

1.1 **Pollution Control Agency**

1.2 **Proposed Permanent Rules Relating to Financial Assurance at Certain Types of**
1.3 **New Landfills**

1.4 **7035.2525 SOLID WASTE MANAGEMENT FACILITIES GOVERNED.**

1.5 [For text of subp 1, see M.R.]

1.6 Subp. 2. **Exceptions.** Parts 7035.2525 to 7035.2915 do not apply to the following
1.7 solid waste management facilities or persons, except as indicated:

1.8 [For text of items A to E, see M.R.]

1.9 F. industrial solid waste land disposal facilities, except that those receiving an
1.10 initial permit after January 1, 2011, must comply with parts 7035.2615 to 7035.2805;

1.11 [For text of items G to K, see M.R.]

1.12 **7035.2665 SCOPE.**

1.13 Parts 7035.2685 to 7035.2805 apply to owners and operators of:

1.14 A. mixed municipal solid waste land disposal facilities and;

1.15 B. municipal solid waste combustor ash land disposal facilities; and

1.16 C. the following facilities that received an initial permit after January 1,
1.17 2011: an industrial waste land disposal facility and a demolition debris land disposal
1.18 facility, except those solid waste land disposal facilities that accept only demolition and
1.19 construction debris and incidental nonrecyclable packaging and certain industrial wastes
1.20 limited to wood, concrete, porcelain fixtures, shingles, or window glass resulting from the
1.21 manufacture of building materials.

1.22 **7035.2695 FINANCIAL ASSURANCES REQUIRED.**

1.23 A. The owner or operator of a mixed municipal solid waste land disposal
1.24 facility or a municipal solid waste combustor ash land disposal facility that received an

2.1 initial permit prior to January 1, 2011, shall establish financial assurance for closure,
2.2 postclosure care and corrective action at the facility by using one or more of the financial
2.3 assurance mechanisms specified in parts 7035.2705 to 7035.2750.

2.4 B. For facilities that received an initial permit after January 1, 2011, the owner
2.5 or operator of a mixed municipal solid waste land disposal facility, a municipal solid
2.6 waste combustor ash land disposal facility, an industrial waste land disposal facility,
2.7 or a demolition debris land disposal facility, except those solid waste land disposal
2.8 facilities that accept only demolition and construction debris and incidental nonrecyclable
2.9 packaging and certain industrial wastes limited to wood, concrete, porcelain fixtures,
2.10 shingles, or window glass resulting from the manufacture of building materials, shall
2.11 establish financial assurance for closure, postclosure care, and corrective action at the
2.12 facility by using one or more of the standardized financial assurance mechanisms specified
2.13 in parts 7035.2705 to 7035.2745, or alternatively may propose a nonstandardized financial
2.14 assurance mechanism under part 7035.2751 for approval by the commissioner. These
2.15 facilities must maintain financial assurance as long as the facility poses a potential
2.16 environmental risk to human health, wildlife, or the environment, as determined by the
2.17 agency following an empirical assessment conducted under part 7035.2655.

2.18 **7035.2751 PROPOSALS FOR NONSTANDARDIZED FINANCIAL ASSURANCE**
2.19 **MECHANISMS; FACILITIES INITIALLY PERMITTED AFTER JANUARY 1,**
2.20 **2011.**

2.21 Subpart 1. Criteria for nonstandardized financial assurance mechanisms.

2.22 A. A nonstandardized financial assurance mechanism must meet the criteria in
2.23 items B to E to be approved for use.

2.24 B. The mechanism must ensure that funds sufficient to cover the estimated costs
2.25 of closure, postclosure care, and corrective action are available at all times.

3.1 C. The mechanism must be such that the funds will be available and
3.2 immediately payable directly into the standby trust fund according to instructions from
3.3 the commissioner. The standby trust fund must meet the requirements in part 7035.2705
3.4 and an originally signed duplicate of the trust agreement must be submitted to the
3.5 commissioner along with the mechanism.

3.6 D. The mechanism must be fully valid, binding, and enforceable under state
3.7 and federal law.

3.8 E. The financial assurance mechanism must be drafted so that the financial
3.9 assurance funds will not be assets in any bankruptcy proceeding filed by the permittee and
3.10 will remain accessible by the commissioner throughout the bankruptcy reorganization or
3.11 discharge.

3.12 Subp. 2. **Evaluation; approval or disapproval.**

3.13 A. All terms and conditions of a nonstandardized financial assurance
3.14 mechanism must be approved by the commissioner. When the commissioner determines
3.15 that the agency would benefit from an expert opinion on the adequacy of a proposed
3.16 nonstandardized financial assurance mechanism, the commissioner shall retain an
3.17 independent expert acceptable to the commissioner to evaluate the mechanism, at the
3.18 owner's or operator's expense, to determine if the mechanism meets the criteria of subpart
3.19 1. The independent expert must have documented experience in the analysis of risk and
3.20 the use of financial instruments used as guarantees such as bonds, letters of credit, and
3.21 insurance. Prior to permit reissuance, the commissioner may require reevaluation of the
3.22 nonstandardized financial assurance mechanism.

3.23 B. If a proposed nonstandardized financial assurance mechanism is disapproved
3.24 by the commissioner, the operator or owner may submit an application for an alternative
3.25 nonstandardized financial assurance mechanism or provide standard financial assurance
3.26 under parts 7035.2705 to 7035.2745.

4.1 **7035.2755 USE OF MULTIPLE FINANCIAL ASSURANCE MECHANISMS.**

4.2 An owner or operator may satisfy the requirements of part 7035.2695 by establishing
4.3 more than one mechanism for financial assurance per facility. For facilities that received
4.4 initial permits before January 1, 2011, these mechanisms are limited to trust funds, surety
4.5 bonds guaranteeing payment into a trust fund, self-insurance, and letters of credit. For
4.6 facilities that received initial permits after January 1, 2011, these mechanisms are limited
4.7 to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and
4.8 nonstandardized financial assurance mechanisms approved by the commissioner. The
4.9 mechanisms must be established as specified in parts 7035.2705, 7035.2715, 7035.2720,
4.10 7035.2725, 7035.2745, ~~and~~ 7035.2750, and 7035.2751, except that it is the combination of
4.11 mechanisms, rather than a single mechanism, which must provide financial assurance for
4.12 an amount at least equal to the sum of the current cost estimates. If an owner or operator
4.13 uses a trust fund in combination with a surety bond or a letter of credit, the owner or
4.14 operator may also use the trust fund as the standby trust fund for the other mechanisms.
4.15 A single standby trust fund may be established for two or more mechanisms. The
4.16 commissioner may use any or all of the mechanisms to provide for closure, postclosure
4.17 care, or corrective action at the facility.