL AGENCY
SOLID AND HAZARDOUS WASTE DIVISION
PRIORITY ASSESSMENT CRITERIA**

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7044.0100 SCOPE.

This chapter governs the procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants, or contaminants required by Minnesota Statutes, section 115B.17. This chapter establishes various classifications for sites with releases or threatened releases, describes the procedures for adding sites with releases or threatened releases to or deleting sites from the permanent list, provides for an annual review and update of the permanent list, establishes the funding priority among classifications and the funding priority within classifications, creates an annual project list, and specifies a ranking system to be used in scoring sites.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58*

7044.0200 DEFINITIONS.

Subpart 1. Scope. As used in this chapter, the following terms have the meanings given them, unless the context requires otherwise.

Subp. 2. Miscellaneous terms. The following terms have the meanings given them in the Environmental Response and Liability Act (ERLA), Minnesota Statutes, chapter 115B: agency, commissioner, Federal Superfund Act, fund, hazardous substance, hazardous waste, natural resources, owner of real property, person, pollutant or contaminant, release, remedy or remedial action, remove or removal, respond or response, and water.

Subp. 3. Advisory. "Advisory" means a warning by the director, Minnesota Department of Health, Minnesota Department of Natural Resources, or the Minnesota Department of Agriculture issued to the public concerning a hazardous substance, pollution, or contamination at or near a facility.

Subp. 4. Emergency. "Emergency" means that there is an imminent risk of fire or explosion, that a temporary water supply is needed where an advisory has been issued, or that immediate adverse human health effects may be anticipated due to direct contact or inhalation and an advisory has been issued.

Subp. 5. Ground water or underground water. "Ground water" or "underground water" has the meaning given in chapter 7060.

Subp. 6. Rater. "Rater" means a member of the agency staff designated by the commissioner to evaluate releases or threatened releases.

Subp. 7. Site. "Site" means any place or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, placed, or otherwise come to be located including:

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A. a building, structure, installation, equipment, pipe or pipeline (including a pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

B. a watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water.

Site does not include a consumer product in consumer use.

Subp. 8. **Target.** "Target" means affected populations or sensitive environments exposed or threatened with exposure due to a release or a threatened release.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58; L 1987 c 186 s 15*

7044.0300 CLASSIFICATION OF SITES.

The agency shall assign a site with a release or a threatened release to the following response action classes:

A. a declared emergency by the commissioner;

B. the operation and maintenance at a site that has undergone previous response actions;

C. other response actions which may include the first year costs associated with operation and maintenance at a site; and

D. remedial investigations and feasibility studies (RI/FS).

A site with a release or a threatened release may be assigned to more than one response action class and may be assigned more than once within a response action class if conditions at the site of the release or the threatened release or the diversity of hazardous substances, pollutants, or contaminants require multiple response actions. Assignment of a site with a release or a threatened release to a response action class must be based on the response action necessary to abate the known or suspected dangers associated with hazardous substances, pollutants, or contaminants at the site of the release or the threatened release. A site may be reclassified based on the findings and recommendations of a remedial investigation and feasibility study (RI/FS).

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58; L 1987 c 186 s 15*

7044.0400 ADDITION OF SITES WITH RELEASES OR THREATENED RELEASES TO THE PERMANENT LIST OF PRIORITIES.

The agency shall rate sites with a release or a threatened release using the Hazard Ranking System (HRS) in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982), as amended by part 7044.1000. All sites must be evaluated using part 7044.1200. A site disqualified by part 7044.1200 is not eligible for placement on the permanent list of priorities. All eligible sites must be assigned to a response action class based on the criteria in part 7044.0300. The site of the release or the threatened release must be added to the permanent list of priorities during the next annual update as specified in part 7044.0600.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58*

7044.0500 DELETION OF SITES FROM THE PERMANENT LIST OF PRIORITIES.

Subpart 1. **Requirement.** The agency shall delete a site from the permanent list of priorities at the next annual update following the completion of all response actions required at the site, or if the agency determines that the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

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Subp. 2. Deletion from a response action class. The agency shall delete a site from a response action class on the permanent list of priorities at the next annual update following the completion of response actions for that class at the site, or if the agency determines that portion of the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58*

7044.0600 ANNUAL UPDATE OF THE PERMANENT LIST OF PRIORITIES.

The agency shall annually update the permanent list of priorities. Notice of the annual update of the permanent list of priorities together with a proposed updated list must be published in the State Register to solicit public comments at least 30 days prior to agency action. A site may be reclassified or rescored based on information obtained during the 30-day comment period or based on information from a completed RI/FS if the commissioner determines the new or additional facts warrant a reclassification or rescoring. A site may not be reclassified or rescored based on prior remedial, removal, or response actions.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58; L 1987 c 186 s 15*

7044.0700 FUNDING PRIORITY OF CLASSES.

The agency shall allocate Environmental Response and Liability Act (ERLA) funds to classes in the following order:

A. All sites classified as part 7044.0300, item A (Class A) receive first priority over all other classes for agency action. The agency shall also allocate ERLA funds to be held in reserve during the next year to fund emergencies that may be declared during the year. The amount of the contingency fund must be estimated based on the funds expended on declared emergencies in previous years. If the contingency fund is depleted before the end of the year, funds allocated for Class C or D projects that are not yet committed are available for response actions that must be taken in connection with a declared emergency.

B. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, all sites classified as part 7044.0300, item B (Class B) receive next priority for ERLA funding. ERLA funds may not be spent for the purpose of operation or maintenance of a community water supply system with the exception of start-up operational and maintenance expenditures deemed necessary by the agency during the first year the system is in operation.

C. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, and all Class B sites have ERLA funds allocated, the agency shall allocate ERLA funds to part 7044.0300, item C (Class C) and to part 7044.0300, item D (Class D) sites.

D. The commissioner may reallocate excess ERLA funds from one class to another if the funding priorities in parts 7044.0700 to 7044.0900 are complied with, and the commissioner determines that a site on the permanent list of priorities is ready for the agency to proceed with a response action or RI/FS prior to the next annual update.

Class A contingency funds may not be transferred to another class.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58; L 1987 c 186 s 15*

7044.0800 FUNDING PRIORITY WITHIN CLASSIFICATIONS C AND D.

Sites listed in classifications C and D must be ranked according to their HRS

scores. The commissioner may allocate funds within each of the two classes to any site with a release or a threatened release that is within ten HRS points of the highest rated site within the class, based upon the cost of the necessary response actions; the effect of the release or the threatened release on public health, welfare, or the environment; and the administrative capabilities of the agency.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58; L 1987 c 186 s 15*

7044.0900 ANNUAL PROJECT LIST.

The agency shall establish a project list based on the amount of ERLA funds allocated by the agency for each class. The project list is a subset of the permanent list of priorities. The project list must contain the names of those projects to which ERLA funding will be allocated and for which the response action or RI/FS is scheduled to begin during the year. Sites on the permanent list of priorities may be added to the project list and funded when the commissioner determines that excess ERLA funds allocated by the agency are available as a result of, for example, a party assuming responsibility for work at a site or a cost saving in the response actions taken at a site. Class A sites not on the project list that develop or are brought to the attention of the commissioner must be funded with Class A contingency funds as directed in part 7044.0700, item A. Before taking any removal and remedial action for a release or a threatened release of a hazardous substance, pollutant, or contaminant, the agency shall follow the procedures specified in Minnesota Statutes, section 115B.17. The project list must be revised annually. Funding for projects on the project list must remain in effect until the next project list is adopted or until the work for which the site was placed on the list is completed, whichever date is later.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58; L 1987 c 186 s 15*

7044.1000 HRS SCORING SYSTEM ADOPTED BY REFERENCE.

The agency shall rank sites utilizing the EPA's "Uncontrolled Hazardous Waste Ranking System" (commonly referred to as the HRS) published in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982) with the following modifications:

A. Substitute the words "ground water" for the word "aquifer" wherever the word "aquifer" appears in the Hazard Ranking System.

B. Substitute Figure 8-3 from the Minnesota Hydrologic Guide, United States Department of Agriculture, Soil Conservation Service, Saint Paul, Minnesota, circa 1976, for Figure 4 of the Hazard Ranking System.

C. Substitute Figure 1-1 from the Minnesota Hydrologic Guide for Figure 5 of the Hazard Ranking System.

D. Substitute Figure 1-2 from the Minnesota Hydrologic Guide for Figure 8 of the Hazard Ranking System.

Statutory Authority: *MS s 115B.17 subd 13*

History: *9 SR 58*

7044.1100 REIMBURSEMENT FOR PAST RESPONSE ACTIONS.

Reimbursement claims, by a private person for expenditures made before July 1, 1983, to provide alternative water supplies deemed necessary by the agency and the Department of Health to protect the public health from contamination resulting from the release of a hazardous substance, must be filed with the agency within 12 months from the date parts 7044.0100 to 7044.1200 become effective. A reimbursement claim filed after the 12-month deadline is invalid. The agency shall consider reimbursement of only the reasonable expenses for the

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types of costs which would have been incurred by the agency. The agency shall determine the amount of ERLA funds to be allocated to reimbursement claims during the annual update.

Statutory Authority: MS s 115B.17 subd 13

History: 9 SR 58

7044.1200 PRESCREENING OF POTENTIAL HAZARDOUS WASTE SITES.

Prescreening of Potential Hazardous Waste Sites Yes No

Ground Water Route

- 1. If there is no observed release, is the containment score equal to zero?
2. Is the toxicity/persistence score equal to zero?

Surface Water Route

- 1. If there is no observed release, is the containment score equal to zero?
2. Is the toxicity/persistence score equal to zero?

Air Route

- 1. Does the observed release score equal zero?
2. Are the reactivity/incompatibility and toxicity scores equal to zero?

Fire and Explosion

- 1. Are the ignitability, reactivity, and incompatibility scores equal to zero?

Direct Contact

- 1. Are the observed incident, accessibility, containment, or toxicity scores equal to zero?

A site is not eligible for ERLA funding or inclusion on the permanent list of priorities, as defined in part 7044.0400, if one or more questions in each of the five routes is answered "yes."

Statutory Authority: MS s 115B.17 subd 13

History: 9 SR 58