

STATE OF MINNESOTA

STATE REGISTER

DEPARTMENT OF ADMINISTRATION—DOCUMENTS DIVISION



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STATE REGISTER

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, official notices to the public, state and non-state public contracts, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

Volume 11 Printing Schedule and Submission Deadlines

| Vol. 11 Issue Number | *Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules | *Submission deadline for State Contract Notices and other **Official Notices | Issue Date |
|----------------------------|---|--|-----------------|
| 36 | Monday 23 February | Monday 2 March | Monday 9 March |
| 37 | Monday 2 March | Monday 9 March | Monday 16 March |
| 38 | Monday 9 March | Monday 16 March | Monday 23 March |
| 39 | Monday 16 March | Monday 23 March | Monday 30 March |

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the *State Register* editorial offices, 504 Rice Street, St. Paul, Minnesota 55155, (612) 296-4273.

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Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

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Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

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Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION also.

The PROPOSED RULES section contains:

- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
• Proposed amendments to rules already in existence in the Minnesota Rules.
• Proposed emergency rules.
• Withdrawal of proposed rules (option; not required).

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the State Register unless requested by an agency.)
• Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
• Notice of adoption of emergency rules.
• Adopted amendments to emergency rules (changes made since the proposed version was published).
• Extensions of emergency rules beyond their original effective date.

The OFFICIAL NOTICES section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
• Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before April 8, 1985 are published in the Minnesota Rules 1985. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 are included in a supplement published in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The State Register publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue numbers and cumulative listings. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issues 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

MINNESOTA RULES
Amendments and Additions

NOTE: This listing includes all proposed and adopted rules printed in this issue except emergency rules and errata for this issue. Please see those sections for the appropriate rule numbers.

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Minnesota: national leader in education

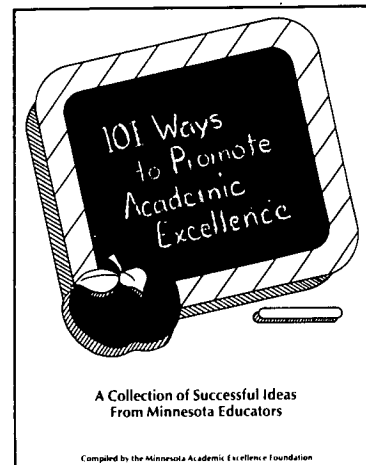
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PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Seed Potato Field Inspection

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture intends to amend the above-entitled rules without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28. The statutory authority to adopt these rules is Minnesota Statutes, Sections 21.113 and 21.118.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed amendments or any part or subpart of the amendment. Comment is encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed amendments may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rules as noticed.

A copy of the proposed amendments is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available upon request from Ms. Milligan.

The proposed amendments will not have a negative impact upon small business as defined in Minnesota Statutes, Section 14.115, because these amendments would simplify application and inspection procedures and place no additional economic restraints or demands on producers.

If no hearing is required, upon adoption of the final rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules must submit a written request to Ms. Milligan.

Dated: 2 January 1987

Jim Nichols
Commissioner, Department of Agriculture

Rules as Proposed**1555.6760 APPLICATION FOR INSPECTION.**

Subpart 1. Eligibility; procedure. All potatoes planted on a farm ~~shall be eligible and shall must~~ be entered for certification. Application for inspection ~~shall must~~ be made before June 16 each year on forms furnished by the commissioner ~~or a seed potato certification inspector~~. Applications postmarked after June 15 but before July 1 ~~shall must~~ be charged a 50 cents per acre late registration fee. No applications ~~shall may~~ be accepted that are postmarked later than June 30. The commissioner may extend the deadline due to special circumstances, such as natural disasters, which make it impractical or impossible for planting to be completed by the deadline and which affect an area or large number of growers.

Subp. 2. Shipping point inspection certificates, bulk seed certificates, or certificates of origin. An application for the inspection of a field planted with purchased certified seed potatoes must include copies of either the shipping point inspection certificates, bulk seed certificates, or certificates of origin for the total amount of purchased certified seed potatoes planted. Use of certificates of origin requires approval of both the seller and the purchaser and is restricted to intrastate shipments between certified seed potato producers. The certificate of origin must contain information considered necessary by the commissioner and must at a minimum identify seed potatoes as to the producer, variety, classification, and lot. The limitation of warranty in part 1555.6740, subpart 7, must be further limited to exclude any representation as to condition of the potatoes at the time of shipment.

Subp. 3. Separate application. A separate application must be completed for each field planted.

Subp. 4. Sufficient acreage. No application for inspection may be accepted from a grower in a community or county in which there is not sufficient acreage for the total inspection fee charges to cover the cost of wages and expenses of the inspectors providing the inspection service. Determination of sufficient acreage must be made by the commissioner.

REPEALER. Minnesota Rules, parts 1555.6770, 1555.6780, and 1555.6790 are repealed.

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste; Closure, Post-closure, and Financial Assurance

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the State of Minnesota intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28. The statutory authority to adopt the rules is Minn. Stat. § 116.07, subd. 4 (1986).

All persons have 30 days in which to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Interested persons have until 4:30 p.m. on April 8, 1987 to submit comments on the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Minnesota Pollution Control Agency (MPCA) will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Nancy Larson
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
520 Lafayette Road
St. Paul, Minnesota 55155

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

The proposed rules may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed rules as noticed.

The proposed rules follow this notice. One free copy of the proposed rules is available from the MPCA. Contact Nancy Larson at 612/296-7437 or at the address listed above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Nancy Larson upon request at 612/296-7437 or at the address listed above.

You are hereby advised pursuant to Minn. Stat. § 14.115 (1986), "Small business considerations in rulemaking," that the proposed amendments will have a minimal impact on small businesses. Several of the amendments provide clarification to existing requirements or provide some relaxation in certain aspects of the requirements and will not cause additional expenses to be incurred.

The proposed amendments follow directly from amendments to the federal hazardous waste program. Therefore, incorporation of these requirements will not impose additional expenses on small businesses in Minnesota that are not incurred by small businesses elsewhere. According to the analysis performed by the U.S. Environmental Protection Agency to satisfy requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. § 801 et seq.), the amendments will not require small businesses to incur significant expenses through increased management costs (51 FR 16443).

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to Nancy Larson at the address listed above.

Thomas J. Kalitowski
Executive Director

Rules as Proposed

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the agency shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the agency finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or B, the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. If the permit is a permit described in part 7001.0020, item B, the following additional requirements apply:

A. The new owner or operator shall submit a revised permit application to the director no later than 90 days before the scheduled change in ownership or control.

B. The previous owner or operator shall comply with the financial requirements of parts 7045.0498 to 7045.0524 until the new owner or operator has demonstrated compliance with the requirements to the director. The new owner or operator must demonstrate compliance within 180 days after the date of the change in ownership or control of the facility. Upon demonstration of compliance to the director, the director shall notify the previous owner or operator in writing that the owner or operator is no longer required to comply with parts 7045.0498 to 7045.0524.

Subp. 3. [Unchanged.]

Subp. 4. **Revocation without reissuance.** The director shall give notice to the permittee of a proposal to revoke a permit without reissuance. This notice must state that within 30 days of the receipt of the notice the permittee may request a contested case hearing be held on the proposed action. If the permittee requests a contested case hearing, the agency shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, parts 1400.5100 to ~~1400.8500~~ 1400.8402.

7001.0560 GENERAL INFORMATION REQUIREMENTS FOR PART B OF APPLICATION.

Part B of the application must contain the following information:

A. [Unchanged.]

B. Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses must contain all information that is necessary ~~in order~~ to treat, store, or dispose of the wastes properly in accordance with parts 7045.0450 to 7045.0544.

C. to K. [Unchanged.]

L. A copy of the closure plan and, where applicable, the post-closure plan required by parts 7045.0486 and 7045.0490, including, if applicable, the specific information ~~set forth~~ in parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8.

M. For ~~existing disposal facilities~~ units that have been closed, documentation that a notice has been placed in the deed or appropriate alternative instruments as required by part 7045.0496.

N. The most recent closure cost estimate for the facility prepared in accordance with part 7045.0502 and a copy of the documentation required to demonstrate financial assurance mechanism adopted in compliance with under part 7045.0504. For a new facility, a copy of the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

O. If applicable, the most recent post-closure cost estimate for the facility prepared in accordance with part 7045.0506 and a copy of the documentation required to demonstrate financial assurance mechanism adopted in compliance with under part 7045.0508. For a new facility, a copy of the required documentation may be submitted 60 days before the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

P. to U. [Unchanged.]

7001.0650 INTERIM STATUS.

Subpart 1. **Qualifying for interim status.** Except as provided in subpart 2, during the period after the submission of Part A of a hazardous waste facility permit application to the Environmental Protection Agency or to the director and ~~prior to~~ before a final determination by the agency on the permit application, the owner or operator of an existing hazardous waste facility shall be considered to be in compliance with the requirement to obtain a permit if the director finds that the Environmental Protection Agency has granted the owner or operator interim status or if the director finds:

A. and B. [Unchanged.]

Subp. 2. **Failure to obtain interim status from EPA.** Notwithstanding the provisions of subpart 1, an owner or operator of a hazardous waste facility who, ~~prior to~~ before April 23, 1984, was required to apply for and obtain interim status from the Environmental Protection Agency but who failed to obtain this interim status is not eligible to obtain interim status from the agency for that facility.

Subp. 3. and 4. [Unchanged.]

Subp. 5. **Changes during interim status.** An owner or operator who has interim status may conduct the following activities as prescribed:

A. The owner or operator may treat, store, or dispose of hazardous wastes not previously specified in Part A of the application if the owner or operator submits a revised Part A of the permit application ~~prior to the~~ before commencement of the treatment, storage, or disposal.

B. The owner or operator may increase the design capacity of the facility if, ~~prior to the~~ before implementation of the increase, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the change, and if the director approves the increase in writing. The director shall approve the change if the director finds that there is a lack of available treatment, storage, or disposal capacity at other permitted hazardous waste facilities.

C. The owner or operator may add new processes or change the processes for the treatment, storage, or disposal of hazardous waste if, ~~prior to the~~ before implementation of the addition or change, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the addition, and if the director approves the addition or change in writing. The director shall approve the addition or change if the director finds that:

(1) [Unchanged.]

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(2) the addition or change is necessary for the owner or operator to comply with federal, Minnesota, or local requirements, including the interim status standards ~~set forth~~ in parts 7045.0552 to 7045.0642.

D. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A of the permit application not later than 90 days ~~prior to~~ before the scheduled change. When a transfer of ownership or operational control of a facility occurs, the former owner or operator shall comply with the requirements of parts 7045.0608 to 7045.0624 that relate to financial requirements, until the new owner or operator has provided to the director a demonstration of compliance with parts 7045.0608 to 7045.0624. The new owner or operator must demonstrate compliance within six months. All other interim status duties must be transferred immediately upon the change of ownership or operational control of the facility. If the director finds that the new owner or operator has complied with parts 7045.0608 to 7045.0624, the director shall notify the former owner or operator in writing that the required demonstration by the new owner or operator has been made and the former owner or operator no longer needs to comply with parts 7045.0608 to 7045.0624 as of the date of the demonstration.

Subp. 6. **Compliance with interim status standards.** During the interim status period the owner or operator shall comply with the interim status standards ~~set forth~~ in parts 7045.0552 to 7045.0642.

Subp. 7. [Unchanged.]

7001.0730 MODIFICATION OF PERMITS; REVOCATION AND REISSUANCE OF PERMITS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Minor modifications of permits.** In addition to the corrections or allowances listed in part 7001.0190, subparts 2 and 3, if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in parts 7001.0100 to 7001.0130:

A. to C. [Unchanged.]

D. to change the expected year of closure under part 7045.0486, subpart 3, item ~~D~~ E;

E. to change schedules for final closure under part 7045.0486, subpart 3, item ~~D~~ E;

F to K. [Unchanged.]

Subp. 5. [Unchanged.]

7045.0020 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 2a. **Active life.** “Active life” of a facility means the period from the initial receipt of hazardous waste at the facility until the director receives certification of final closure.

Subp. 3. to 24. [Unchanged.]

Subp. 24a. **Final closure.** “Final closure” means the closure of all hazardous waste management units at the facility in accordance with the approved facility closure plan and all applicable closure requirements.

Subp. 25. to 36. [Unchanged.]

Subp. 36a. **Hazardous waste management unit.** “Hazardous waste management unit” is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

Subp. 37. to 64. [Unchanged.]

Subp. 65. **Partial closure.** “Partial closure” means the closure of a discrete part of a facility hazardous waste management unit in accordance with the applicable closure requirements of parts 7045.0450 to 7045.0544 or 7045.0552 to 7045.0642 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a trench, a unit operation tank, including its associated piping and containment systems, a landfill cell, or a pit surface impoundment, waste pile, or other hazardous waste management unit, while other parts units of the same facility continue in operation or will be placed in operation in the future to operate.

Subp. 66. to 108. [Unchanged.]

7045.0486 CLOSURE.

Subpart 1. **Scope.** Except as part 7045.0450 provides otherwise, the provisions of subparts 2 to ~~5~~ 6 and part 7045.0488 apply to the owner or operator of a hazardous waste facility.

Subp. 2. **Closure performance standard.** The owner or operator shall close the facility in a manner minimizing the need for further maintenance. Closure procedures must result in controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, in accordance with the closure requirements including, the requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; 7045.0542, subpart 8.

Subp. 3. **Submittal and contents of closure plan.** The owner or operator of a hazardous waste facility shall submit a closure plan with the permit application, and the closure plan must be approved by the agency as part of the permit issuance procedure. The approved closure plan shall become a condition of any permit. The agency's approval must ensure that the approved closure plan is consistent with subparts 2, 4, and 5, and part 7045.0488, and the applicable closure requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8.

A copy of the approved closure plan and all revisions to the plan must be ~~kept at the facility~~ furnished to the director upon request, including request by mail, until final closure is completed and certified. The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must at least include all of the following:

A. A description of how ~~and when~~ each hazardous waste management unit will be closed, and how the facility will be ~~partially closed, if applicable,~~ and finally closed. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of subparts 2, 5, part 7045.0488, and the applicable closure requirements of parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8 will be met.

B. An estimate of the maximum inventory of hazardous wastes in storage and in treatment at any time during ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type of off-site hazardous waste management units to be used, if applicable.

C. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, facility equipment, structures, and soils during partial and final closure, including, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard.

D. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, ground water monitoring, leachate collection, and run-on and run-off control.

E. An estimate of the expected year of closure and A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include the total time required to close the facility each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure.

F. An estimate of the expected year of closure for facilities that use trust funds to establish financial assurance under part 7045.0504 or 7045.0508 and that are expected to close before the expiration of the permit.

Subp. 4. **Amendment of plan.** The owner or operator must submit a written request to the director for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the agency's permitting procedures in chapter 7001. The written request must include a copy of the closure plan amendments for approval. The owner or operator may request a permit modification to amend the closure plan at any time during the active life before notification of partial or final closure of the facility. ~~The active life of the facility is that period during which wastes are periodically received.~~ The owner or operator shall request a permit modification to amend the plan whenever:

A. changes in operating plans or facility design affect the closure plan and whenever; or

B. there is a change in the expected year of closure - When the owner or operator requests a permit modification to authorize a change in operating plans or facility design, he or she shall request a modification of the closure plan at the same time. If a

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permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within 60 days after the change for those facilities that use trust funds to establish financial assurance as provided in subpart 3; or

C. in conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

The director may request modifications to the plan under the conditions described in items A to C. The owner or operator must submit the modified plan within 60 days of the director's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the director will be approved in accordance with the agency's permitting procedures in chapter 7001. The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days before the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event.

Subp. 5. Notification of partial and final closure.

A. The owner or operator shall notify the director in writing at least 480:

(1) 60 days prior to before the date he or she the owner or operator expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

(2) 45 days before the date the owner or operator expects to begin final closure of a facility with only tanks, container storage, or incinerator units remaining to be closed.

B. The date when he or she on which the owner or operator "expects to begin closure" must be within 30 days after the date on which he or she expects to receive the final volume of waste is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional volumes of hazardous waste" if the owner or operator in fact receives hazardous wastes within one year after the last volume was received. The director may approve an extension to this one-year limit if the owner or operator of a hazardous waste management unit can demonstrate to the director that the unit or facility has the capacity to receive additional hazardous wastes and he or she has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

If the facility's permit or interim status is terminated, or if the facility is otherwise ordered by judicial decree or compliance order to cease receiving hazardous waste or to close, then this the requirement in this item does not apply. However, the owner or operator shall close the facility in accordance with established deadlines.

Subp. 6. Removal of wastes and decontamination or dismantling of equipment. Nothing in this part precludes the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved closure plan at any time before or after notification of partial or final closure.

7045.0488 CLOSURE ACTIVITIES.

Subpart 1. Time allowance to begin closure activities. Within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the site unit or facility, or dispose of on-site all hazardous waste in accordance with the approved closure plan. The director may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90-day period, that he the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all permit requirements and:

A. the activities required to comply with the approved closure plan will, of necessity, take longer than 90 days to complete; or

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, there is a reasonable likelihood that a person other than the owner or operator or another person will recommence operation of the site unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

C. the owner or operator complies with all applicable requirements for requesting a modification to the permit.

If the owner or operator of a facility required to maintain financial assurance for closure, post-closure care, or corrective action fails to make a required payment or to substitute alternative financial assurance when required to do so, the director shall order the owner or operator to begin closure activities.

Subp. 2. **Time extension for closure activities.** The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous waste at the hazardous waste management unit or facility. The director may approve a longer closure period if the owner or operator demonstrates ~~he~~ at least 30 days before expiration of the 180-day period that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements and:

A. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, there is a reasonable likelihood ~~that a person other than the owner or operator or another person~~ will recommence operation of the site unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site; and

C. the owner or operator complies with all applicable requirements for requesting a modification to the permit.

If operation of the site is recommended, the director may defer completion of closure activities until the new operation is terminated.

Subp. 3. **Disposal or decontamination of equipment, structures, and soils.** ~~When~~ During the partial and final closure is completed periods, all contaminated facility equipment ~~and~~ structures, and soils must ~~have been~~ be properly disposed of or decontaminated ~~by removing all hazardous wastes and residues unless otherwise specified in parts 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8, and 7045.0538, subpart 7.~~ By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of parts 7045.0205 to 7045.0304.

Subp. 4. **Certification of closure.** ~~When closure is completed~~ Within 60 days after each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit is closed, and within 60 days after final closure is completed, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan.

Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for closure under part 7045.0504, subpart 10.

7045.0490 POST-CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Submittal of post-closure plan.** The owner or operator of a facility shall submit a post-closure plan with the permit application, and the plan must be approved by the agency as part of the permit issuance procedure. The approved post-closure plan will become a condition of any permit issued.

Owners or operators of surface impoundments and waste piles which are not otherwise required by part 7045.0532, subpart 7 or 7045.0534, subpart 7 to prepare a post-closure plan, must submit a post-closure plan to the director within 90 days after the owner or operator or the director determines that the unit must be closed as a landfill and is subject to the post-closure care requirements of parts 7045.0490 to 7045.0496.

Subp. 3. **Post-closure plan; amendment of plan.** A copy of the approved plan and all revisions to the plan must be kept at the facility furnished to the director upon request, including request by mail until the post-closure care period begins final closure of the facility. ~~This~~ After final closure has been certified, the person or office in item C must keep the approved post-closure plan during the remainder of the post-closure period. For each hazardous waste management unit subject to post-closure care requirements the plan must identify the activities which will be carried on after closure and the frequency of these activities, and it must include at least:

A. [Unchanged.]

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B. a description of the planned maintenance activities and frequencies at which they will be performed to ensure the integrity of the cap and final cover or other containment systems according to the requirements of parts 7045.0532 to 7045.0538, and the function of the facility monitoring equipment according to the requirements of parts 7045.0484 and 7045.0532 to 7045.0538; and

C. the name, address, and telephone number of the person or office to contact about the disposal facility during the post-closure period. This person or office must keep an updated post-closure plan during the post-closure period.

The owner or operator may submit a written request for a permit modification to amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure period in accordance with the agency's permitting procedures in chapter 7001. The owner or operator shall request a permit modification to amend the plan whenever changes in operating plans, or facility design, or events which occur during the active life of the facility including partial and final closures, or during the post-closure period affect the post-closure plan. He or she shall also amend the plan whenever there is a change in the expected year of final closure, if applicable. In addition, the director may request modifications to the post-closure plan under these conditions.

When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time. ~~In all other cases, the request for modification of the post-closure plan must be made within~~ The owner or operator must submit a written request for a permit modification at least 60 days after before the proposed changes in operating plans or facility design, or no later than 60 days after the unexpected events which affect the post-closure plan occur. If the director requests modification of the post-closure plan, the owner or operator must submit the modified plan no later than 60 days after the director's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the director will be approved, disapproved, or modified in accordance with the agency's permitting procedures in chapter 7001.

7045.0492 POST-CLOSURE CARE AND USE OF PROPERTY.

Subpart 1. **Post-closure care requirements.** Post-closure care requirements are as follows:

A. Post-closure care of each hazardous waste management unit subject to parts 7045.0490 to 7045.0496 must continue for 30 years after the date of completing closure of the unit and must consist of at least monitoring and reporting according to ~~the requirements of parts 7045.0484 and 7045.0532 to 7045.0538~~, and the maintenance of monitoring and waste containment systems, according to ~~the requirements of parts 7045.0484 and 7045.0532 to 7045.0538~~.

B. ~~During the 180-day period~~ Any time preceding closure of a hazardous waste management unit subject to the post-closure care requirements or final closure, or at any time thereafter during the post-closure period for a particular unit, the director may reduce the post-closure care period to less than 30 years in accordance with the agency's permit modification procedures in chapter 7001 for the hazardous waste management unit or facility, if all disposal units have been closed if it is found that the reduced period is sufficient to protect human health and the environment. This determination must be based on leachate or ground water monitoring results, waste characteristics, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicating the hazardous waste management unit or facility is secure.

C. ~~Prior to~~ Before the time that the post-closure care period is due to expire, the director may extend the post-closure care period in accordance with the agency's permit modification procedures in chapter 7001 for the hazardous waste management unit or facility if it is found that the extended period is necessary to protect human health and the environment. This determination must be based on factors such as leachate or ground water monitoring results that indicate a potential for migration of hazardous waste at levels which may be harmful to human health and the environment.

D. All post-closure care activities must be in accordance with ~~the provisions of~~ the approved post-closure plan.

Subp. 2. **Continuation of security requirements.** The director may require, at partial and final closure, continuation of any of the security requirements during part of or all of the post-closure period after the date of completing closure when hazardous wastes may remain exposed after completion of partial or final closure or when access by the public or domestic livestock may pose a hazard to human health.

Subp. 3. **Post-closure use of property.** Post-closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed by the owner or operator to disturb the integrity of the final cover, liners, or any other components of any containment system or the function of the facility's monitoring system systems, unless the owner or operator can demonstrate to the director either in the post-closure plan or by petition that the disturbance:

A. and B. [Unchanged.]

Subp. 4. **Certification of completion of post-closure care.** Within 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the approved post-closure plan. Documentation supporting the independent

registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for post-closure care under part 7045.0508, subpart 10.

7045.0494 NOTICE TO LOCAL LAND AUTHORITY.

Subpart 1. Submission of survey plat. Within 90 days after No later than submission of the certification of closure is completed of each hazardous waste disposal unit, the owner or operator of a disposal facility shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified.

Subp. 2. Post-closure notices. In addition Within 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or ~~area~~ other disposal unit of the facility. For ~~waste hazardous wastes~~ disposed of before January 12, 1981, the owner or operator shall comply with all requirements of Code of Federal Regulations, title 40, section 264.119 (1983). The owner or operator shall identify the type, location, and quantity of the waste to the best of his or her knowledge and in accordance with any records he or she has kept. A change in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occurs after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

7045.0496 NOTICE IN DEED TO PROPERTY.

Subpart 1. Deed notation. Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit the owner of the property on which a disposal facility is located or operator shall:

A. record, in accordance with state law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

~~A-~~ (1) the land has been used to manage hazardous waste;

~~B-~~ (2) the land use is restricted; and

~~C-~~ (3) the survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or area other hazardous waste disposal unit of the facility required in part 7045.0494 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

B. submit a certification signed by the owner or operator that he or she has recorded the notation specified in this subpart, including a copy of the document in which the notation has been placed, to the director.

Subp. 2. Changes to the deed. If at any time the owner or operator or a subsequent owner or operator of the land upon which a hazardous waste facility was disposal unit is located removes wishes to remove the waste hazardous wastes and hazardous waste residues, the liner, if any, and all or contaminated underlying and surrounding soil, he or she may remove must request a permit modification to amend the post-closure plan in accordance with the agency's permitting procedures in chapter 7001. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of part 7045.0492, subpart 3. If the owner or operator is granted approval to conduct removal activities, he or she may request that the director approve either:

A. removal of the notation on the deed to the facility property or other instrument normally examined during title search; or he may add

B. addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

Upon By removing the hazardous waste and hazardous waste residue, the liner, if any, and the contaminated soil, the owner or operator, unless he or she can demonstrate that any waste removed is not a hazardous waste, becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter.

7045.0498 FINANCIAL REQUIREMENTS.

Subpart 1. [Unchanged.]

Subp. 2. **Definitions.** The following definitions apply:

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A. When used in parts 7045.0498 to 7045.0524, the following terms have the meanings given.

(1) "Closure plan" means the plan for closure prepared in accordance with the requirements of part 7045.0486.

(2) "Corrective action plan" means the plan for corrective action prepared in accordance with part 7045.0484, ~~subpart~~ subparts 2, item D, and subpart 14.

(3) and (4) [Unchanged.]

(5) "Current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities" means the most recent of the estimates prepared in accordance with Code of Federal Regulations, title 40, section 144.62 (a), (b), and (c).

~~(5)~~ (6) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0506, subparts 1, 2, and 3.

~~(6)~~ (7) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the later corporation is deemed a "subsidiary" of the parent corporation.

~~(7)~~ (8) "Post-closure plan" means the plan for post-closure care prepared according to parts 7045.0490 to 7045.0496.

B. The following terms are used in the specifications for the financial tests for corrective action, closure, post-closure care, and liability coverage. The following definitions are intended to assist in the understanding of ~~these rules parts 7045.0498 to 7045.0524~~ and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

(1) to (8) [Unchanged.]

C. In the liability insurance requirements the terms "bodily injury" and "property damage" have the meanings given these terms by applicable state law. However, these terms do not include liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The following definitions of several of the terms are intended to assist in the understanding of ~~these rules parts 7045.0498 to 7045.0524~~ and are not intended to limit their meanings in a way that conflicts with general insurance industry usage:

(1) to (4) [Unchanged.]

7045.0502 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with ~~the requirements in~~ parts 7045.0486 and 7045.0488 and applicable closure requirements in parts 7045.0526, subpart 9; 7045.0528, subpart 6; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; 7045.0538, subpart 7; and 7045.0542, subpart 8. The closure cost estimate must equal the cost of final closure at the point in the facility's operating active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

A. The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if the operator can demonstrate that on-site disposal capacity will exist at all times through the life of the facility.

B. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 30 60 days after before each anniversary of the date on which the first closure cost estimate was prepared financial instruments used to comply with part 7045.0504 were established. Owners and operators using the financial test or corporate guarantee must adjust the closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in part 7045.0504, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. Adjustments must be made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** During the active life of the facility, the owner or operator shall revise the closure cost estimate whenever a within 30 days after the director approves the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ supply the following ~~at the facility during the operating life of the facility to the director upon request, including request by mail until final closure is completed~~: the latest closure cost estimate prepared in accordance with subparts 2 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted closure cost estimate.

7045.0504 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure trust fund.** The following apply to closure trust funds:

A. to J. [Unchanged.]

K. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursement for partial closure expenditures only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the director shall determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining operating life of the facility will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

L. The director shall agree to termination of the trust if:

- (1) an owner or operator substitutes alternate financial assurance as specified in this part; or
- (2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** The following apply to surety bonds that guarantee payment into a closure trust fund:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

- (1) [Unchanged.]
- (2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or court of competent jurisdiction; or
- (3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. **Surety bond guaranteeing performance of closure.** The following apply to surety bonds that guarantee performance of closure:

A. to D. [Unchanged.]

E. Under the terms of the bond, the surety becomes liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination by the director that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure in accordance with the closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

F to H. [Unchanged.]

