

CHAPTER 7044

MINNESOTA POLLUTION CONTROL AGENCY GROUNDWATER AND SOLID 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, subdivision 13. 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 14.06; 115B.17*

History: *9 SR 58; 17 SR 2328*

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: agricultural chemical, Federal Superfund Act, account, 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 commissioner, Minnesota Department of Health, Minnesota Department of Natural Resources, or the Minnesota Department of Agriculture issued to the public concerning a hazardous substance, or a pollutant or contaminant, at or near a site.

Subp. 3a. **Agency.** "Agency" means the Department of Agriculture for actions, duties, or authorities relating to agricultural chemicals, or the Pollution Control Agency for other substances.

Subp. 3b. **Agricultural chemical site.** "Agricultural chemical site" means a site that is predominately contaminated with agricultural chemicals.

Subp. 3c. **Commissioner.** "Commissioner" means the commissioner of agriculture for actions, duties, or authorities relating to agricultural chemicals or the commissioner of the Pollution Control Agency for other substances.

Subp. 4. **Emergency.** "Emergency" means a determination by the commissioner that immediate action is required to prevent, minimize, or mitigate damage to the public health or welfare or the environment.

Subp. 5. [Repealed, 17 SR 2328]

Subp. 5a. **Operation and maintenance.** "Operation and maintenance" means measures required to maintain the effectiveness of response actions.

Subp. 5b. **PCA site.** "PCA site" means a site that is predominately contaminated with substances other than agricultural chemicals.

Subp. 6. [Repealed, 17 SR 2328]

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:

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. [Repealed, 17 SR 2328]

Statutory Authority: *MS s 14.06; 115B.17*

History: 9 SR 58; L 1987 c 186 s 15; 17 SR 2328

7044.0250 SCORING OF SITES WITH RELEASES OR THREATENED RELEASES FOR ADDITION TO PERMANENT LIST OF PRIORITIES.

The agency shall score sites with releases or threatened releases of hazardous substances, or pollutants or contaminants, using the Hazard Ranking System (HRS) in part 7044.0350. The Pollution Control Agency shall score PCA sites with releases or threatened releases of hazardous substances, or pollutants or contaminants. The commissioner of agriculture shall score agricultural chemical sites with releases or threatened releases of hazardous substances, or pollutants or contaminants.

All eligible sites must be assigned to a response action class based on the criteria in part 7044.0450. 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 14.06; 115B.17*

History: 9 SR 58; 17 SR 2328

7044.0300 [Renumbered 7044.0450]

7044.0350 HRS SCORING SYSTEM.

The Pollution Control Agency and the commissioner of agriculture shall score sites under part 7044.0250 utilizing the Hazard Ranking System (HRS) adopted by the United States Environmental Protection Agency, and published in the Federal Register, volume 55, pages 51583 to 51667 (December 14, 1990).

Statutory Authority: *MS s 14.06; 115B.17*

History: 9 SR 58; 17 SR 2328

7044.0400 [Renumbered 7044.0250]

7044.0450 CLASSIFICATION AND RECLASSIFICATION OF SITES.

Subpart 1. **Classifications.** Sites with a release or a threatened release shall be assigned 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.

Subp. 2. **Classification of site.** 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.

At the time of proposing to list a site on the permanent list of priorities, the Pollution Control Agency shall indicate the appropriate classifications for a PCA site. The commissioner of agriculture shall indicate the appropriate classifications for an agricultural chemical site.

Subp. 3. Reclassification of site. The commissioner may reclassify a site or an operable unit of a site between updates in the permanent list of priorities based on completion of response actions for that class at the site or an operable unit of the site. A site may be reclassified based on the findings and recommendations of a remedial investigation and feasibility study.

Statutory Authority: *MS s 14.06; 115B.17*

History: 9 SR 58; L 1987 c 186 s 15; 17 SR 2328

7044.0500 [Renumbered 7044.0950]

7044.0600 ANNUAL UPDATE OF THE PERMANENT LIST OF PRIORITIES.

The Pollution Control Agency shall update the permanent list of priorities at least annually. In preparation for updating the permanent list of priorities, the commissioner of agriculture shall submit agricultural chemical sites to the commissioner of the Pollution Control Agency for proposed inclusion on, or deletion from, the permanent list of priorities. The commissioner of the Pollution Control Agency shall submit the sites proposed for addition or deletion by the commissioner of agriculture together with sites proposed for addition or deletion by the Pollution Control Agency to the Pollution Control Agency for inclusion in the proposed update of the permanent list of priorities to be published in the State Register.

