

7045.0075 PETITIONS.

Subpart 1. **Petitions for equivalent testing or analytical methods.** Any person seeking to use a testing or analytical method other than those described in parts 7045.0102 to 7045.0155 or 7045.0450 to 7045.0649 may petition under these provisions. The person must demonstrate to the satisfaction of the commissioner that the proposed method is equal to or superior to the corresponding method prescribed in parts 7045.0102 to 7045.0155 or 7045.0450 to 7045.0649 in terms of its sensitivity, accuracy, precision, and reproducibility. Each petition must include:

- A. the petitioner's name and address;
- B. a statement of the petitioner's interest in the proposed action;
- C. a full description of the proposed method, including all procedural steps and equipment used in the method;
- D. a description of the types of wastes or waste matrices for which the proposed method may be used;
- E. comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in parts 7045.0102 to 7045.0155 or 7045.0450 to 7045.0649;
- F. an assessment of any factors which may interfere with, or limit the use of, the proposed method; and
- G. a description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

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

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

- A. Any person seeking to exclude a waste at a particular generating facility from regulation under this chapter may petition under these provisions. The petitioner must demonstrate to the satisfaction of the agency that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste and, in the case of an acutely hazardous waste meeting the criteria in part 7045.0129, subpart 1, item B, that it also does not meet the criteria of part 7045.0129, subpart 1, item C. In determining whether to exclude a waste as requested by the petition, the agency must consider the factors considered at the time the waste was listed and, if the agency has reason to believe that other factors, including additional constituents, could also cause the waste to be hazardous, the agency must also consider these other factors. In order

to exclude a waste as requested by the petition, the agency must determine that no factor exists that warrants retaining the classification of the waste as hazardous. A waste which is so excluded may still, however, be a hazardous waste by operation of part 7045.0131.

B. These procedures may also be used to petition the agency to exclude from part 7045.0214, subpart 2, item A or subpart 3, a waste which is described in those subparts and is either a waste listed in part 7045.0135, contains a waste listed in part 7045.0135, or is derived from a waste listed in part 7045.0135. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by item A, except that where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, this demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste by operation of part 7045.0131.

C. Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

D. If the waste is listed with codes "I," "C," "R," or "E" in part 7045.0135, the petitioner must show that the waste does not exhibit a relevant characteristic defined in part 7045.0131 using any applicable methods prescribed in part 7045.0131. The petitioner also must show that the waste does not exhibit any of the other characteristics in part 7045.0131 using any applicable method prescribed in part 7045.0131. In determining whether to exclude a waste as requested by the petition, the agency must consider the factors considered at the time the waste was listed and, if the agency has reason to believe that other factors, including additional constituents, could also cause the waste to be hazardous, the agency must also consider these other factors. In order to exclude a waste as requested by the petition, the agency must determine that no factor exists that warrants retaining the classification of the waste as hazardous. A waste which is so excluded, however, may still be a hazardous waste by operation of part 7045.0131.

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

(1) The petitioner must demonstrate that the waste:

(a) does not contain the constituent or constituents in part 7045.0141 that caused the agency to list the waste, using the appropriate test methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846, incorporated by reference in part 7045.0065, item D; or

(b) although containing one or more of the hazardous constituents, as defined in part 7045.0141, that caused the agency to list it, the waste does not meet

the criterion of part 7045.0129, subpart 1, item C, when considering the factors in part 7045.0129, subpart 1, item C, subitems (1) to (11).

(2) In determining whether to exclude a waste as requested by the petition, the agency must consider the factors considered at the time the waste was listed and, if the agency has reason to believe that other factors, including additional constituents, could also cause the waste to be hazardous, the agency must also consider these other factors. In order to exclude a waste as requested by the petition, the agency must determine that no factor exists that warrants retaining the classification of the waste as hazardous.

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in part 7045.0131 using any applicable methods prescribed therein.

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of part 7045.0131.