I. The owner or operator may cancel the bond if the director has given prior written consent. The agency director shall provide such written consent if:

- (1) an owner or operator substitutes alternate financial assurance as specified in this part; or

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PROPOSED RULES

(2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 10.

J. The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the agency director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 5. **Closure letter of credit.** The following apply to closure letters of credit:

A. to I. [Unchanged.]

J. The director shall return the letter of credit to the issuing institution for termination if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 6. **Closure insurance.** The following apply to closure insurance:

A. to D. [Unchanged.]

E. After beginning partial or final closure, an owner, operator, or other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the director may withhold reimbursement of amounts as deemed prudent until it is determined, in accordance with subpart 10, that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to I. [Unchanged.]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 10.

Subp. 7. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least \$10,000,000; and

(4) assets in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for ~~his~~ the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least \$10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required

to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to J. [Unchanged.]

K. The owner or operator is no longer required to submit the items specified in item E if:

- (1) an owner or operator substitutes alternate financial assurance as specified in this part; or
- (2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 10.

L. [Unchanged.]

Subp. 8. and 9. [Unchanged.]

Subp. 10. **Release of owner or operator from requirements of this part.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the agency director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for closure of the particular facility, unless the agency director has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

7045.0506 COST ESTIMATE FOR POST-CLOSURE CARE.

Subpart 1. **Cost estimate requirements.** The owner or operator of a facility subject to post-closure monitoring or maintenance requirements shall have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in parts 7045.0490 to 7045.0496; 7045.0532, subpart 7; 7045.0534, subpart 7; 7045.0536, subpart 8; and 7045.0538, subpart 7. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under part 7045.0492. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is neither a parent nor a subsidiary of the owner or operator.

Subp. 2. **Yearly update of cost estimate.** During the operating active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first post-closure cost estimate was prepared~~ financial instruments used to comply with part 7045.0508 were established. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be adjusted for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the director as specified in part 7045.0506, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year. Adjustments are made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the post-closure cost estimate during the operating life of the facility whenever a within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall keep furnish the following at the facility during the operating life of the facility: to the director upon request, including request by mail: the latest post-closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted post-closure cost estimate.

7045.0508 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

Subpart 1. **In general.** The owner or operator of a facility hazardous waste management unit subject to post-closure monitoring or maintenance requirements shall establish financial assurance for post-closure care of the facility 60 days before the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. ~~He or she~~ The owner or operator shall choose from the options specified in subparts 2 to 7.

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PROPOSED RULES

Subp. 2. **Post-closure trust fund.** The following apply to post-closure trust funds:

A. to K. [Unchanged.]

L. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure activities are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director does not instruct the trustee to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

M. [Unchanged.]

Subp. 3. **Surety bond guaranteeing payment into post-closure trust fund.** The following apply to surety bonds that guarantee payment into post-closure trust funds:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Post-closure insurance.** The following apply to post-closure insurance:

A. to D. [Unchanged.]

E. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in amounts as the director specifies in writing. If the director does not instruct the insurer to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to K. [Unchanged.]

Subp. 7. **Financial test and corporate guarantee for post-closure care.** The financial test and corporate guarantee for post-closure care is as follows:

A. [Unchanged.]

B. The owner or operator must have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for ~~his~~ the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least \$10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of ~~his~~ the owner's or operator's total assets or at

least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimates" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to M. [Unchanged.]

Subp. 8. and 9. [Unchanged.]

Subp. 10. **Release of owner or operator from requirements of this part.** ~~When an~~ Within 60 days after receiving certification from the owner or operator has completed, to the satisfaction of the agency, and an independent registered professional engineer that all post-closure care requirements have been completed for a hazardous waste disposal unit in accordance with the post-closure plan, the agency will, at the request of the owner or operator, notify ~~him~~ the owner or operator in writing that ~~he~~ the owner or operator is no longer required by this part to maintain financial assurance for post-closure care of ~~the particular facility that unit,~~ unless the agency has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The agency shall provide the owner or operator with a detailed written statement of any reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

7045.0518 LIABILITY REQUIREMENTS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this part until certifications of closure of the facility, as specified in part 7045.0488, are received by the director. Within 60 days after receiving the certifications from the owner or operator and an independent registered professional engineer, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the director has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 6. [Unchanged.]

7045.0524 WORDING OF INSTRUMENTS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Letter from chief financial officer for corrective action, closure, and/or post-closure care.** A letter from the chief financial officer as specified in part 7045.0504, subpart 7; 7045.0508, subpart 7; 7045.0514, subpart 7; 7045.0612, subpart 6; or 7045.0616, subpart 6 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER FOR CORRECTIVE ACTION, CLOSURE, AND/OR POST-CLOSURE CARE

[Agency Director]

Minnesota Pollution Control Agency

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

[Fill out the following ~~four~~ five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for corrective action, closure, or post-closure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for corrective action, closure, or

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PROPOSED RULES

post-closure care is demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624. The current corrective action, closure, and/or post-closure cost estimates covered by the text are shown for each facility: _____

2. This firm guarantees, through the corporate guarantee specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624, the corrective action, closure, or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility: _____

3. In states other than Minnesota, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the corrective action, closure, or post-closure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial test specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, and/or post-closure cost estimates covered by such a test are shown for each facility: _____

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for corrective action, if required, closure, or if a disposal facility, post-closure care, is not demonstrated either to the United States Environmental Protection Agency or a state through the financial test or any other financial assurance mechanism specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or equivalent or substantially equivalent state mechanisms. The current corrective action, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____

5. This firm is the owner or operator of the following underground injection control (UIC) facilities for which financial assurance for plugging and abandonment is required under Code of Federal Regulations, title 40, part 144. The current closure cost estimates as required by Code of Federal Regulations, title 40, section 144.62 are shown for each facility.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; 7045.0612, subpart 6, item B; 7045.0616, subpart 6, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C; 7045.0514, subpart 7, item C; or 7045.0612, subpart 6, item C; or 7045.0616, subpart 6, item C are used.]

ALTERNATIVE I

- | | | |
|-----|---|-------------|
| 1. | Sum of current corrective action, closure, and post-closure cost estimate [total of all cost estimates shown in the four five paragraphs above] | \$ _____ |
| *2. | Total liabilities [if any portion of the corrective action, closure, or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]. | \$ _____ |
| *3. | Tangible net worth | \$ _____ |
| *4. | Net worth | \$ _____ |
| *5. | Current assets | \$ _____ |
| *6. | Current liabilities | \$ _____ |
| 7. | Net working capital [line 5 minus line 6] | \$ _____ |
| *8. | The sum of net income plus depreciation, depletion, and amortization | \$ _____ |
| *9. | Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.) | \$ _____ |
| | | YES NO |
| 10. | Is line 3 at least \$10,000,000? | _____ |
| 11. | Is line 3 at least 6 times line 1? | _____ |
| 12. | Is line 7 at least 6 times line 1? | _____ |

PROPOSED RULES

- *13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14 _____
- 14. Is line 9 at least 6 times line 1? _____
- 15. Is line 2 divided by line 4 less than 2.0? _____
- 16. Is line 8 divided by line 2 greater than 0.1? _____
- 17. Is line 5 divided by line 6 greater than 1.5? _____

ALTERNATIVE II

- 1. Sum of current corrective action, closure, and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above] \$ _____
 - 2. Current bond rating of most recent issuance of this firm and name of rating service _____
 - 3. Date of issuance of bond _____
 - 4. Date of maturity of bond _____
 - *5. Tangible net worth [if any portion of the corrective action, closure, and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ _____
 - *6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in U.S.) \$ _____
- | | | |
|--|-------|-------|
| | YES | NO |
| 7. Is line 5 at least \$10,000,000? | _____ | _____ |
| 8. Is line 5 at least 6 times line 1? | _____ | _____ |
| *9. Are at least 90 percent of firm's assets located in U.S.? If not, complete line 10 | _____ | _____ |
| 10. Is line 6 at least 6 times line 1? | _____ | _____ |

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7045.0524, subpart 6, as such rules were constituted on the date shown immediately below.

[SIGNATURE]

[NAME]

[TITLE]

[DATE]

Subp. 7. **Letter from chief financial officer for liability coverage.** A letter from the chief financial officer as specified in part 7045.0518, subpart 6 or 7045.0620, subpart 5 must be worded as specified in this subpart, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER FOR LIABILITY COVERAGE OR LIABILITY COVERAGE, CORRECTIVE ACTION, CLOSURE, AND/OR POST-CLOSURE CARE

[Agency Director]

Minnesota Pollution Control Agency

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and corrective action, closure, and/or post-closure care" if applicable] as specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624.

[Fill out the following paragraph regarding facilities and liability coverage. For each facility, include its identification number, name, and address.]

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PROPOSED RULES

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624:

[If you are using the financial test to demonstrate coverage of both liability and corrective action, closure, and post-closure care, fill in the following ~~four~~ five paragraphs regarding facilities and associated corrective action, closure, and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current corrective action, closure, and/or post-closure cost estimates. Identify each cost estimate as to whether it is for corrective action, closure, or post-closure care.]

1. The owner or operator identified above owns or operates the following facilities for which financial assurance for corrective action, closure, or post-closure care is demonstrated through the financial test specified in Minnesota Rules, parts 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624. The current corrective action, closure, and/or post-closure cost estimates covered by the test are shown for each facility: _____

2. The owner or operator identified above guarantees, through the corporate guarantee specified in Minnesota Rules, part 7045.0498 to 7045.0524 and 7045.0608 to 7045.0624, the corrective action, closure, and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the corrective action, closure, or post-closure care so guaranteed are shown for each facility: _____

3. In states other than Minnesota, this owner or operator is demonstrating financial assurance for the corrective action, closure, or post-closure care of the following facilities either to the United States Environmental Protection Agency through the use of the financial test specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or to an authorized state through the use of a test equivalent or substantially equivalent to the specified financial test. The current corrective action, closure, and/or post-closure cost estimates covered by such a test are shown for each facility: _____

4. The owner or operator identified above owns or operates the following hazardous waste management facilities for which financial assurance for corrective action, if required, closure, or, if a disposal facility, post-closure care, is not demonstrated either to the United States Environmental Protection Agency, or a state through the financial test or any other financial assurance mechanism specified in Code of Federal Regulations, title 40, parts 264 or 265, subpart H, or equivalent or substantially equivalent state mechanisms. The current corrective action, closure, and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____

5. The owner or operator identified above owns or operates the following underground injection control (UIC) facilities for which financial assurance for plugging and abandonment is required under Code of Federal Regulations, title 40, part 144. The current closure cost estimates as required by Code of Federal Regulations, title 40, section 144.62 are shown for each facility: _____

This owner or operator [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences.

[Fill in Alternative I if the criteria of Minnesota Rules, part 7045.0518, subpart 6, item B or 7045.0620, subpart 5, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, part 7045.0518, subpart 6, item C or 7045.0620, subpart 5, item C are used.]

ALTERNATIVE I

- | | | |
|-----|---|------------------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ |
| *2. | Current assets | \$ _____ |
| *3. | Current liabilities | \$ _____ |
| 4. | Net working capital (line 2 minus line 3) | \$ _____ |
| *5. | Tangible net worth | \$ _____ |
| *6. | If less than 90 percent of assets are located in the U.S., give total U.S. assets | \$ _____ |
| | | YES NO |
| 7. | Is line 5 at least \$10,000,000? | _____ _____ |

- 8. Is line 4 at least 6 times line 1? _____
- 9. Is line 5 at least 6 times line 1? _____
- *10. Are at least 90 percent of assets located in the U.S.? If not, complete line 11 _____
- 11. Is line 6 at least 6 times line 1? _____

ALTERNATIVE II

- 1. Amount of annual aggregate liability coverage to be demonstrated \$ _____
 - 2. Current bond rating of most recent issuance and name of rating service _____
 - 3. Date of issuance of bond _____
 - 4. Date of maturity of bond _____
 - *5. Tangible net worth _____
 - *6. Total assets in U.S. (required only if less than 90 percent of assets located in the U.S.) _____
- | | YES | NO |
|---|-------|-------|
| 7. Is line 5 at least \$10,000,000? | _____ | _____ |
| 8. Is line 5 at least 6 times line 1? | _____ | _____ |
| *9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10 | _____ | _____ |
| 10. Is line 6 at least 6 times line 1? | _____ | _____ |

Part B. Corrective Action, Closure, or Post-Closure Care and Liability Coverage.

[Fill in Alternative I if the criteria of Minnesota Rules, parts 7045.0504, subpart 7, item B; 7045.0508, subpart 7, item B; 7045.0514, subpart 7, item B; and 7045.0518, subpart 6, item B are used or if the criteria of Minnesota Rules, parts 7045.0612, subpart 6, item B or 7045.0616, subpart 6, item B; and 7045.0620, subpart 5, item B are used. Fill in Alternative II if the criteria of Minnesota Rules, parts 7045.0504, subpart 7, item C; 7045.0508, subpart 7, item C; 7045.0514, subpart 7, item C; and 7045.0518, subpart 6, item C are used or if the criteria of Minnesota Rules, parts 7045.0612, subpart 6, item C; 7045.0616, subpart 6, item C; and 7045.0620, subpart 5, item C are used.]

