

1 Pollution Control Agency
 2 Groundwater and Solid Waste Division
 3
 4 Adopted Permanent Rules Relating to Priority Assessment Criteria
 5
 6 Rules as Adopted

7 7044.0100 SCOPE.

8 This chapter governs the procedures for establishing a
 9 permanent list of releases or threatened releases of hazardous
 10 substances, pollutants, or contaminants required by Minnesota
 11 Statutes, section 115B.17, subdivision 13. This chapter
 12 establishes various classifications for sites with releases or
 13 threatened releases, describes the procedures for adding sites
 14 with releases or threatened releases to or deleting sites from
 15 the permanent list, provides for an annual review and update of
 16 the permanent list, establishes the funding priority among
 17 classifications and the funding priority within classifications,
 18 creates an annual project list, and specifies a ranking system
 19 to be used in scoring sites.

20 7044.0200 DEFINITIONS.

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

22 Subp. 2. **Miscellaneous terms.** The following terms have
 23 the meanings given them in the Environmental Response and
 24 Liability Act (ERLA), Minnesota Statutes, chapter 115B:
 25 agricultural chemical, Federal Superfund Act, account, hazardous
 26 substance, hazardous waste, natural resources, owner of real
 27 property, person, pollutant or contaminant, release, remedy or
 28 remedial action, remove or removal, respond or response, and
 29 water.

30 Subp. 3. **Advisory.** "Advisory" means a warning by the
 31 commissioner, Minnesota Department of Health, Minnesota
 32 Department of Natural Resources, or the Minnesota Department of
 33 Agriculture issued to the public concerning a hazardous
 34 substance, or a pollutant or contaminant, at or near a site.

35 Subp. 3a. **Agency.** "Agency" means the Department of



1 Agriculture for actions, duties, or authorities relating to
2 agricultural chemicals, or the Pollution Control Agency for
3 other substances.

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

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

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

15 Subp. 5. [See repealer.]

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

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

22 Subp. 6. [See repealer.]

23 [For text of subp 7, see M.R.]

24 Subp. 8. [See repealer.]

25 7044.0250 SCORING OF SITES WITH RELEASES OR THREATENED RELEASES
26 FOR ADDITION TO PERMANENT LIST OF PRIORITIES.

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

35 All eligible sites must be assigned to a response action

1 class based on the criteria in part 7044.0450. The site of the
2 release or the threatened release must be added to the permanent
3 list of priorities during the next annual update as specified in
4 part 7044.0600.

5 7044.0350 HRS SCORING SYSTEM.

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

11 7044.0450 CLASSIFICATION AND RECLASSIFICATION OF SITES.

12 Subpart 1. **Classifications.** Sites with a release or a
13 threatened release shall be assigned to the following response
14 action classes:

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

16 D. remedial investigations and feasibility studies.

17 Subp. 2. **Classification of site.** A site with a release or
18 a threatened release may be assigned to more than one response
19 action class and may be assigned more than once within a
20 response action class if conditions at the site of the release
21 or the threatened release or the diversity of hazardous
22 substances, pollutants, or contaminants require multiple
23 response actions. Assignment of a site with a release or a
24 threatened release to a response action class must be based on
25 the response action necessary to abate the known or suspected
26 dangers associated with hazardous substances, pollutants, or
27 contaminants at the site of the release or the threatened
28 release.

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

34 Subp. 3. **Reclassification of site.** The commissioner of
35 agriculture may reclassify a site or an operable unit of a site

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

6 7044.0600 ANNUAL UPDATE OF THE PERMANENT LIST OF PRIORITIES.

7 The Pollution Control Agency shall update the permanent
8 list of priorities at least annually. In preparation for
9 updating the permanent list of priorities, the commissioner of
10 agriculture shall submit agricultural chemical sites to the
11 commissioner of the Pollution Control Agency for proposed
12 inclusion on, or deletion from, the permanent list of
13 priorities. The commissioner of the Pollution Control Agency
14 shall submit the sites proposed for addition or deletion by the
15 commissioner of agriculture together with sites proposed for
16 addition or deletion by the Pollution Control Agency to the
17 Pollution Control Agency for inclusion in the proposed update of
18 the permanent list of priorities to be published in the State
19 Register.

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

32 A site may be rescored based on information obtained during
33 the 30-day comment period or based on information from a
34 completed RI/FS if the commissioner determines that new or
35 additional facts warrant rescoring. A site may not be rescored

1 based on remedial, removal, or response actions conducted
2 following the commencement of site investigation and scoring
3 activities by the Pollution Control Agency or the commissioner
4 of agriculture.

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

17 7044.0650 ANNUAL PROJECT LISTS.