F. If the waste is listed with the code "H" in part 7045.0135, the petitioner must demonstrate that the waste does not meet the criterion of part 7045.0129, subpart 1, item B.

(1) In determining whether to exclude a waste as requested by the petition, the agency must consider the factors considered at the time the waste was listed and, if the agency has reason to believe that other factors, including additional constituents, could also cause the waste to be hazardous, the agency must also consider these other factors. In order to exclude a waste as requested by the petition, the agency must determine that no factor exists that warrants retaining the classification of the waste as hazardous.

(2) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in part 7045.0131 using any applicable methods prescribed therein.

(3) A waste which is so excluded, however, still may be a hazardous waste by operation of part 7045.0131.

G. Each petition must include in addition to the information required by item B:

- (1) the petitioner's name and address;
- (2) a statement of the petitioner's interest in the proposed action;
- (3) the name and address of the laboratory facility performing the sampling or testing of the waste;
- (4) the names and qualifications of the persons sampling and testing the waste;
- (5) the dates of sampling and testing;
- (6) the location of the generating facility;

(7) a description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(8) a description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(9) pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, when the demonstration is based on the factors in part 7045.0129, subpart 1, item C, subitems (1) to (11);

(10) a description of the methodologies and equipment used to obtain the representative samples;

(11) a description of the sample handling and preparation techniques, including techniques used for extraction, containerization, and preservation of the samples;

(12) a description of the tests performed, including results;

(13) the names and model numbers of the instruments used in performing the tests; and

(14) the following statement signed by the generator of the waste or an authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

H. After receiving a petition for an exclusion, the agency or the commissioner may request any additional information which may reasonably be required to evaluate the petition. An exclusion will only apply to the waste generated at the individual facility and covered by the demonstration and will not apply to waste from any other facility. The agency may limit the exclusion to portions of the waste for which sufficient affirmative demonstration is provided when it has reason to believe that the hazardous characteristics may not be consistent throughout the waste or that the demonstration may not be representative of the entire petitioned waste.

Subp. 3. **Petition for reduced regulation of hazardous waste being speculatively accumulated or reclaimed prior to use.** The agency may, upon presentation of a petition for those purposes, reduce any of the requirements of chapter 7045 applicable to reclamation, reuse, or recycling. The agency shall apply the standards and criteria set forth

below in determining whether to grant a petition to reduce the regulatory requirements for the following recycled hazardous wastes.

A. Any person seeking a reduction in regulation of hazardous wastes that are accumulated speculatively as defined in part 7045.0020 without sufficient amounts being recycled as defined in part 7045.0020 may petition under this subpart. The petitioner must demonstrate to the satisfaction of the agency that sufficient amounts will be recycled or transferred for recycling in the following year. Such a reduction in regulation is valid only for the following year, but may be renewed on an annual basis by filing a new petition. The agency's decision to grant the petition shall be based on the following standards and criteria:

(1) the manner in which the hazardous waste is to be recycled, when the waste is expected to be recycled, and whether the expected disposition is likely to be affected by past practice, market factors, the nature of the hazardous waste, or contractual arrangements for recycling;

(2) the reason that the applicant has accumulated the hazardous waste for one or more years without recycling 75 percent of the volume accumulated at the beginning of the previous year;

(3) the quantity of the hazardous waste already accumulated and the quantity expected to be generated and accumulated before the hazardous waste is recycled;

(4) the extent to which the hazardous waste is handled to minimize loss; and

(5) any additional information the commissioner may reasonably request which may be required to evaluate the petition.

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

(1) how economically viable the production process would be if it were to use virgin materials rather than the reclaimed hazardous waste;

(2) the prevalence of the practice on an industry wide basis;

(3) the extent to which the hazardous waste is handled before reclamation to minimize loss;

(4) the time periods between generating the hazardous waste and its reclamation, and between reclamation and return to the original primary production process;

(5) the location of the reclamation operation in relation to the production process;

(6) whether the hazardous waste as reclaimed is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) whether the person who generates the hazardous waste also reclaims it; and

(8) any additional information the commissioner may reasonably request which may be required to evaluate the petition.