ALTERNATIVE I

- 1. Sum of current corrective action, closure, and post-closure cost estimates (total of all cost estimates listed above) \$ _____
- 2. Amount of annual aggregate liability coverage to be demonstrated \$ _____
- 3. Sum of lines 1 and 2 \$ _____
- *4. Total liabilities (if any portion of your current corrective action, closure, or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) \$ _____
- *5. Tangible net worth \$ _____
- *6. Net worth \$ _____
- *7. Current assets \$ _____
- *8. Current liabilities \$ _____
- 9. Net working capital (line 7 minus line 8) \$ _____
- *10. The sum of net income plus depreciation, depletion, and amortization \$ _____
- *11. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.) \$ _____

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- | | YES | NO |
|--|-------|-------|
| 12. Is line 5 at least \$10,000,000? | _____ | _____ |
| 13. Is line 5 at least 6 times line 3? | _____ | _____ |
| 14. Is line 9 at least 6 times line 3? | _____ | _____ |
| *15. Are at least 90 percent of assets located in the U.S.? If not, complete line 16 | _____ | _____ |
| 16. Is line 11 at least 6 times line 3? | _____ | _____ |
| 17. Is line 4 divided by line 6 less than 2.0? | _____ | _____ |
| 18. Is line 10 divided by line 4 greater than 0.1? | _____ | _____ |
| 19. Is line 7 divided by line 8 greater than 1.5? | _____ | _____ |

ALTERNATIVE II

- | | |
|---|-------------------------|
| 1. Sum of current corrective action, closure, and post-closure cost estimates (total of all cost estimates listed above) | \$ _____ |
| 2. Amount of annual aggregate liability coverage to be demonstrated | \$ _____ |
| 3. Sum of lines 1 and 2 | \$ _____ |
| 4. Current bond rating of most recent issuance and name of rating service | _____ |
| 5. Date of issuance of bond | _____ |
| 6. Date of maturity of bond | _____ |
| *7. Tangible net worth (if any portion of the current corrective action, closure, or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) | \$ _____ |
| *8. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) | \$ _____ |
| | YES NO |
| 9. Is line 7 at least \$10,000,000? | _____ _____ |
| 10. Is line 7 at least 6 times line 3? | _____ _____ |
| *11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12 | _____ _____ |
| 12. Is line 8 at least 6 times line 3? | _____ _____ |

I hereby certify that the wording of this letter is identical to the wording specified in Minnesota Rules, part 7045.0524, subpart 7, as the rules were constituted on the date shown immediately below.

[SIGNATURE]

[NAME]

[TITLE]

[DATE]

Subp. 8. to 10. [Unchanged.]

7045.0594 CLOSURE.

Subpart 1. [Unchanged.]

7045.0594 CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure performance standard.** The owner or operator shall close the facility in a manner minimizing the need for further maintenance. Closure procedures must result in controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated ~~rainfall~~ run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, in accordance with all closure requirements including the requirements of parts 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0634, subpart 5; and 7045.0642, subpart 5.

Subp. 3. **Submittal of closure plan.** The closure plans must be submitted as follows:

A. A copy of the written closure plan and all revisions to the plan must be kept at the facility furnished to the director upon request, including request by mail until final closure is completed and certified. For facilities without approved closure plans, the plan must also be provided to the director as requested, during site inspections on the day of the inspection. The plan must identify steps necessary to completely or partially close perform partial and/or final closure of the facility at any point during its intended operating active life and to completely close the facility at the end of its intended operating life. The closure plan must include:

(1) A description of how and when the facility each hazardous waste management unit will be partially closed, if applicable, and how the facility will be finally closed, in accordance with subpart 2. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of subpart 2, part 7045.0596, and the applicable closure requirements of parts 7045.0626, subpart 8; 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; 7045.0642, subpart 5; and 7045.0655, subpart 6, will be met;

(2) An estimate of the maximum inventory of wastes in storage and in treatment at any time during the active life of the facility and a detailed description of the methods to be used during partial and final closure, including methods for removing, transporting, treating, storing, or disposing of all hazardous waste, and identification of off-site hazardous waste management units to be used, if applicable;

(3) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, facility equipment, structures and soils during partial or final closure. The description must include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and

(4) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including ground water monitoring, leachate collection, and run-on and run-off control;

(5) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under parts 7045.0612, subpart 2, and 7045.0616, subpart 2, and whose remaining operating life is less than 20 years, and for facilities without approved closure plans; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include the total time required to close the facility each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial or final closure.

B. The owner or operator may amend the closure plan at any time during the active life before notification of partial or final closure of the facility. The active life of the facility is that period during which wastes are periodically received. An owner or operator with an approved closure plan must submit a written request to the director to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the director. The owner or operator shall amend the plan whenever:

(1) changes in operating plans or facility design affect the closure plan and whenever; or

(2) there is a change in the expected year of closure- The plan must be amended within 60 days of the changes, if applicable; or

(3) unexpected events occur during partial or final closure activities which require a modification to the closure plan;

or

(4) the director requests modifications to the plan under the conditions described in subitems (1) to (3). An owner or operator with an approved closure plan must submit the modified plan to the director within 60 days after the director's request, or within 30 days if an unexpected event occurs during partial or final closure. A modification to the plan will be approved in accordance with the procedures in item F unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4.

The owner or operator must amend the plan at least 60 days before the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during

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the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. An owner or operator with an approved closure plan must submit the amended closure plan in accordance with the deadlines specified above. A modification to the plan will be approved in accordance with the procedures in item F unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure in accordance with parts 7045.0630, subpart 6; and 7045.0632, subpart 7, but are required to close as landfills under part 7045.0638, subpart 4.

C. The owner or operator of a hazardous waste facility having interim status shall submit a closure plan to the director at least 180 days before the date he or she expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final facility closure if it involves such a unit, whichever is earlier. The owner or operator shall submit a closure plan to the director at least 45 days before the date he or she expects to begin final closure of a facility with only tanks, container storage, or incinerator units. The owner or operator shall submit the closure plan no later than 15 days after:

- (1) termination of interim status, except when a permit is issued simultaneously with termination of interim status; or
- (2) issuance of a judicial decree or agency order to cease receiving wastes or close.

D. Owners or operators with approved closure plans must notify the director in writing at least:

(1) 60 days before the date he or she expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit; or

(2) 45 days before the date he or she expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

E. The date on which the owner or operator "expects to begin closure" is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes, then the date on which the owner or operator "expects to begin closure" is one year after the date on which the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional hazardous waste" if the owner or operator in fact receives additional hazardous wastes within one year after the last volume was received. If the owner or operator can demonstrate to the director that the unit or facility has the capacity to receive additional hazardous wastes and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the director may approve an extension to this one-year limit.

F. The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments, to request modifications, or to request a public information meeting on the closure plan within 30 days of the date of the notice. In response to a request or at ~~his or her own~~ the director's discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the closure plan. The director shall approve, modify, or disapprove closure plans for facilities having interim status within 90 days of receipt of the plan. If the director does not approve the plan, the director shall provide the owner or operator with a detailed written statement of reasons for the refusal. The owner or operator shall submit a modified or new plan for approval within 30 days. The director shall approve or modify this plan. If the director modifies the plan, this modified plan becomes the approved closure plan. A copy of the modified plan shall be mailed to the owner or operator.

Subp. 4. Removal of wastes and decontamination or dismantling of equipment. Nothing in this part shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

7045.0596 CLOSURE ACTIVITIES.

Subpart 1. Time allowance to begin closure activities. Within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the site unit or facility, or dispose on-site all hazardous waste in accordance with the approved closure plan. The director may approve a longer period if the owner or operator demonstrates at least 30 days before expiration of the 90-day period, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, and:

A. the activities required to comply with the approved closure plan will, of necessity, take longer than 90 days to complete;
or

B. the hazardous waste management unit or facility has the capacity to receive additional hazardous waste, there is a reasonable likelihood that a ~~person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ hazardous waste management unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

If the owner or operator of a facility required to maintain financial assurance for closure, post-closure care, or corrective action fails to make any required payment or to substitute alternative financial assurance when required to do so, the director shall order the owner or operator to begin closure activities.

Subp. 2. **Time extension for closure activities.** The owner or operator shall complete partial or final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous waste at the hazardous waste management unit or facility, or 180 days after approval of the closure plan if that is later. The director may approve a longer closure period if the owner or operator demonstrates at least 30 days before expiration of the 180-day period that he or she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including all applicable interim status requirements, and:

A. the partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B. the hazardous waste management unit or facility has capacity to receive additional hazardous waste, there is a reasonable likelihood that a ~~person other than~~ the owner or operator or another person will recommence operation of the ~~site~~ unit or facility within one year, and closure of the unit or facility would be incompatible with continued operation of the site.

If operation of the site is recommended, the director may defer completion of partial or final closure activities until the new operation is terminated.

Subp. 3. **Disposal or decontamination of equipment, structures, and soils.** ~~When~~ During the partial and final closure is completed periods, all contaminated facility equipment ~~and~~ structures, and soils must ~~have been~~ be properly disposed of or decontaminated ~~by removing all hazardous wastes and residues, unless otherwise specified in part 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; or 7045.0638, subpart 4.~~ By removing any hazardous wastes or hazardous constituents during partial or final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of parts 7045.0205 to 7045.0304.

Subp. 4. **Certification of closure.** ~~When~~ Within 60 days after closure is completed for each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit and within 60 days after final closure is completed, the owner or operator shall submit to the director, by registered mail, certification by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until he or she releases the owner or operator from the financial assurance requirements for closure under part 7045.0612, subpart 9.

7045.0600 POST-CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Submittal of post-closure plan.** The post-closure plan must be submitted as follows:

A. The owner or operator of a disposal facility shall have a written post-closure plan. A copy of the most current plan and all revisions to the plan must be kept at the facility furnished to the director upon request, including request by mail, until the post-closure care period begins. This For facilities without approved post-closure plans, it must also be provided to the director as requested, during site inspections, on the day of inspection. For each hazardous waste management unit subject to post-closure care requirements, the plan must identify the activities which will be carried on after closure of the unit and the frequency of these activities, and it must include:

(1) a description of the planned ground water monitoring activities and frequencies at which they will be performed;

(2) a description of the planned monitoring activities, and frequencies at which they will be performed to comply with parts 7045.0630, 7045.0632, 7045.0634, and 7045.0638 during the post-closure care period;

(3) a description of the planned maintenance activities and frequencies at which they will be performed to ensure the

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integrity of the cap and final cover or other containment structures, where applicable, and the function of the facility monitoring equipment; and

(3) (4) the name, address, and telephone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure period. After final closure has been certified, this person or office must keep an updated post-closure plan during the post-closure period.

B. The owner or operator may amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure period. An owner or operator with an approved post-closure plan must submit a written request to the director to authorize a change in the approved plan. The owner or operator shall amend the plan whenever the following conditions affect the post-closure plan:

(1) changes in operating plans or facility design; or

(2) unexpected events which occur during the active life of the facility, including partial and final closure, or during the post-closure period affect the post-closure plan. He or she shall also amend the plan whenever; or

(3) there is a change in the expected year of closure, if applicable.

A request for modification of the post-closure plan must be made to the director within at least 60 days after before the proposed changes in operating plans or facility design, or no later than 60 days after the events which affect the post-closure plan occur. This request must include the revised post-closure plan and indicate the reasons for modifying the plan. The request must be made in accordance with the procedures of subpart 3 and the director shall take actions in accordance with the procedures required in subpart 3. A modification to the plan will be approved in accordance with item D unless the modification meets the criteria of a minor modification in parts 7001.0190, subparts 2 and 3; and 7001.0730, subpart 4. The director may request modifications to the post-closure plan under the conditions described in subitems (1) to (3). An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days after the director's request. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with part 7045.0630, subpart 6; or 7045.0632, subpart 7, is required to close as a landfill in accordance with part 7045.0638, subpart 4. The owner or operator must submit a post-closure plan within 90 days after the owner or operator or director determines that the unit must be closed as a landfill.

C. The owner or operator of a facility with hazardous waste management units subject to post-closure requirements shall submit the post-closure plan to the director at least 180 days before the date he or she expects to begin closure of the first hazardous waste disposal unit. The date he or she on which the owner or operator "expects to begin closure" must begin immediately after the date on which he or she expects to receive the final volume of wastes is defined as follows:

(1) Where the owner or operator of a hazardous waste management unit anticipates receiving a volume of hazardous wastes the owner or operator knows will be the final volume, then the date on which the owner or operator "expects to begin closure" is 30 days after the date the final volume is anticipated to be received.

(2) Where the owner or operator of a hazardous waste management unit reasonably anticipates that the owner or operator will continue to receive hazardous wastes; then the date on which the owner or operator "expects to begin closure" is one year after the date the last volume of hazardous waste was received by the hazardous waste management unit. An owner or operator shall only be considered to "reasonably anticipate receiving additional volumes of hazardous waste" if the owner or operator in fact receives additional hazardous wastes within one year after the last volume was received.

The owner or operator also shall submit the plan to the director no later than 15 days after:

(4) termination of interim status, except when a permit is issued to the facility simultaneously with termination of interim status; or

(2) issuance of a judicial decree or agency order to cease receiving waste or close.

D. The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments, to request modification, or to request a public information meeting on the post-closure plan or substantive amendments to the post-closure plan within 30 days of the date of the notice. In response to a request or at his or her own discretion, the director shall hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. The director shall approve, modify, or disapprove post-closure plans for facilities having interim status within 90 days of the receipt of the plan. If the director does not approve the plan, he or she shall provide the owner or operator with a detailed written statement of reasons for the refusal, and the owner or operator shall submit a modified or new plan for approval within 30 days after receiving this written statement. The director shall approve or modify this plan in writing within 60 days. If the director modifies the plan, this modified plan becomes the approved post-closure plan. A copy of the modified plan and a detailed statement of reasons for the modifications shall be mailed to the owner or operator. The director shall ensure that the approved post-closure plan is consistent with part 7045.0602.

Subp. 3. **Modification of post-closure period.** The post-closure period may be modified during the post-closure care period as described in items A and B:

A. The owner or operator or any member of the public may petition the director to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility or alter the requirements of the post-closure care period based on cause.

(1) The petition must include evidence demonstrating that the secure nature of the hazardous waste management unit or facility makes the post-closure care requirements unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan, or that the requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment. Areas which must be considered in demonstrating the secure nature of the facility include leachate or ground water monitoring results, characteristics of the waste, application of advanced technology; or alternative disposal, treatment, or reuse techniques that indicate the facility is secure.

(2) [Unchanged.]

B. The director may decide to modify the post-closure plan if necessary to prevent threats to human health and the environment. Extension or reduction of the post-closure care period or alteration of the requirements of the post-closure care period may be proposed based on cause.

The director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments or request a public information meeting within 30 days of the date of the notice. The director shall in response to a request or at his or her own discretion hold a public information meeting whenever a meeting might clarify one or more issues concerning the post-closure plan. After considering the comments, a final determination shall be issued.

The director shall base the final determination upon the criteria outlined in item A, subitem (1). A modification of the post-closure plan may include, when appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the director shall determine whether the requirements should be permanently discontinued or reinstated to prevent threats to human health and the environment.