18 The commissioner of the Pollution Control Agency and the
19 commissioner of agriculture shall each establish a project list
20 based on the amount of ERLA funds allocated by the respective
21 agency for each class. The project list is a subset of the
22 permanent list of priorities. The project list must contain the
23 names of those sites to which ERLA funding will be allocated and
24 for which the response action or RI/FS is scheduled to begin
25 during the year. Sites on the permanent list of priorities may
26 be added to a project list and funded when the appropriate
27 commissioner determines that excess ERLA funds allocated by each
28 respective agency are available as a result of, for example, a
29 party assuming responsibility for work at a site or a cost
30 saving in the response actions taken at a site. Class A sites
31 not on the project list that develop or are brought to the
32 attention of the commissioner must be funded with Class A
33 contingency funds as directed in part 7044.0750, item A. Before
34 taking any removal and remedial action for a release or a
35 threatened release of a hazardous substance, pollutant, or

1 contaminant, the agency shall follow the procedures specified in
2 Minnesota Statutes, section 115B.17. The project list must be
3 revised annually. The commissioners may amend their respective
4 project lists between annual revisions. Funding for sites on
5 the project lists must remain in effect until the next project
6 list is established or amended or until the work for which the
7 site was placed on the list is completed, whichever date is
8 later.

9 7044.0750 FUNDING PRIORITY OF CLASSES.

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

12 A. All sites classified as part 7044.0450, subpart 1,
13 item A (Class A) receive first priority over all other classes
14 for agency action. The agency shall also allocate ERLA funds to
15 be held in reserve during the next year to fund emergencies that
16 may be declared during the year. The amount of the contingency
17 fund must be estimated based on the funds expended on declared
18 emergencies in previous years. If the contingency fund is
19 depleted before the end of the year, funds allocated for Class C
20 or D projects that are not yet committed are available for
21 response actions that must be taken in connection with a
22 declared emergency.

23 B. After all Class A sites have ERLA funds allocated
24 and a Class A contingency fund has been established, all sites
25 classified as part 7044.0450, subpart 1, item B (Class B)
26 receive next priority for ERLA funding. ERLA funds may not be
27 spent for the purpose of operation or maintenance of a community
28 water supply system with the exception of start-up operational
29 and maintenance expenditures deemed necessary by the agency
30 during the first year the system is in operation.

31 C. After all Class A sites have ERLA funds allocated
32 and a Class A contingency fund has been established, and all
33 Class B sites have ERLA funds allocated, the agency shall
34 allocate ERLA funds to part 7044.0450, subpart 1, item C (Class
35 C) and to part 7044.0450, subpart 1, item D (Class D) sites.

1 D. The commissioner may reallocate excess ERLA funds
2 from one class to another if the funding priorities in this part
3 and part 7044.0850 are complied with, and the commissioner
4 determines that a site on the permanent list of priorities is
5 ready for the agency to proceed with a response action prior to
6 the next update.

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

9 7044.0850 FUNDING PRIORITY WITHIN CLASSIFICATIONS C AND D.

10 Sites listed in classifications C and D must be ranked
11 according to their HRS scores. The commissioner may allocate
12 funds within each of the two classes to any site with a release
13 or a threatened release that is within ten HRS points of the
14 highest scored site within the class, based upon the cost of the
15 necessary response actions; the effect of the release or the
16 threatened release on public health, welfare, or the
17 environment; and the administrative capabilities of the agency.
18 If there are no other sites within ten HRS points of the highest
19 scored site within the class, the commissioner may allocate
20 funds to the next highest scoring site or sites.

21 7044.0950 DELETION OF SITES FROM PERMANENT LIST OF PRIORITIES.

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

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

27 B. the Pollution Control Agency determines that a PCA
28 site no longer poses a threat to public health or welfare or the
29 environment from a release or a threatened release of a
30 hazardous substance, or pollutant or contaminant; or

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

35 Subp. 2. [See repealer.]

1 7044.1100 REIMBURSEMENT FOR PAST RESPONSE ACTIONS.

2 Reimbursement claims, by a private person for expenditures
 3 made before July 1, 1983, to provide alternative water supplies
 4 deemed necessary by the agency and the Department of Health to
 5 protect the public health from contamination resulting from the
 6 release of a hazardous substance, must have been filed with the
 7 Pollution Control Agency within 12 months from July 10, 1984. A
 8 reimbursement claim filed after the 12-month deadline is
 9 invalid. The agency shall consider reimbursement of only the
 10 reasonable expenses for the types of costs which would have been
 11 incurred by the agency. The agency shall determine the amount
 12 of ERLA funds to be allocated to reimbursement claims during the
 13 annual update.

14

15 RENUMBERER. The part numbers in column A are renumbered as
 16 shown in column B and appropriate cross-reference changes shall
 17 be made in Minnesota Rules.

18	COLUMN A	COLUMN B
19		
20	7044.0300	7044.0450
21	7044.0400	7044.0250
22	7044.0500	7055.0950
23	7044.0700	7044.0750
24	7044.0800	7044.0850
25	7044.0900	7044.0650
26	7044.1000	7044.0350

27 REPEALER. Minnesota Rules, parts 7044.0200, subparts 5, 6, and
 28 8; 7044.0500, subpart 2; and 7044.1200, are repealed.