C. Any person seeking a reduction in regulation of hazardous waste that has been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is used like a commodity, may petition under this subpart. The agency's decision to grant the petition shall be based on the following standards and criteria:

(1) the degree of processing the hazardous waste has undergone and the degree of further processing that is required;

(2) the value of the hazardous waste after it has been reclaimed;

(3) the degree to which the reclaimed hazardous waste is like an analogous raw material;

(4) the extent to which an end market for the reclaimed hazardous waste is guaranteed;

(5) the extent to which the reclaimed hazardous waste is handled to minimize loss; and

(6) any additional information the commissioner may reasonably request that may be required to evaluate the petition.

Subp. 4. **Petition to be classified as a boiler.** In accordance with the definition of boiler in part 7045.0020, the commissioner may determine that certain enclosed devices using controlled flame combustion are boilers, although they do not otherwise meet the definition of boiler, based on the following standards and criteria:

A. the extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

B. the extent to which the combustion chamber and energy recovery equipment are of integral design;

C. the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of fuel;

- D. the extent to which the exported energy is utilized;
- E. the extent to which the device is in common and customary use as a "boiler" functioning to produce steam, heated fluids, or heated gases; and
- F. any additional information the commissioner may reasonably request which may be required to evaluate the petition.

Subp. 5. **Petition for use of alternate manifest.** A person who meets the criteria in item A may submit a petition to the commissioner for approval of the use of an alternate manifest system as described in item B. The criteria the commissioner shall use in determining whether to approve the use of the alternate manifest system are provided in item C.

A. Only persons meeting the following criteria are eligible to file a petition under this subpart:

(1) the person proposing to use the alternate manifest system must agree to only use the alternate manifest for the transportation of waste from small quantity or very small quantity generators;

(2) the person proposing to use the alternate manifest system must agree to only use the alternate manifest for waste that will be reclaimed under a contractual agreement specifying the type and frequency of waste shipments; and

(3) the person proposing to use the alternate manifest system must own and operate the recycling facility to which the waste is proposed to be transported, and must also own the vehicle to be used in transporting the waste to the recycling facility and in delivering reclaimed material back to the generator.

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

(1) The alternate manifest system must include a manifest form to be used by the generator to notify the commissioner each time waste is transported under this subpart. The manifest form must include: a space for the generator's name, mailing address, telephone number, and identification number; a space for the transporter's name and identification number; a space for the name, address, telephone number, and identification number of the recycling facility; a space for the United States Department of Transportation shipping name, hazard class, identification number, and packing group of the waste as specified in the United States Department of Transportation Code, title 49, parts 171 to 199; a space for the number and type of containers and total volume of the waste being shipped; a space for the waste identification number as specified in part 7045.0131, 7045.0135, or 7045.0137; a space for the signature of the generator or the generator's authorized representative affirming the correctness of the information; the

mailing address of the commissioner; and a statement advising the generator to complete the form and submit it to the commissioner within five working days of transporting waste.

(2) The alternate manifest system must provide for the petitioner's submittal, on a monthly basis, of summaries of the names and identification numbers of generators who transported wastes using the alternate manifest and the volume and number of containers of each waste type shipped by each generator.

(3) The alternate manifest system must allow generators the option of using the manifest system provided in parts 7045.0261 and 7045.0265 in lieu of the alternate manifest system.

C. To obtain the commissioner's approval of the alternate manifest system, the petitioner must:

(1) submit information demonstrating that the petitioner meets the criteria in item A;

(2) submit information demonstrating that the proposed alternate manifest system meets the criteria in item B; and

(3) submit information demonstrating the effectiveness and reliability of the alternate manifest system, including the following: information on the waste that will be managed and the general type of customers who will be using the alternate manifest system; information on the type of recycling service provided by the petitioner and a description of the petitioner's recycling facility; information on the type of vehicle to be used and the system to be used to pick up and deliver waste from the generator to the petitioner's recycling facility; and a discussion of the measures to be taken to educate generators on the use of the alternate manifest and their responsibilities as waste generators.