7045.0602 POST-CLOSURE CARE AND USE OF PROPERTY.

Subpart 1. **Post-closure care requirements.** Post-closure care for each hazardous waste management unit subject to these requirements must continue for 30 years after the date of completing closure of the unit and must consist of at least ground water monitoring and reporting and the maintenance of monitoring and waste containment systems in accordance with parts 7045.0630, 7045.0632, 7045.0634, and 7045.0638, as applicable.

The director may reduce the post-closure care period to less than 30 years for the hazardous waste management unit or facility, if all disposal units have been closed, if it is found that the reduced period is sufficient to protect human health and the environment. This determination must be based on leachate or ground water monitoring results, waste characteristics, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicating the hazardous waste management unit or facility is secure.

~~Prior to~~ Before the time that the post-closure care period is due to expire, the director may extend the post-closure care period applicable to the hazardous waste management unit or facility, if it is found that the extended period is necessary to protect human health and the environment. This determination must be based on leachate or groundwater monitoring results which indicate a potential for migration of wastes at levels which may be harmful to the environment.

All post-closure care activities must be in accordance with the provisions of the approved post-closure plan.

Subp. 2. **Continuation of security requirements.** The director may require, at partial or final closure, continuation of any of the security requirements during part of or all of the post-closure period after the date of completing closure when wastes may remain exposed after completion of closure or when access by the public or domestic livestock may pose a hazard to human health.

Subp. 3. [Unchanged.]

Subp. 4. **Certification of completion of post-closure care.** Within 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the director, by registered mail, certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation

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supporting the independent registered professional engineer's certification must be furnished to the director upon request until the director releases the owner or operator from the financial assurance requirements for post-closure care under part 7045.0616, subpart 9.

7045.0604 NOTICE TO LOCAL LAND AUTHORITY.

Subpart 1. Submission of survey plat. Within 90 days after No later than the certification of closure is completed of each hazardous waste disposal unit is submitted to the director, the owner or operator of a disposal facility shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed bench marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or authority with jurisdiction over local land use must contain a prominently displayed note which states the owner's or operator's obligation to restrict disturbance of the site as specified.

Subp. 2. Post-closure notices. Within 60 days after closure is certified for each hazardous waste disposal unit, in addition, the owner or operator shall submit to the local zoning authority or the authority with jurisdiction over local land use and to the director a record of the type, location, and quantity of hazardous waste disposed of within each cell or area of the facility. For hazardous waste disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the waste to the best of his or her knowledge and in accordance with any records he has kept. Any changes in the type, location, or quantity of hazardous waste disposed of within each cell or area of the facility that occur after the survey plat and record of waste have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the director.

7045.0606 NOTICE IN DEED TO PROPERTY.

Subpart 1. Deed notation. Within 60 days after closure of the first hazardous waste disposal unit is certified and within 60 days after closure of the last hazardous waste disposal unit is certified, the owner or operator of the property on which a disposal facility unit is located shall:

A. record, in accordance with state law, a notation on the deed to the facility property, or on another instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

A- (1) the land has been used to manage hazardous waste;

B- (2) the land use is restricted; and

C- (3) the survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cell or area other hazardous waste disposal unit of the facility required in part 7045.0604 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

B. submit a certification signed by the owner or operator that he or she has recorded the notation specified in this subpart, including a copy of the document in which the notation has been placed, to the director.

Subp. 2. Changes to deed. If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes intends to remove the hazardous waste and hazardous waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he or she may remove the owner or operator must request a modification to the approved post-closure plan in accordance with part 7045.0600, subpart 2, item B. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of part 7045.0602, subpart 3. If the owner or operator is granted approval to conduct removal activities, he or she may request that the director approve either:

A. removal of the notation on the deed to the facility property or other instrument normally examined during title search; or he or she may add

B. addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

Upon By removing the hazardous waste and hazardous waste residue; the liner, if any; and the contaminated soil, the owner or operator, unless he or she can demonstrate that any waste removed is not a hazardous waste, becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this chapter.

7045.0608 FINANCIAL REQUIREMENTS.

Subpart 1. [Unchanged.]

Subp. 2. **Definitions.** Definitions are as follows:

A. When used in parts 7045.0608 to 7045.0624, the following terms have the meanings given.

(1) "Closure plan" means the plan for closure prepared in accordance with the requirements of part 7045.0594.

(2) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0610, subparts 1, 2, and 3.

(3) "Current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities" means the most recent of the estimates prepared in accordance with Code of Federal Regulations, title 40, section 144.62(a), (b), and (c).

(4) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with part 7045.0614, subparts 1, 2, and 3.

(4) (5) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(5) (6) "Post-closure plan" means the plan for post-closure care prepared in accordance with ~~the requirements of parts~~ 7045.0600 to 7045.0606.

B. and C. [Unchanged.]

7045.0610 COST ESTIMATE FOR FACILITY CLOSURE.

Subpart 1. **Cost estimate requirements.** The owner or operator shall prepare a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan in part 7045.0594 and applicable closure requirements in parts 7045.0626, subpart 8; 7045.0628, subpart 5; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; 7045.0638, subpart 4; 7045.0640, subpart 5; and 7045.0642, subpart 5. The closure cost estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. The closure cost shall be estimated as follows:

A. The closure cost estimate may be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if it can be demonstrated that on-site disposal capacity will exist at all times through the life of the facility.

B. The closure cost estimate may not incorporate any salvage value that may be realized with the scale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

C. The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

Subp. 2. **Yearly update of cost estimate.** During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within ~~30~~ 60 days ~~after~~ before each anniversary of the date on which the ~~first~~ first closure cost estimate was prepared financial instruments used to comply with part 7045.0612 were established. Owners and operators using the financial test or corporate guarantee shall adjust the closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the director as specified in part 7045.0504, subpart 7, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the Survey of Current Business issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

Adjustments must be made as follows:

A. and B. [Unchanged.]

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the closure cost estimate ~~whenever~~ within 30 days after a change in the closure plan increases the cost of closure, or within 30 days after the director has approved the request to modify the plan, for facilities with approved closure plans. The revised closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall keep ~~supply~~ the following at the facility during the operating life of the facility to the director upon request, including request by mail until closure is completed; the latest closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted closure cost estimate.

7045.0612 FINANCIAL ASSURANCE FOR FACILITY CLOSURE.

Subpart 1. [Unchanged.]

Subp. 2. **Closure trust fund.** Requirements for closure trust funds are as follows:

A. to K. [Unchanged.]

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PROPOSED RULES

L. After beginning partial or final closure, an owner or operator or any other person authorized to perform partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if sufficient funds remain in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the director shall determine whether the partial or final closure expenditures comply with the closure plan or are otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in amounts as the director specifies in writing. If the director has reason to believe that the maximum cost of closure will be significantly greater than the value of the trust fund, the director may withhold reimbursement of the amounts as deemed prudent until it is determined, under subpart 9, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

M. The director shall agree to termination of the trust if:

- (1) an owner or operator substitutes alternate financial assurance as specified in this part; or
- (2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 3. **Surety bond guaranteeing payment into a closure trust fund.** Requirements for surety bonds that guarantee payment into a closure trust fund are as follows:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

- (1) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;
- (2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or
- (3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. **Closure letter of credit.** Requirements for closure letters of credit are as follows:

A. to I. [Unchanged.]

J. The director shall return the letter of credit to the issuing institution for termination if:

- (1) an owner or operator substitutes alternate financial assurance as specified in this part; or
- (2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 5. **Closure insurance.** Requirements for closure insurance are as follows:

A. to D. [Unchanged.]

E. After beginning partial or final closure, an owner or operator, or other person authorized to perform closure, may request reimbursement for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for closure activities, the director shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director shall instruct the insurer to make reimbursement in the amounts the director specifies in writing. If the director has reason to believe that the maximum cost of closure will be significantly greater than the face amount of the policy, the director may withhold reimbursement of the amounts deemed prudent until it is determined in accordance with subpart 9 that the owner or operator is no longer required to maintain financial assurance for closure of the facility. If the director withholds reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to I. [Unchanged.]

J. The director shall give written consent to the owner or operator to terminate the insurance policy if:

- (1) an owner or operator substitutes alternate financial assurance as specified in this part; or
- (2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 9.

Subp. 6. **Financial test and corporate guarantee for closure.** The financial test and corporate guarantee for closure is as follows:

A. [Unchanged.]

B. The owner or operator shall have:

- (1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least \$10,000,000; and

(4) assets in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) tangible net worth of at least \$10,000,000; and

(4) assets located in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer, as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimate" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to J. [Unchanged.]

K. The owner or operator is no longer required to submit the items specified in item E if:

(1) an owner or operator substitutes alternate financial assurance as specified in this part; or

(2) the agency director releases the owner or operator from the requirements of this part in accordance with subpart 9.

L. [Unchanged.]

Subp. 7. and 8. [Unchanged.]

Subp. 9. **Release of the owner or operator from the requirements of this part.** Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the closure plan, the agency director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain financial assurance for final closure of the particular facility, unless the agency has reason to believe that closure has not been in accordance with the closure plan. The director shall provide the owner or operator a detailed written statement of any reason to believe that closure has not been in accordance with the approved closure plan.

7045.0614 COST ESTIMATE FOR POST-CLOSURE CARE.

Subpart 1. **Cost estimate requirements.** The owner or operator of a disposal facility shall prepare a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in parts 7045.0600 to 7045.0606; 7045.0630, subpart 6; 7045.0632, subpart 7; 7045.0634, subpart 6; and 7045.0638, subpart 4. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under part 7045.0602. The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is neither a parent nor a subsidiary of the owner or operator.

Subp. 2. **Yearly update of cost estimate.** During the operating active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within 30 60 days after before each anniversary of the date on which the first post-closure cost estimate was prepared financial instruments used to comply with part 7045.0616 were established. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be adjusted for inflation within 30 days after

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PROPOSED RULES

the close of the firm's fiscal year and before the submission of updated information to the director as specified in part 7045.0616, subpart 6, item E. The adjustment must be made as specified in items A and B using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as found in the "Survey of Current Business" issued by the United States Department of Commerce. The inflation factor is the result of dividing the latest published annual deflator by the deflator of the previous year. Adjustments must be made as follows:

A. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

B. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

Subp. 3. **Cost estimate revisions.** The owner or operator shall revise the post-closure cost estimate during the operating active life of the facility whenever within 30 days after a change in the post-closure plan increases the cost of post-closure care, or within 30 days after the director has an approved request to modify the plan, for facilities with approved post-closure plan. The revised post-closure cost estimate must be adjusted for inflation as specified in subpart 2.

Subp. 4. **Record retention.** The owner or operator shall ~~keep~~ furnish the following at the facility during the operating life of the facility to the director upon request, including request by mail: the latest post-closure cost estimate prepared in accordance with subparts 1 and 3 and, when this estimate has been adjusted in accordance with subpart 2, the latest adjusted post-closure cost estimate.

7045.0616 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

Subpart 1. **In general.** An owner or operator of a disposal facility shall establish financial assurance for post-closure care of the facility by choosing 60 days before the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall choose from the options specified in subparts 2 to 6.

Subp. 2. **Post-closure trust fund.** Requirements of a post-closure trust fund are as follows:

A. to L. [Unchanged.]

M. An owner or operator or other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, the director shall instruct the trustee to make reimbursement in the amounts the director specifies in writing. If the director does not instruct the trustee to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

N. [Unchanged.]

Subp. 3. **Surety bond guaranteeing payment into a post-closure trust fund.** The following are requirements for surety bonds that guarantee payment into a post-closure trust fund:

A. to C. [Unchanged.]

D. The bond must guarantee that the owner or operator will:

(1) [Unchanged.]

(2) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the director, the agency, or a court of competent jurisdiction; or

(3) [Unchanged.]

E. to I. [Unchanged.]

Subp. 4. [Unchanged.]

Subp. 5. **Post-closure insurance.** The following requirements apply to post-closure insurance:

A. to D. [Unchanged.]

E. An owner or operator or other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the director. Within 60 days after receiving bills for post-closure activities, the director shall determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, he or she shall instruct the insurer to make reimbursement in the amounts the director specifies in writing. If the director does not instruct the insurer to make reimbursement, the director shall provide the owner or operator with a detailed written statement of reasons.

F. to K. [Unchanged.]

Subp. 6. **Financial test and corporate guarantee for post-closure care.** The following is the financial test and corporate guarantee for post-closure care:

A. [Unchanged.]

B. The owner or operator shall have:

(1) [Unchanged.]

(2) net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

C. The owner or operator shall have:

(1) a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable;

(3) [Unchanged.]

(4) assets located in the United States amounting to at least 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimate for class I underground injection control (UIC) facilities, if applicable.

D. The phrase "current closure and post-closure cost estimates" as used in items A to C, refers to the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer, as specified in part 7045.0524, subpart 6. The phrase "current plugging and abandonment cost estimates" as used in items A to C means the cost estimates required to be shown in paragraphs 1 to 4 of the letter from the owner's or operator's chief financial officer as specified in Code of Federal Regulations, title 40, section 144.70(f).

E. to M. [Unchanged.]

Subp. 7. and 8. [Unchanged.]

Subp. 9. **Release of the owner or operator from the requirements of this part.** ~~When an~~ Within 60 days after receiving certification from the owner or operator has completed, to the satisfaction of the agency, all and an independent registered professional engineer that the post-closure care requirements have been completed for a hazardous waste disposal unit in accordance with the post-closure plan, the agency shall, at the request of the owner or operator, notify him or her in writing that he or she is no longer required by this part to maintain financial assurance for post-closure care of the particular facility that unit, unless the agency has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The agency shall provide the owner or operator with a detailed written statement of any reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

7045.0620 LIABILITY REQUIREMENTS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this part, until certifications of closure of the facility, as specified in part 7045.0596, are received by the director. Within 60 days after receiving such certifications from the owner or operator and an independent registered professional engineer, the director shall notify the owner or operator in writing that he or she is no longer required by this part to maintain liability coverage for that facility, unless the director has reason to believe that closure has not been in accordance with the approved closure plan.

Subp. 5. [Unchanged.]

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PROPOSED RULES

Department of Public Service, Energy Division

Proposed Permanent Rules Relating to Testing Requirements

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Public Service proposes to adopt amendments to Minnesota Rules, Chapter 4155.0130, subpart 2.A.(1), without a public hearing. The Director has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in the Minn. Stat., sections 14.22 to 14.28. Authority for the adoption of these rules is contained in Minn. Stat., sections 325F.20, subd. 1 and 325F.21, subd. 1 and 2.

