

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Rules Governing the Acceptance
of Waste at the Stabilization
and Containment Facility Sited
Under Minn. Stat. § 115A,
Minn. Rules ch. 7047.

ORDER OF THE
CHIEF ADMINISTRATIVE LAW JUDGE

A hearing was held on August 1 and 3, 1989, before Richard C. Luis, an Administrative Law Judge of the Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14; and

The Report of the Administrative Law Judge made pursuant to Minn. Stat. § 14.50 was issued on September 27, 1989, and the Report of the Chief Administrative Law Judge was issued on September 28, 1989; and

The Pollution Control Agency has now determined to adopt the rules; and

The Pollution Control Agency has submitted the rules to the Chief Administrative Law Judge for review pursuant to Minn. Stat. §§ 14.16, 14.51, and Minn. Rule 1100.1000, subp. 1, and 1400.1100.

NOW, THEREFORE, the Chief Administrative Law Judge finds:

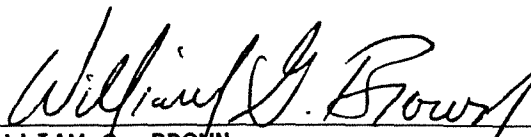
(1) The final proposed rules are not substantially different from those proposed at the public hearing.

(2) The Pollution Control Agency has cured the defects in the rules with the exception of the defect found with respect to Part 7047.0040, Subp. 5. B., and Part 7047.0050, Subp. 3 to the extent that the phrase "and who has made a satisfactory attempt to render the waste nonhazardous" relies on the "reasonable methods" standard set forth in Part 7047.0040, Subp. 5. B. of the proposed final rule. The Agency was advised on the manner in which to cure the defect in Finding 39 et seq. of the Report of the Administrative Law Judge as adopted by the Chief Administrative Law Judge.

(3) The Agency may correct the defect in Part 7047.0040, Subp. 5. B., and Part 7047.0050, Subp. 3., by comporting with Finding 39 et seq. of the Report of the Administrative Law Judge.

(4) The Agency has the responsibility of submitting those portions of the rule which it may adopt consistent with Minn. Stat. §§ 14.15 and 14.16, and Minn. Rule 1400.1200 to the Revisor of Statutes, and to publish the same in the State Register and file them with the Secretary of State if approved by the Revisor of Statutes.

Dated: March 21st, 1990.


WILLIAM G. BROWN
Chief Administrative Law Judge

MEMORANDUM

The Pollution Control Agency has advised the Chief Administrative Law Judge that it has submitted this proposed rule to the Legislative Commission to Review Administrative Rules in accordance with Minn. Stat. § 14.15, subd. 4. This action was taken because the Agency indicates it has chosen not to follow the advice of the Administrative Law Judge as to the correction of the defect found in Party 7047.0040 of Subpart 5. B. of the proposed rule. That defect related to the statutory authority of the Agency to establish a standard of "reasonableness" for the treatment of hazardous waste rather than the "feasible and prudent" standard for the alternatives to hazardous waste containment and migration minimization contained in Minn. Stat. § 115A.175, subd. 4 (c) (1) and (2).

The Report of the Administrative Law Judge indicated this was an issue of statutory authority; that the establishment of a "reasonableness" standard versus a "feasible and prudent" standard exceeded the statutory authority of the Agency.

In its Order adopting the rules, the Agency indicates that the Agency's proposed standard of "reasonableness" does not exceed or conflict with the explicit authority provided under Minn. Stat. § 115A.175, subd. 4. Thus, the Agency disagrees with the Administrative Law Judge's Report that a question of statutory authority is at issue. Further, by its submission of this issue to the Legislative Commission to Review Administrative Rules to obtain advice and comment, it suggests that the need for and reasonableness of the rule is in question.

The Administrative Law Judge's Report established that the defect in question involves one of statutory authority, not need and reasonableness. Thus, should the agency promulgate that portion of the rule without the correction of the defect in accordance with the Report of the Administrative Law Judge, it is the judgement of the Chief Administrative Law Judge that that portion of the rule would not have been promulgated in accordance with the Administrative Procedure Act.

W.G.B.