Subp. 6. **Petition for alternate design or operating practices for secondary containment of tank systems.** A person may submit a petition to the commissioner for approval to use alternate design or operating practices in lieu of the requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4. The commissioner's decision shall be based on a demonstration by the petitioner that the alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous wastes or hazardous constituents into surface and ground water as effectively as the secondary containment requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4, during the active life of the tank system.

A. In order to determine equivalent protection, the commissioner shall consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operating practices;

(3) the hydrogeologic setting of the facility, including the thickness of soils present between the tank system and ground water; and

(4) factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

B. The following procedures must be followed for submittal of a petition for alternate design or operating practices for secondary containment of permitted tank systems.

(1) The commissioner must be notified in writing by the owner or operator that he or she intends to conduct and submit a demonstration for a petition from secondary containment for existing tank systems. This notification must be submitted at least 24 months before the date that secondary containment must be provided in accordance with part 7045.0528, subpart 4, item A. For new tank systems, this notification must be submitted at least 30 days before entering into a contract for installation.

(2) As part of the notification, the owner or operator must also submit to the commissioner a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in item A.

(3) The demonstration for a petition must be completed within 180 days after notifying the commissioner of an intent to conduct the demonstration.

(4) If a petition is granted under this subpart, the commissioner will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the petition.

C. The following procedures must be followed for submittal of a petition for alternate design or operating practices for secondary containment of interim status tank facilities and generator's tanks.

(1) The owner or operator must notify the commissioner in writing that a demonstration will be conducted and submitted to obtain approval to use alternate design or operating practices. For existing tank systems this notification must be submitted 24 months before the date that secondary containment must be provided in accordance with part 7045.0628, subpart 4, item A. For new tank systems this notification must be submitted 30 days before entering into a contract for installation of the tank system.

(2) As part of the notification, the owner or operator must also submit a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. This description must be submitted to the commissioner and must address each of the factors listed in item A.

(3) The demonstration for a petition must be completed and submitted to the commissioner within 180 days after notifying the commissioner of the intent to conduct the demonstration.

(4) The commissioner will notify the public, through a newspaper notice, of the availability of the demonstration for a petition. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration. Public comments shall be made in accordance with the procedures and requirements in part 7001.0110. If public comments request that a contested case hearing be held, the commissioner shall review the requests using the standards in part 7001.0120 or 7001.0130, whichever applies. If a public information meeting or contested case hearing is held, the commissioner shall give notice of the hearing or meeting in accordance with the requirements of part 7001.0120 or 7001.0130, whichever applies, except that the commissioner shall give notice at least 30 days before the date of the hearing or meeting. In addition, notice of the hearing or meeting may be given at the same time as the notice of availability of the demonstration for a petition.

(5) When the commissioner approves or disapproves a petition request, the owner or operator will be notified in writing of the petition decision. The commissioner will also notify each person who submitted written comments or requested notice of the petition decision.

D. Upon approval of a petition for alternate design or operating practices, as provided in item A, the owner or operator of a tank system must comply with the following requirements in the event of a release of hazardous waste from the primary tank system that has not migrated beyond the zone of engineering control. The owner or operator must:

(1) comply with the requirements of part 7045.0528, subpart 8, except for item D; or for interim status facilities and generator's tanks, the requirements of part 7045.0628, subpart 8, except for item D;

(2) decontaminate or remove contaminated soil to the extent necessary to enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had before the release, and prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

(3) if contaminated soil cannot be removed or decontaminated in accordance with subitem (2), comply with the requirement of part 7045.0528, subpart 9, item B; or for interim status facilities or generator's tanks, the requirement of part 7045.0628, subpart 9, item B.