Minnesota Rules, Chapter 4155 apply to manufacturers of all residential thermal insulation products sold or installed in Minnesota.

All persons have 30 days in which to submit comment in support of or in opposition to any part of the proposed amendments. Comment is encouraged. Each comment should identify the proposed amendment addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed amendments within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing must state his or her name and address and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minn. Stat., sections 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to: Bruce D. Nelson, Department of Public Service, Energy Division, 900 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, (612) 297-2313.

Comments or requests for a public hearing must be received by the Department of Public Service, Energy Division by 4:00 p.m., April 9, 1987. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed amendments as noticed.

A Copy of the proposed rule amendment is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available by requesting a copy from Mr. Nelson at the address listed above.

The implementation of these amendments will not require the expenditure of public money in excess of \$100,000 by local bodies in either of the two years following their adoption, nor do the rules have any impact on agricultural land.

The adoption of these amendments will affect small businesses in Minnesota. The Department has evaluated the effect of the proposed rules on small businesses and has considered each of the methods prescribed by Minn. Stat. Section 14.155, subd. 2, for reducing the impact of the rules on small businesses. Small businesses would benefit from the proposed rule, since the required frequency of testing is reduced, resulting in less stringent compliance, schedules and deadlines in conformance with Minn. Stat. Section 14.155, subd. 2(a) and (b). The proposed rule would have no effect on reporting requirements addressed by Minn. Stat. Section 14.155, subd. 2(a), (b) or (c). The requirements of Chapter 4155 are already performance standards for all insulation types in conformance with Minn. Stat. Section 14.155, subd. 2(d). The Department has determined that small businesses cannot be exempted from any or all requirements of the rules in conformance with Minn. Stat. Section 14.155, subd. 2(e).

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent that form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules must submit a written request for such to Mr. Nelson at the above address.

Dated: 20 February 1987

Tony Perpich, Director
Department of Public Service

Rules as Proposed

4155.0130 INSULATION MATERIALS STANDARDS.

Subpart 1. [Unchanged.]

Subp. 2. **General testing and reporting requirements.** General testing and reporting requirements for regulated thermal insulation materials in this part are as follows:

A. All regulated thermal insulation materials shall be tested for compliance with the standards set forth in this part within 120 days of the effective date of this chapter. Testing procedures are as follows:

(1) Testing ~~shall, at a minimum, must~~ be performed ~~annually and the testing shall be completed prior to June 1 of at least every other year. Annual tests shall be performed at least ten months apart~~ The testing must be completed by June 1 of every even-numbered year.

(2) to (6) [Unchanged.]

B. to D. [Unchanged.]

Subp. 3. **Cellulose fiber in loose-fill form.** The following requirements apply to cellulose fiber in loose-fill form:

A. [Unchanged.]

B. All manufacturers shall contract with an independent NVLAP approved laboratory for the following two purposes:

(1) The laboratory shall pick up three unopened bags of manufacturer's cellulose from the marketplace for ~~annual~~ testing under this chapter.

(2) [Unchanged.]

C. [Unchanged.]

Subp. 4. to 15. [Unchanged.]

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Ethical Practices Board

Adopted Permanent Rules Relating to Ethics in Government

The rules proposed and published at *State Register*, Volume 11, Number 23, pages 1027-1031, December 8, 1986 (11 S.R. 1027) are adopted with the following modifications:

Rules as Adopted

4525.0200 COMPLAINTS OF VIOLATIONS.

Subp. 5. **Confidentiality.** Any portion of a meeting during which the board is hearing testimony or taking action concerning any complaint, investigation, preparation of a conciliation agreement, or a conciliation meeting must be closed to the public. The minutes and tape recordings of ~~the~~ a meeting closed to the public must be kept confidential.

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ADOPTED RULES

Department of Human Services

Adopted Permanent Rules Relating to Day Service Provider Billing

The rule proposed and published at *State Register*, Volume 11, Number 7, pages 300-301, August 18, 1986 (11 S.R. 300) and Volume 11, Number 16, pages 709-710, October 20, 1986 (11 S.R. 709) is adopted as proposed.

EMERGENCY RULES

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

- 1) that a free copy of the proposed emergency rule is available upon request from the agency;
- 2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
- 3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
- 4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

State Board of Vocational Technical Education

Continuation of Emergency Rules of the State of Minnesota Governing Uncharted License Criteria, Preparation For Small Business Ownership, Textile, and Apparel Occupations, Minn. Rules pt. 3515.5060, and 3515.5061.

Notice is hereby given that the Minnesota State Board of Vocational Technical Education is continuing in effect the above entitled rules pursuant to its general rule making authority, Minnesota Statutes 136C.04, subdivision 9.

The text of the rules was published in the *State Register* on May 19, 1986. The rules had the force and effect of law on September 8, 1986 five working days after approval of the Administrative Division of the Office of the Attorney General.

Pursuant to Minnesota Statutes, section 14.35 emergency rules are in effect for no longer than 180 days and may be continued in effect for an additional period of up to 180 days. The emergency rules are in effect until March 12, 1987 and will be continued in effect 180 days until October 9, 1987.

Helen Henrie, Deputy Director
State Board of Vocational Technical Education

ANNOUNCEMENTS

DEPARTMENT OF ADMINISTRATION: DOCUMENTS A series of videotapes produced in Minnesota and designed to help chemically dependent-hearing impaired persons, their families and treatment counselors is now available for use in treatment programs and educational centers. The five-tape set, "Hope and Help," was produced by the Hennepin County Community Services Department in Minneapolis, with a grant from the Minnesota Department of Human Services. The tapes are the first of their kind in the country that help gain awareness for problems faced by the chemically dependent-hearing impaired. All five tapes are shown in American Sign Language as well as caption and voice and come on 1/2 inch VHS tapes. The five-tape set sells for \$395, plus \$1.50 for postage and handling. Tapes can be ordered by sending a check payable to the State of Minnesota to: Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155. Phone orders can be taken with MasterCard/VISA by calling (612) 297-3000. For more information about the tapes, call (612) 348-8085.

ARTS BOARD The Minnesota State Arts Board will meet on Thursday, March 19 at 9:30 a.m. at the arts board offices, 432 Summit Avenue in St. Paul. Anyone having a disability that requires special access to the building should contact Gail Swaim at (612) 297-2603. The Artists in Education School Support program deadline is April 20. The program provides funds for artist residencies in Minnesota public and private elementary and secondary schools and educational organizations. Grant awards, to be made in July 1987, pay for up to one half of residency costs. Previous grants have ranged from a few hundred dollars for a five day residency, to over \$14,000 for a year-long residency involving several artists throughout a school district. Contact Elizabeth Childs at the arts board for more information, 432 Summit Avenue, St. Paul, MN 55102, (612) 297-2603 or toll-free in Minnesota 1-800-652-9747 and ask for "Arts Board."

DEPARTMENT OF HEALTH Five new members have been appointed to the 10-member State Alcohol and Other Drug Abuse Advisory Council. The new appointees who will serve four-year terms on the council, include Kenneth Engstrom, Virginia; M. Anita Gay, Plymouth; Michael Gerrety, Redwood Falls; Ruth Harris, St. Paul; and Dionicio Puente, St. Paul.

DEPARTMENT OF JOBS & TRAINING Minnesota's seasonally adjusted unemployment rate increased to 5.2% in January, up from 4.9% in December. The state's January unemployment rate was below the comparable national rate of 6.7% and under the Minnesota figure of 5.9% in January 1986. Seasonally adjusted total employment showed gains in numbers of workers of 7,600, up 0.4%, and 40,600, up 1.9%, from a month and a year ago respectively.

MINNESOTA EDUCATIONAL COMPUTING CORPORATION A new membership option, the **1000 Plan**, offers hundreds of smaller school districts and schools fifteen products of their choice from the new MECC membership Product Collection, as well as one MECC Copy System, catalog discounts, and direct MECC service. The fee for the **1000 Plan** is based upon enrollment increments of 1000, with an annual base fee of \$900 for the first 1000 students, and \$350 for every additional 1000 students or less. Call 1-800-228-3504 for more information. MECC also announces seven additional packages to the MECC Reading Collection and two new math courseware packages.

DEPARTMENT OF NATURAL RESOURCES (DNR) Hearing impaired people can now call (612) 296-5484 on a new Telecommunications Device for the Deaf (TDD) for DNR information. Approximately 8,000-9,000 Minnesotans with hearing impairments are expected to use these devices. Calls are accepted between 8 a.m.-4 p.m. and will be handled as quickly as possible.

Six public meetings are being held around the state to seek opinions on DNR hunting regulations and the state's wildlife management programs. The following meetings are yet to be held: Bemidji Hagg-Sauer Auditorium, BSU campus (12 March 7 p.m.); Cloquet Garfield Community Center, 302 14th St. (19 March 7 p.m.); New Ulm Regional Wildlife Office, Hwy. 15 So. (10 March 7 p.m.); and Orono High School (2 April 7 p.m.).

SENTENCING GUIDELINES COMMISSION A public hearing will be held on Thursday 2 April at 5:30 p.m. in Hearing Room 10, Ground Floor, State Office Bldg., 435 Park Street, St. Paul to consider proposed modifications to the sentencing guidelines regarding effective date of modifications to the guidelines. Copies of proposed modifications are available free of charge by contacting the commission at 51 State Office Bldg., St. Paul, MN 55155 (612) 296-0144.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

OFFICIAL NOTICES

Pursuant to the provisions of Minnesota Statutes 2 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Energy and Economic Development Business Financial Management Division

Notice of Availability of Tax Exempt Financing Issuance Authority

Pursuant to Minn. Laws 1986, Ch. 465, Article 1, Section 22

The Department gives notice that the amounts of tax exempt financing issuance authority available to qualified issuers as of March 2, 1987 is as follows:

Competitive Pool (Federal Volume Limitation Act)

Pursuant to Minn. Laws 1986, Ch. 465, Article 1, Section 19

Total Pool Available (Priority to:)

- (a) General Obligation Projects
- (b) Manufacturing Projects \$62,739,380

For:

- Pollution Control/Waste Management Projects \$12,547,876
- Multifamily Housing Projects \$21,958,783

Pursuant to Minn. Laws 1986, Ch. 465, Article 1, Section 19, Subd. 2, and Section 21, Subd. 2, issuers requesting allocations of issuance authority must submit applications, any applicable deposit and any other supporting documents required. Application forms are available from the Department upon request.

Environmental Quality Board

Outside Opinion Sought on Rules Governing Environmental Review

Notice is hereby given that the Environmental Quality Board (Board) is seeking information or opinions from sources outside the agency in preparing to propose the adoption, amendment, or repeal of the rules governing environmental review. The Environmental Quality Board is considering amending sections of the existing environmental review rules, in accordance with its responsibility to monitor the rules and to take appropriate measures to improve their effectiveness under Minnesota Rules pt. 4410.0400 subp. 1. The adoption of the rules is authorized by Minnesota Statutes, sections 116D.04 and 116D.045. The existing rules are published at Minnesota Rules pts. 4410.0200-4410.7800.

The Environmental Quality Board requests information and comments concerning the subject matter of the rules. Opinions and information are particularly welcome concerning the following topics: (1) mandatory thresholds for Environmental Assessment Worksheets (EAWs) and Environmental Impact Statements (EISs); and (2) the process for preparing, reviewing, and responding to comments on Environmental Assessment Worksheets. Interested or affected persons or groups may submit data or views on the subject matter of concern orally or in writing. Written statements should be addressed to:

Greg Downing
Environmental Review Program
Minnesota Environmental Quality Board
110 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-8253 and in person at the above address.

All statements of information and comment will be accepted through May 29, 1987. Any written material received by the Environmental Quality Board will become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that amendments are adopted.

The Board maintains a list of all persons who have registered with the agency for the purpose of receiving notice of rule hearings. Anyone interested in being placed on this list should contact Mr. Downing at the above address.

Dated: 24 February 1987

John C. Ditmore, Chair

Department of Human Services

Notice of Hospital Cost Index

Pursuant to Minnesota Rules, Part 9500.1120 hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subjected to a Health Cost Index (HCI) that is used in the determination of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 4.4 percent according to an independent source, Data Resources, Inc., for Health Care Costs for hospitals whose fiscal years begin during the calendar quarter beginning April 1, 1987.

Sandra S. Gardebring, Commissioner
Department of Human Services

Department of Human Services

Notice of Proposed Rule Change to Meet Federal Notice Requirements

Notice is hereby given to all providers and recipients of Minnesota Medical Assistance (MA) and General Assistance Medical Care (GAMC), and to the public, of proposed changes in Minnesota Rules parts 9505.0500 to 9505.0540, which establish a system for reviewing the utilization of inpatient hospital care for hospitals which participate in the MA or GAMC programs. This notice is being published pursuant to federal regulations which govern the administration of the Medical Assistance program, 42 CFR 447.205 (1985). Statutory authority for the changes is found in Minnesota Statutes, Sections 256B.503 and 256D.03, subdivision 7 (b).

The proposed Minnesota Rules, parts 9505.0500 to 9505.0540 were published in the *State Register* on December 8, 1986 (11 S.R. 1031) as part of meeting Minnesota Statutes, chapter 14 rulemaking requirements. This notice is published only for purposes of meeting the above federal requirements.

The proposed changes will have the following effects: clarification of the definition of "readmission" in part 9505.0500, subpart 24; provision for a request for retroactive admission certification in part 9505.0520, subpart 14; establishment of criteria for determination of the medical necessity of inpatient chemical dependency treatment and inpatient psychiatric treatment; and clarification of parties who may appeal. In addition, several technical amendments are proposed that do not change the substance of the rule.

The amendments are proposed in order to focus denials of request for Admission Certification on medical necessity, rather than on the timely submittal of the Admission Certification Request.

A free copy of this proposed rule is available upon request from:

Eleanor Weber
Division of Appeals and Regulations
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55101

A copy of the proposed rule may also be viewed at any of the county welfare or human services agencies in the State of Minnesota.