Notice of any update of the permanent list of priorities together with the list of sites proposed to be added to or deleted from the list must be published in the State Register to allow a 30-day public comment period prior to action by the Pollution Control Agency or by the commissioner of agriculture. The Pollution Control Agency shall review and respond to public comments regarding sites proposed for listing on, or deletion from, the permanent list of priorities by the Pollution Control Agency. The commissioner of agriculture shall review and respond to public comments regarding sites proposed for listing on, or deletion from, the permanent list of priorities by the commissioner of agriculture.

A site may be rescored based on information obtained during the 30-day comment period or based on information from a completed RI/FS if the commissioner determines that new or additional facts warrant rescoring. A site may not be rescored based on remedial, removal, or response actions conducted following the commencement of site investigation and scoring activities by the Pollution Control Agency or the commissioner of agriculture.

Within 15 days after the comment period has closed, the commissioner of agriculture shall notify any person who has commented on an agricultural chemical site proposed to be added to, or deleted from, the permanent list of priorities that a public meeting will be held at the request of any person making a comment. After considering all comments, including those expressed at the public meeting, the commissioner of agriculture shall create a list of agricultural chemical sites for inclusion on, or deletion from, the permanent list of priorities. The commissioner shall forward this list of sites to the Pollution Control Agency for inclusion on, or deletion from, the permanent list of priorities.

Statutory Authority: *MS s 14.06; 115B.17*

History: 9 SR 58; L 1987 c 186 s 15; 17 SR 2328

7044.0650 ANNUAL PROJECT LISTS.

The commissioner of the Pollution Control Agency and the commissioner of agriculture shall each establish a project list based on the amount of ERLA funds allocated by the respective 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 sites 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 a project list and funded when the appropriate commissioner determines that excess ERLA funds allocated by each respective 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 7044.0750, 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. The commissioners may amend their respective project lists between annual revisions. Funding for sites on the project lists must remain in effect until the next project list is established or amended or until the work for which the site was placed on the list is completed, whichever date is later.

Statutory Authority: *MS s 14.06; 115B.17*

History: *9 SR 58; L 1987 c 186 s 15; 17 SR 2328*

7044.0700 [Renumbered 7044.0750]

7044.0750 FUNDING PRIORITY OF CLASSES.

ERLA funds shall be allocated to classes in the following order:

A. All sites classified as part 7044.0450, subpart 1, 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 7044.0450, subpart 1, 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 7044.0450, subpart 1, item C (Class C) and to part 7044.0450, subpart 1, item D (Class D) sites.

D. The commissioner may reallocate excess ERLA funds from one class to another if the funding priorities in this part and part 7044.0850 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 prior to the next update.

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

Statutory Authority: *MS s 14.06; 115B.17*

History: *9 SR 58; L 1987 c 186 s 15; 17 SR 2328*

7044.0800 [Renumbered 7044.0850]

7044.0850 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 scored 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. If there are no other sites within ten HRS points of the highest scored site within the class, the commissioner may allocate funds to the next highest scoring site or sites.

Statutory Authority: *MS s 14.06; 115B.17*

History: *9 SR 58; L 1987 c 186 s 15; 17 SR 2328*

7044.0900 [Renumbered 7044.0650]

7044.0950 DELETION OF SITES FROM PERMANENT LIST OF PRIORITIES.

Subpart 1. **Requirement.** The Pollution Control Agency shall delete a site from the permanent list of priorities at the next update if:

A. all response actions, including operation and maintenance, required at the site have been completed;

B. the Pollution Control Agency determines that a PCA 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, or pollutant or contaminant; or

C. the commissioner of agriculture determines that an agricultural chemical site no longer poses a threat to public health or welfare or the environment from a release or threatened release of an agricultural chemical.

Subp. 2. [Repealed, 17 SR 2328]

Statutory Authority: *MS s 14.06; 115B.17*

History: 9 SR 58; 17 SR 2328

7044.1000 [Renumbered 7044.0350]

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 have been filed with the Pollution Control Agency within 12 months from July 10, 1984. A reimbursement claim filed after the 12-month deadline is invalid. The agency shall consider reimbursement of only the reasonable expenses for the 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 14.06; 115B.17*

History: 9 SR 58; 17 SR 2328

7044.1200 [Repealed, 17 SR 2328]