E. Upon approval of a petition for alternate design or operating practices under item A, the owner or operator of a tank system must comply with the following requirements in the event of a release of hazardous waste from the primary tank system that has migrated beyond the zone of engineering control. The owner or operator must:

(1) Comply with the requirements of part 7045.0528, subpart 8, items A to D; or for interim status facilities or generator's tanks, the requirements of part 7045.0628, subpart 8, items A to D.

(2) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if ground water has been contaminated, the owner or operator must comply with the requirements of subpart 9, item B; or for interim status facilities or generator's tanks, the requirements of part 7045.0628, subpart 9, item B.

(3) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with part 7045.0528, subpart 4; or for interim status facilities or generator's tanks, part 7045.0628, subpart 4, reapply for a variance from secondary containment and meet the requirements for new tank systems in part 7045.0528, subpart 3, if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and ground water or surface water has not been contaminated.

Subp. 7. Petition for demonstration of no substantial hazard from tank systems. A person may submit a petition to the agency for an exemption from the secondary containment requirements of parts 7045.0528, subpart 4, and 7045.0628, subpart 4. The agency's decision shall be based on a demonstration that, in the event of a release that migrates to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment. No petition may be granted under this subpart for new underground tank systems.

A. In order to determine no substantial present or potential hazard, the agency shall consider the following factors.

(1) The potential adverse effects on ground water, surface water, and land quality, taking into account:

(a) the physical and chemical characteristics of the waste in the tank system, including its potential for migration;

(b) the hydrogeologic characteristics of the facility and surrounding land;

(c) the potential for health risks caused by human exposure to waste constituents;

(d) the potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(e) the persistence and permanence of the potential adverse effects.

(2) The potential adverse effects of a release on ground water quality, taking into account:

(a) the quantity and quality of ground water and the direction of ground water flow;

(b) the proximity and withdrawal rates of ground water users;

(c) the current and future uses of ground water in the area; and

(d) the existing quality of ground water, including other sources of contamination and their cumulative impact on ground water quality.

(3) The potential adverse effects of a release on surface water quality, taking into account:

(a) the quantity and quality of ground water and the direction of ground water flow;

(b) the patterns of rainfall in the region;

(c) the proximity of the tank system to surface waters;

(d) the current and future uses of surface waters in the area and any water quality standards established for these surface waters;

(e) the existing quality of surface water, including other sources of contamination; and

(f) the cumulative impact on surface water quality.

(4) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(a) the patterns of rainfall in the region; and

(b) the current and future uses of the surrounding land.

B. The following procedures must be followed for the submittal of a petition for an exemption from secondary containment for permitted facilities.

(1) The agency must be notified in writing by the owner or operator that he or she intends to conduct and submit a demonstration to be exempted from secondary containment requirements. For existing tank systems, this notification must be submitted at least 24 months before the date secondary containment must be provided in accordance with part 7045.0528, subpart 4, item A. For new aboveground, onground, or inground tank

systems, this notification must be submitted at least 30 days before entering into a contract for installation.

(2) As part of the notification, the owner or operator must also submit to the agency a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in item A.

(3) The demonstration for a petition must be completed within 180 days after notifying the agency of the intent to conduct the demonstration.

(4) If a petition is granted under this subpart, the agency will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the petition.

C. The following procedures must be followed for submittal of a petition for an exemption from secondary containment for interim status or generator's tanks.

(1) The owner or operator must notify the agency in writing that a demonstration will be conducted and submitted to obtain approval to use alternate design or operating practices. For existing tank systems, this notification must be submitted 24 months before the date that secondary containment must be provided in accordance with part 7045.0628, subpart 4, item A. For new aboveground, onground, or inground tank systems, this notification must be submitted 30 days before entering into a contract for installation of the tank system.