Total increased expenditures, assuming the 1985 rate of admissions, under the proposed amendments will be as follows:

| | |
|------------------------|-----------|
| Federal Share | \$137,815 |
| State Share | 128,324 |
| County Share | 13,389 |
| Aggregate Expenditures | \$297,528 |

Written comments and questions about the proposed amendments may be sent to and viewed at:

Division of Appeals and Regulations
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55101

Metropolitan Council of the Twin Cities Area

Public Hearings for Plan for Expanding Access to Health Care for the Low Income Population

The Metropolitan Council and its Health Planning Board will hold two public hearings on a draft plan for expanding access to health care for the low income population. The hearings are scheduled as follows: Monday, April 6, 1987, 1:30 p.m., at the Indian Health Board Social Center, Room #3, 1315 East 24th Street, Minneapolis and Wednesday, April 8, 1987, 5:30 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Streets, St. Paul. All interested persons are encouraged to attend the hearings and offer comments. People may register in advance to speak by calling Edith Watson at 291-6427. Copies of the draft plan will be available for public inspection beginning March 9 at designated libraries throughout the region. For information on the location of these libraries or a free copy of the draft plan, call 291-6464.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is March 31, 1987.

MEDICAL SERVICES REVIEW BOARD has 1 vacancy open for a medical practitioner member. The board advises the department on medical matters relating to workers compensation and hears appeals on decisions of the department. Members are appointed by the Commissioner of Labor and Industry. Members receive \$35 per diem plus expenses. Members must file with the Ethical Practices Board. For specific information contact the Medical Services Review Board, Dept. of Labor and Industry, Office of Public Affairs, 444 Lafayette Rd., St. Paul 55101; (612) 297-4373.

MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION (MMJUA) BOARD OF DIRECTORS has 6 vacancies open for: 1) 3 public members; b) 3 health care provider members. The board of directors shall provide medical malpractice insurance coverage to any licensed health care provider unable to obtain this insurance through ordinary methods. Every personal injury liability insurer in the state shall be a member as condition of obtaining and retaining a license to write insurance in Minnesota. Public members are appointed by the Governor and health care providers are appointed by the Commissioner of Commerce. Members receive \$35 per diem. For specific information contact the Medical Malpractice Joint Underwriting Association (MMJUA) Board of Directors, Dept. of Commerce, 500 Metro Square Bldg., St. Paul 55101; (612) 297-3238.

MINNESOTA WORKERS' COMPENSATION ASSIGNED RISK PLAN REVIEW BOARD has 5 vacancies open for the following: a) 3 insured of the Minnesota Workers' Compensation Risk Plan; b) 2 representatives of insurance companies. The board shall review and make recommendations regarding Assigned Risk Plan operations and reserving practices. Members are appointed by the Commissioner of Commerce. Members receive no compensation. For specific information contact the Minnesota Workers' Compensation Assigned Risk Plan Review Board, 500 Metro Square Bldg., St. Paul 55101; (612) 297-4017.

Department of Transportation

Petition of the City of Albert Lea for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Albert Lea has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on Bridge Avenue (MSAS 107) from Wilson Street to Marshall Street a distance of 0.10 miles.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a street width of 48' with parking on both sides instead of the required width of 72' with parking on both sides.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

STATE CONTRACTS & ADVERTISED BIDS

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 27 February 1987

Leonard W. Levine
Commissioner of Transportation

Department of Transportation

Petition of the County of Pipestone for a Variance from State Aid Standards for Bridge Width

Notice is hereby given that the County Board of Pipestone County had made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a resurfacing project on CSAH 13 from CSAH 2 to T.H. 30 a distance of 6 miles.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9914 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a bridge with a width of 19.5' to remain in place rather than requiring the width of the bridge to be 22'.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 3 March 1987

Leonard W. Levine
Commissioner of Transportation

STATE CONTRACTS AND ADVERTISED BIDS

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Department of Administration: Procurement Division

Contracts and Requisitions Open for Bid

Call 296-6152 for Referral to Specific Buyers, whose initials are next to each commodity.

| Commodity for Bid (and Buyer) | Bid Due. Date at 2 pm | Department or Division | Delivery Point | Requisition # |
|-------------------------------------|--------------------------|---------------------------|-------------------|---------------|
| Scrubber (DM) | Mar. 11 | Community College | Willmar | 27145 07552 |
| Trailer (DM) | Mar. 11 | Correctional Facility | Oak Park Heights | 78630 07139 |
| Photocopy machine purchase (JPK) | Mar. 11 | Jobs & Training | St. Paul | 21200 14578 |
| Micro-computers (PA) | Mar. 11 | Human Services | St. Paul | 55000 96044 |
| Apple equip. (PA) | Mar. 11 | Revenue | St. Paul | 67320 02569 |
| Computer equip. (PA) | Mar. 11 | Revenue | St. Paul | 67580 02568 |
| Upgrade & trade-in (PA) | Mar. 11 | State Planning | St. Paul | 30000 16234 |

STATE CONTRACTS & ADVERTISED BIDS

| Commodity for Bid (and Buyer) | Bid Due Date at 2 pm | Department or Division | Delivery Point | Requisition # |
|--|-------------------------|-----------------------------|-------------------|-------------------------------|
| Meet for April 1987 (JPK) | Mar. 11 | Various | Various | Various Various |
| Air compressor (DM) | Mar. 12 | Vets Home | Hastings | 75250 00720 |
| Well rehabilitation (BV) | Mar. 12 | Military Affairs | Little Falls | 01000 04885 |
| Traffic controller (BV) | Mar. 12 | Transportation | St. Paul | 79050 19167 |
| Traffic controller (BV) | Mar. 12 | Transportation | St. Paul | 79050 19166 |
| Reflectometer (PA) | Mar. 12 | Transportation | St. Paul | 79000 73805 |
| VCR (PA) | Mar. 12 | Correctional Facility | Stillwater | 78620 00123 |
| Photocopy machine purchase (JPK) | Mar. 12 | Correctional Facility | Lino Lakes | 78550 05599 |
| License plate validation sticker material (AW) | Mar. 12 | Correctional Facility | St. Cloud | Price Contract |
| Hot dip galvanizing (DRT) | Mar. 13 | Correctional Facility | Stillwater | 78620 00119 |
| Centrifuge (PAM) | Mar. 13 | State University | St. Cloud | 26073 19484 |
| Paper towels, tissue napkins and disposable wipers (DW) | Mar. 16 | Various | Various | Price Contract |
| Cable locators (PA) | Mar. 16 | Transportation | St. Paul | 79000 73802 |
| Computers (PA) | Mar. 16 | Transportation | St. Paul | 79000 73802 |
| Carpeting & installation (JPK) | Mar. 16 | Administration | St. Paul | 02307 52710 |
| Pagers (EFS) | Mar. 16 | State University | Mankato | B 26071 17204 |
| Toluol (BV) rebid | Mar. 16 | Transportation | Various | Price Contract |
| Mobile telephone (PA) | Mar. 16 | Correctional Facility | Oak Park Heights | 78630 07083 |
| Water trailer (DM) | Mar. 16 | Transportation | Various | 79750 0069 |
| Collator (AW) | Mar. 17 | State University | St. Cloud | 26073 19479 |
| Aerial lift/truck (DM) | Mar. 17 | Transportation | St. Paul | 79382 01183 |
| Flotation devices (DRT) | Mar. 17 | Correctional Facility | Stillwater | 78620 00118 |
| Repair 2 Trane centrifugal chill- ers (EFS) | Mar. 17 | State University | Mankato | 26071 17201 |
| Computer software (MJB) | Mar. 17 | Public Utilities Commission | St. Paul | 82000 00441 |
| Carpeting & installation (JPK) | Mar. 17 | Community College | Bloomington | 99997 10113 |
| Maintenance contract on IBM computer equip.—5th fl., Centennial Bldg. (DO) | Mar. 17 | Various | Various | Price Contract |
| Elevator maintenance (BV) | Mar. 17 | Iron Range Interp. Center | Chisholm | 43000 07750 Price Contract |

Department of Administration: Printing & Mailing Services

Printing Vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

| Commodity for Bid (and Buyer) | Bid Due Date at 2 pm | Department or Division | Delivery Point | Requisition # |
|------------------------------------|-------------------------|---------------------------|-------------------|------------------|
| HYPOTHERMIA—The Cold Facts (AC) | Mar. 11 | Natural Resources | St. Paul | 5282 29000 45748 |

Department of Natural Resources

Request for Proposals for Lake Use Study

The Department of Natural Resources is requesting proposals from highly qualified firms or individuals for a study of lake surface use in Minnesota. The study will include a population of approximately 200 water-access priority lakes in the counties of Kandiyohi, Meeker, Sherburne, Stearns and Wright. A stratified sample of some 50 lakes has been selected. The goals of the survey are to:

1. Measure boater attitudes concerning safety-related issues such as:
 - a. Perception of lake crowding as related to boating safety.
 - b. Occurrence of specific safety problems.
 - c. Participation in boating safety courses.
 - d. Alcohol use by boat operators.
 - e. Awareness of boating use restrictions and perceptions of needed restrictions.
2. Describe boat/boater/boating characteristics such as:
 - a. Boat type, engine size.
 - b. Activity, boating time, fuel consumption.
 - c. Distance traveled by land and money spent on boating activities.
3. Evaluate access characteristics including:
 - a. Overall adequacy for launching and landing as perceived by boaters.
 - b. Problems encountered and improvements needed.
 - c. Identification of specific access features liked.
4. Measure the volume boaters using accesses at different times in the season, times in the week, time of day and from different lake categories.
5. Ascertain the attitudes and use statistics of persons who reside on the lake in proportion to their use contribution.
6. Ascertain the volume boating use of the study area lakes, classified by source of access to the lake.

Interested parties may request a detailed request for proposal by writing to:

William H. Becker
Office of Planning
Department of Natural Resources
Box 10F
500 Lafayette Road
St. Paul, Minnesota 55146
296-3093

Proposals are due in Mr. Becker's office at the Department of Natural Resources at 4 p.m. twenty-one days following the publication of this Request in the *State Register*.

The contract for a similar study in 1986 was approximately \$50,000.

Department of Natural Resources

Request for Proposals for Lowhead Dam/Fast-Water Rescue Classes

The Minnesota Department of Natural Resources is seeking proposals from individuals and firms experienced in water rescue instruction to conduct two 16-hour classes in lowhead dam and fast-water rescue techniques. The first class will be held June 16-17, 1987, at Mille Lacs Kathio State Park. The second class will be conducted June 24-25, 1987, in Faribault, MN. There will be approximately 40 students in each class. The students will be primarily DNR personnel, sheriff's deputies, and other first responders such as EMTs and firefighters.

Qualified respondents must be able to demonstrate experience and expertise in water safety and rescue, and must be certified by a recognized program in lowhead dam and fast-water rescue.

It is anticipated that total cost for this project will not exceed \$4,200.

STATE CONTRACTS & ADVERTISED BIDS

These services, which will be provided under contract, are outlined in the Request for Proposal. The formal Request for Proposal may be requested from and inquiries directed to: Timothy Smalley, Boating Safety Specialist, MN DNR, Boat and Water Safety Section, 500 Lafayette Road, St. Paul, Minnesota 55155-4046, (612) 296-3310.

Teachers Retirement Association

Request for Proposal for Actuarial Consultant Services from July 1, 1987 to June 30, 1989

The Minnesota Teachers Retirement Association requests proposals to provide actuarial consultant services to the Association from July 1, 1987 to June 30, 1989; to review the annual actuarial valuations and quadrennial experience study prepared by the actuary for the Minnesota Legislative Commission on Pensions and Retirement as required in M.S. Section 356.215; to consult with the Director of the Board and staff on any matters of an actuarial nature; to make any necessary special statistical studies for the information of the Board or in regard to proposed legislation; to recommend to the Board appropriate mortality tables and actuarially equivalent forms of optional annuity plans, to review the appropriateness of the assumptions used in the annual actuarial valuations and recommend changes if needed; and to perform any other services of an actuarial nature which the Board may deem desirable. Final Submission Date—April 1, 1987. Estimated amount of contract is \$50,000 for the two year period. Proposals should be submitted to: Minnesota Teachers Retirement Association, 302 Capitol Square Building, St. Paul, MN 55101—Tel. (612) 296-2409. Contact Persons: Elton I. Erdahl or John J. Gardner.

Minnesota Waste Management Board

Request for Proposals to Conduct an Economic Feasibility Study for a Hazardous Waste Stabilization and Containment Facility to be Developed in Minnesota

This Request for Proposals does not obligate the State to enter into any contract or to complete the project. The State reserves the right to cancel the solicitation.

I. INTRODUCTION

A. PROJECT CONTEXT AND PURPOSE

The Minnesota Waste Management Board is an agency of the state of Minnesota responsible for planning and implementing projects to improve the management of solid and hazardous waste in the state. The Waste Management Act of 1980, as amended in 1986, directs the Board to undertake a number of activities leading to the development of a stabilization and containment facility in the state. This process has three major components: The first is a voluntary, cooperative process in which the Board and local units of government (counties) will provide for the identification and selection of a host community for the facility; the second is the selection of a developer for the facility; the third is the completion of a Facility Development Report which describes key features of the facility.

The purpose of this Request for Proposals is to solicit proposals from qualified persons to assist the Board in completing a portion of the Facility Development Report consisting of an economic feasibility analysis of the development and operation of a stabilization and containment facility in Minnesota. Specifically, this analysis should provide the Board with accurate cost information on technologies which may be used at the facility and with an assessment of the prices charged by competing facilities in other states.

B. FACILITY SPECIFICATION

The Waste Management Act describes a hazardous waste stabilization and containment facility as "a waste facility that is designed for stabilization and containment of waste, together with other appurtenant facilities needed to process waste for stabilization, containment or transfer to another facility." The Act defines stabilization as "a chemical or thermal process in which materials or energy are added to waste in order to reduce the possibility of migration of any hazardous constituents of the resulting stabilized waste..." Under the Act, the goal at the facility is to stabilize waste residuals so that they qualify for delisting under the standards enforced by the US EPA and the Minnesota Pollution Control Agency (MPCA). Waste that is still considered to be a regulated hazardous waste after treatment (including stabilization) may be accepted for containment under strict criteria established by the Act to maximize the protection of human health and the environment.

In accordance with the Act, containment of the stabilized waste must be above grade, unless the WMB determines that below grade containment would provide greater protection for human health and the environment. Containment of any residuals is assumed to be in a facility that has been designed and approved for disposal of regulated hazardous wastes and the facility must meet all Minnesota Pollution Control Agency and US EPA regulations and permitting requirements.