(2) As part of the notification, the owner or operator must also submit a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. This description must be submitted to the agency and must address each of the factors listed in item A.

(3) The demonstration for a petition must be completed and submitted to the agency within 180 days after notifying the agency of the intent to conduct the demonstration.

(4) The agency will notify the public, through a newspaper notice, of the availability of the demonstration for a petition. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration. Public comments shall be made in accordance with the procedures and requirements in part 7001.0110. If public comments request that a contested case hearing be held, the agency shall review the requests using the standards in part 7001.0120 or 7001.0130, whichever applies. If a public information meeting or contested case hearing is held, the agency shall give notice of the hearing or meeting in accordance with the requirements of part 7001.0120 or 7001.0130, whichever applies, except that the agency shall give notice at least 30 days

before the date of the hearing or meeting. In addition, notice of the hearing or meeting may be given at the same time as the notice of availability of the demonstration for a petition.

(5) When the agency approves or disapproves the petition request within 90 days, the owner or operator will be notified in writing of the petition decision. The agency will also notify each person who submitted written comments or requested notice of the petition decision.

Subp. 8. [Repealed, 33 SR 2042]

Subp. 9. **Petitions to allow land disposal of a prohibited waste.** A person seeking an exemption from a prohibition for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the agency and to the EPA demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration to the EPA must include the provisions in Code of Federal Regulations, title 40, section 268.6. The demonstration to the agency must include an identification of the specific waste and the specific unit for which the demonstration will be made, a waste analysis to describe fully the chemical and physical characteristics of the subject waste, and a comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality. The demonstration must also include a monitoring plan that detects migration at the earliest practicable time, and sufficient information to assure the commissioner that the owner or operator of a land disposal unit receiving restricted wastes will comply with other applicable federal, state, and local laws. The person seeking the exemption must also comply with items A to L.

A. The demonstration must meet the following criteria:

(1) all waste and environmental sampling, test, and analysis data must be accurate and reproducible to the extent that state-of-the-art techniques allow;

(2) all sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters must have been approved by the agency;

(3) simulation models must be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements;

(4) a quality assurance and quality control plan that addresses all aspects of the demonstration must be approved by the agency; and

(5) an analysis must be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis must include an evaluation of the consequences of predictable future events, including but not limited to earthquakes, floods, severe storm events, droughts, or other natural phenomena.

B. Each petition referred to in this subpart must include information described in subitems (1) to (5):

(1) A monitoring plan that describes the monitoring program installed at and around the unit to verify continued compliance with the conditions of the variance. This monitoring plan must provide information on the monitoring of the unit and the environment around the unit. The following specific information must be included in the plan:

- (a) the media monitored in the cases where monitoring of the environment around the unit is required;
- (b) the type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;
- (c) the location of the monitoring stations;
- (d) the frequency of monitoring at each station;
- (e) the specific hazardous constituents to be monitored;
- (f) the implementation schedule for the monitoring program;
- (g) the equipment used at the monitoring stations;
- (h) the sampling and analytical techniques employed; and
- (i) the data recording and reporting procedures.

(2) Where applicable, the monitoring program must be in place for a period of time specified by the commissioner, as part of the commissioner's approval of the petition, before receipt of prohibited waste at the unit.

(3) The monitoring data collected according to the monitoring plan must be sent to the commissioner according to a format and schedule specified and approved in the monitoring plan.

(4) A copy of the monitoring data collected under the monitoring plan must be kept on-site at the facility in the operating record.

(5) The monitoring program in subitem (1) must meet the following criteria:

(a) all sampling, testing, and analytical data must be approved by the commissioner and must provide data that is accurate and reproducible;

(b) all estimation and monitoring techniques must be approved by the commissioner; and

(c) a quality assurance and quality control plan addressing all aspects of the monitoring program must be provided to and approved by the commissioner.

C. After a petition has been approved, the owner or operator must report any changes in conditions at the unit and the environment around the unit that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:

(1) If the owner or operator plans to make changes to the unit design, construction, or operation, the change must be proposed, in writing, and the owner or operator must submit a demonstration to the commissioner at least 30 days before making the change. The commissioner shall determine whether the proposed change invalidates the terms of the petition and will determine the appropriate response. Any change must be approved by the commissioner before being made.

(2) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change must be reported, in writing, to the commissioner within ten days of discovering the change. The commissioner shall determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.

D. If the owner or operator determines that there is migration of hazardous constituents from the unit, the owner or operator must immediately suspend receipt of prohibited waste at the unit and notify the commissioner in writing within ten days of the determination that a release has occurred. Within 60 days of receiving the notification, the commissioner shall determine whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The commissioner shall also determine whether further examination of any migration is warranted under applicable provisions of parts 7045.0450 to 7045.0649.

E. Each petition must include the following statement signed by the petitioner or an authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

F. After receiving a petition, the commissioner may request additional information that reasonably may be required to evaluate the demonstration.

G. If approved, the petition will apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and will not apply to

any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.

H. The commissioner will give public notice in the State Register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the State Register.

I. The term of a petition granted under this part must be no longer than the term of the RCRA permit if the disposal unit is operating under an RCRA permit, or up to a maximum of five years from the date of approval provided under item G if the unit is operating under interim status. In either case, the term of the granted petition expires upon the termination or denial of an RCRA permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

J. Before the agency's decision, the applicant must comply with all restrictions on land disposal under part 7045.1390 when the effective date for the waste has been reached.

K. The petition granted by the agency does not relieve the petitioner of responsibility for the management of hazardous waste under chapters 7001 and 7045.

L. Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm are not eligible for an exemption under this subpart.

Subp. 10. [Repealed, 33 SR 2042]

Subp. 11. **Petition for additional treatability study quantities.** The commissioner may grant requests for quantity limits in excess of those specified in part 7045.0121, subpart 2, item A, for up to an additional 500 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, and 250 kilograms of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation. Item A of this subpart prescribes the conditions which the petitioner must meet in order for the commissioner to grant a petition to increase the quantity limits for waste, destined for use in treatability studies, to a maximum of the limits described in this subpart. Item B of this subpart prescribes what the petition must contain.

A. Conditions for granting a petition to increase quantity limits of waste for use in a treatability study are:

(1) there has been an equipment or mechanical failure during the conduct of a treatability study;

(2) there is a need to verify the results of a previously conducted treatability study;

(3) there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

(4) there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

B. The generator or sample collector must apply to the commissioner and provide in writing the following information:

(1) the reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;

(2) documentation accounting for all samples of hazardous waste from the waste stream that have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(3) a description of the technical modifications or change in specifications that will be evaluated and the expected results;

(4) if a further study is required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and include what procedures or equipment improvements have been made to protect against further breakdowns; and

(5) any additional information requested by the commissioner which may reasonably be required to evaluate the petition.

C. Upon receiving approval of the petition, the generator must manage the additional samples as specified in part 7045.0121.

Subp. 12. **Petition for alternate design or operating practices.** An owner or operator may submit a petition to the commissioner for approval to use alternate design or operating practices in lieu of the requirements of parts 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638. The commissioner's decision shall be based on a demonstration by the petitioner that the alternate design or operating practices, together with location characteristics, will prevent the migration of any hazardous wastes or hazardous constituents into surface and ground water as effectively as the requirements of parts 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638.

Statutory Authority: *MS s 14.07; 116.07; 116.37*

History: *9 SR 115; 10 SR 1688; 11 SR 1832; 11 SR 1950; L 1987 c 186 s 15; 13 SR 259; 13 SR 1238; 14 SR 2248; 15 SR 1877; 16 SR 2102; 16 SR 2239; 17 SR 1279; 18 SR 1565; 20 SR 715; 22 SR 5; 29 SR 947; 33 SR 2042*

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