II. PROJECT TASKS**A. COST CALCULATIONS FOR VARIOUS STABILIZATION AND CONTAINMENT TECHNOLOGIES AND DEVELOPMENT SCENARIOS**

Tasks A.1-A.5 involve cost calculations for the development of a stabilization and containment facility in Minnesota. Costs must be calculated for a number of scenarios which differ in terms of quantities of waste managed at the facility, type of stabilization technology used, type of containment, and mode of ownership and operation. Waste to be managed at the facility will be inorganic wastes consisting primarily of incinerator ash and sludges from metal plating operations.

The cost analysis for the various facility scenarios must be comprehensive and must include consideration of all capital and operating costs. The work on developing costs for these comparisons should utilize, to the maximum extent possible, existing information from work available to the Board or previously done by the contractor. A list of relevant previous studies will be found in Attachment A. The Board, in consultation with the contractor, will provide basic technical and design information regarding stabilization and containment technologies and the types and quantities of wastes expected to be managed at the facility. The analysis will be non site specific and "generic" assumptions will be made regarding any site dependent costs.

TASK A.1. STABILIZATION TECHNOLOGY OPTIONS: Cost data will be developed for three types of stabilization technologies: **portland cement based process, lime based process, and glassification.** In developing the capital and operating costs for these three technology options, the contractor should pay special attention to the cost impact of achieving the goal that all wastes stabilized by this process qualify for regulatory delisting and make a specific estimate of the impact of this requirement on both processing and regulatory compliance costs. The contractor shall clearly display in the report the assumptions regarding underlying costs for each technology, such as capital costs, equipment, materials, labor, and energy and also indicate clearly the volume and/or weight that will be added to the waste in the stabilization process. Data must be prepared in such a way as to allow for sensitivity analysis and to be useful in the construction of the cost curves discussed in Task A.5.

TASK A.2. CONTAINMENT TECHNOLOGY OPTIONS: Cost estimates will be developed for three containment technology options: **above grade (mound) containment, above grade (vault) containment, and above ground long term storage (with waste stored in buildings).** The containment facility will be a "state of the art" facility which meets or exceeds all federal and state permitting requirements for a hazardous waste land disposal facility. Any assumptions which may be required regarding design and cost factors such as volume per cell, number of active cells, coverage of active cells, and the availability of clay for base and cover will be developed in consultation with Board staff and listed in the final report. Data should be prepared in such a way as to allow for sensitivity analysis and to be useful in the construction of the cost curves discussed in Task A.5.

It should be noted in connection with Tasks A.1 and A.2 that the technologies identified in these tasks should not be understood to necessarily represent or limit the technologies that the Board will finally consider in selecting a facility design. The Board will soon be issuing a Request for Proposal for facility development which will seek state of the art proposals for stabilization and containment technologies. The options identified in Tasks A.1. and A.2. are for purposes of comparing economic costs.

TASK A.3. OWNERSHIP AND OPERATION OPTIONS: The cost implications of four specific ownership and operation options will be included in the scenario analysis:

- joint public-private ownership and/or operation; (This option should be structured so as to allow analysis of a range of public/private shares and should specifically include a configuration where the state owns the land with the facility privately owned and operated. All scenarios in this option should include some private participation in facility profits or losses.)
- complete public ownership and operation;
- complete private ownership and operation;
- public ownership of land and facility, private operation through a lease agreement. (Private operation is for a fixed fee, with no participation in facility profits or losses.)

This task should include a discussion of the financial advantages and disadvantages of the four options specified, including, for example, consideration of tax issues and financing options. The cost data should be prepared in such a way as to be useful in the construction of the cost curves discussed in Task A.5. Specific details of each of the options will be determined by Board staff in consultation with the contractor.

TASK A.4. LIABILITY AND INDEMNIFICATION ISSUES. The cost of providing adequate financial assurance as required by federal and state law should be explicitly addressed. The Waste Management Act currently requires the operator of the stabilization and containment facility to demonstrate financial responsibility for claims and to indemnify all other potentially responsible parties in the amount of at least \$40 million. In addition, a state facility liability trust fund must be created based on a user surcharge which is sufficient to maintain insurance coverage of at least \$10 million during the operating life of the facility and to accumulate a balance of at least \$10 million within 20 years after the facility begins operating. The cost of each of these requirements should be calculated and included in the scenario analysis.

STATE CONTRACTS & ADVERTISED BIDS

TASK A.5. SUMMARY SCENARIO AND SENSITIVITY ANALYSIS. Based on the information developed in tasks A.1-A.4, the contractor shall construct a computer program which will allow the development of unit cost curves as a function of waste quantity for any scenario created by combining options regarding stabilization technology, containment technology, and ownership/operation. Cost curves shall be developed for all possible combinations of the following for amounts of waste ranging from 5,000 tons per year to 80,000 tons per year.

| <u>Stabilization</u> | <u>Containment</u> | <u>Ownership/Operation</u> |
|----------------------|----------------------|--|
| Cement | Above Grade mound | Public Ownership and Operation |
| Lime | Above Ground Storage | Public Ownership; Private Operation/Lease |
| Glassification | Above Grade Vault | Private Ownership and Operation Joint Ownership and Operation |

After analysis of these cost curves and consultation with Board Staff, the contractor shall present and analyze a smaller number of (up to six) scenarios selected by the staff. This analysis shall include calculation of "break even" prices for various waste quantities and a discussion of the sensitivity of that price to key variables.

B. ANALYSIS OF COMPETITIVE FACILITIES

TASK B.1. Based on a list of up to six hazardous waste disposal facilities used by Minnesota generators (to be supplied by the Board), the contractor shall estimate an average disposal (or stabilization and disposal) cost per ton at the facilities identified. Transportation cost, and any significant regulatory costs such as license fees or disposal taxes, shall also be estimated and added to the disposal cost to produce an overall management cost estimate for each facility. In addition, based on the contractor's knowledge of trends in the waste management industry, the contractor will estimate any likely changes in the cost of disposal and/or stabilization and disposal at existing facilities due to increased technological or regulatory compliance costs.

TASK B.2. In addition, the contractor shall assess and report on the liability protection or indemnification provided users of the identified facilities as reflected in state or federal laws, insurance coverage, and/or corporate policy, and any anticipated changes in that protection.

III. PROJECT PRODUCTS

A. REPORT

The contractor shall provide the Board with a written report containing the findings and conclusions required to complete Tasks A:1-5 and Task B:1-1. The report shall include information as specified in the task descriptions. A draft report shall be submitted to Board staff for comment prior to the submission of a final report.

B. COMPUTERIZED PROGRAM AND DATA BASE

Upon completion of the computerized data base necessary to complete task A:1-5. The contractor shall deliver to the Board a copy of the data disk and software information to enable the Board to do further analysis as is deemed necessary. Software developed must be compatible with version I-A of Lotus 1-2-3 operating on IBM compatible equipment.

C. APPEARANCES

The contractor's duties will include one appearance before the Board and one before the Minnesota Legislative Commission on Waste Management to explain and discuss the report's findings.

IV. STUDY TIMELINE

The project will start by April 27, 1987. A preliminary draft report will be due July 3, 1987. A final report will be due July 31, 1987.

V. BUDGET

Costs for the project must be specifically identified for each task and subtask (A:1-5 and B:1-2). Costs must be additionally specified for expenses and labor for specific individuals. A maximum of \$40,000 is available for this project.

VI. PROPOSAL CONTENTS

The following will be considered minimum contents of the proposal:

A. A description of the proposer's qualifications to perform the tasks specified in the RFP indicating, at a minimum:

1. Identification of and resumes for the project manager and all personnel to be assigned to the project including the proportion of time assigned to the project and specific familiarity with the tasks to which they are to be assigned.
2. Documentation of the firm's familiarity and experience with conducting economic analyses of hazardous waste facilities with particular reference to any comparable work recently performed.

B. A description of the proposer's approach to each task required. This should include, at a minimum:

STATE CONTRACTS & ADVERTISED BIDS

1. A restatement of the objectives to show the responder's view of the nature of the project.
2. A discussion of the approach to be taken to each task specified, including a description of data sources and methodologies to be used. Special attention should be paid to describing the economic methodology to be used in determining the "break even" cost curves.
3. A description of the products to be provided by the responder. Follow the format of Section II of the RFP as closely as possible. Any additions or variations should be noted as such. This should include a proposed outline of the report required by Section III.A.
 - C. A detailed work plan and schedule which will identify the major tasks to be completed and which can be used as a scheduling and managing tool as well as the basis for invoicing.
 - D. A project budget which identifies costs for each specified task as well as specifically for expenses and labor for specific individuals.

VII. EVALUATION

All solicited proposals received by the deadline will be evaluated by representatives of the Waste Management Board. The evaluation may include an interview as part of the process. Factors upon which proposals will be judged include—but are not limited to—the following:

- A. Expressed understanding of project scope.
- B. Project work plan.
- C. Project cost and cost detail.
- D. Technical qualifications of both the proposing group and the specific personnel to be assigned to the project.
- E. Verifiable management capabilities to assure task completion within time and budgetary constraints.

Selection of any proposal will be made by the Waste Management Board Chair, who reserves the right to reject any and all proposals.

VIII. POTENTIAL FOR ADDITIONAL WORK

Because of the nature of the facility development process being undertaken by the Board, it is possible that further work related to economic feasibility of various technologies may be required. This could arise, for example, with respect to new technologies that come to the attention of the Board or as a result of specific developer proposals. Depending on the nature of this additional work and performance on the project described in this RFP, it is possible that the consultant selected to do this project would also be used for the additional tasks. However, this possibility should in no way be interpreted as committing the Board to additional work or as committing the Board to select a particular consultant if additional work is needed.

IX. SUBMISSION OF PROPOSALS

One unbound copy suitable for photocopying and five bound copies of the proposal must be received at the Waste Management Board office by 4:30 P.M. on Friday, April 3, 1987. The proposal should be sent to Dr. Brett Smith, Minnesota Waste Management Board, 7323 58th Avenue North, Crystal, MN. Questions may be addressed to Dr. Smith, Mr. Dan Reinke, or Mr. David Cera at (612)-536-0816.

ATTACHMENT A: Previous Studies

1. *Above Ground Storage of Hazardous Waste*. Prepared by the Waste Management Board with Pope-Reid Associates Inc.; December 6, 1982.
2. *Technical and Economic Analysis of Hazardous Waste Management Facilities*. Prepared for the Board by Environmental Resources Management, Inc.; October 7, 1983.
3. *Comparative Analysis of Alternatives for Waste Disposal and Storage*. Prepared for the Board by Battelle; December 7, 1983.
4. *Development of a Hazardous Waste Incineration/Processing Facility in Minnesota*. Prepared for the Minnesota State Planning Agency by HWD Company, IT Corporation, and Environmental Resources Management Inc.; February, 1985.
5. *Draft Estimate of Need for a Hazardous Waste Disposal Facility in Minnesota*. Prepared by the Waste Management Board; November, 1985.
6. *Economic Feasibility Analysis of a Hazardous Waste Land Disposal Facility in Connecticut*. Prepared for the Connecticut Hazardous Waste Management Service by Arthur D. Little, Inc.; December 5, 1986.

STATE GRANTS

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Lawyer Trust Account Board

Notice of Grant Cycle for July 1, 1987 to June 30, 1988

The Minnesota Supreme Court has established a program to use the interest on lawyer trust accounts (IOLTA) to improve the delivery of legal services to the poor, to promote development of law-related education for the public, and to develop programs to enhance the administration of justice.

The Lawyer Trust Account Board has made grants in the amount of over \$4,000,000 to legal services organizations, to programs to enhance the administration of justice and to programs providing legal education for the public in its four prior grant cycles.

The Board is soliciting proposals to distribute funds to projects in any of the three program areas. The Board will support not only traditional approaches, but will encourage projects that show innovative approaches to recognized needs throughout the state. For application information, contact the Executive Director, 318 Capitol, St. Paul, MN 55155. The deadline for submitting applications is April 15, 1987.

Dated: 13 February 1987

Judith L. Rehak, executive director
Lawyer Trust Account Board

State Board of Vocational Technical Education Instructional and Student Support Services Section

Notice of Availability of Funds for Sex Equity Programs

The State Board of Vocational Technical Education will distribute federal funds to eligible recipients in accordance with the Carl D. Perkins Vocational Education Act for women who are enrolled in programs that are non-traditional for their sex. The amount of federal funds for these programs and activities is \$317,000.

Organizations and associations interested in applying for federal funds should contact the nearest AVTI for additional information or refer to Section 7.0, "Planning Use of Federal Funds," in the Fiscal Year 1988 Minnesota State Plan for Vocational Technical Education for information relating to the availability and disbursement of federal funds.

Qualified organizations and associations must prepare a joint application with an appropriate eligible recipient whose main responsibility will be to act as fiscal agent for distribution of and accountability for the federal funds.

An eligible recipient is defined as: 1) a nonprofit educational recipient legally authorized to provide post-secondary or secondary vocational education; and b) have established certified vocational technical education programs.

Additional Information will be included in the "Request for Proposal" which will be mailed upon request. To receive a Request for Proposal, notify Shirlee A. Walker, 5th Floor—Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Final proposals must be submitted to Shirlee A. Walker at the same address by 4:30 P.M. on April 6, 1987.

SUPREME COURT DECISIONS

Decisions Filed Friday 27 February 1987

Compiled by Wayne O. Tschimperle, Clerk

C0-85-2270 Hogs Unlimited, a general partnership, et al., v. Farm Bureau Mutual Insurance Company, petitioner, Appellant. Court of Appeals.

The intentional destruction of partnership property by one partner constitutes malicious mischief against the partnership property interests of the innocent partners, and the provision in an insurance policy voiding the policy for fraud of "the insured" does not void the policy coverage for innocent insureds.

Innocent partners may recover proportionately under their insurance policy for malicious mischief to partnership property by another partner to the extent of their tenancy in partnership interest.

An award of prejudgment interest on the unliquidated claim for loss of special breeding sows was inappropriate.

Affirmed in part, reversed in part, and remanded for further proceedings. Simonett, J.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

COUNTY OF MC LEOD: Order Entered 13 February 1987

Docket No. 3799

Wayne W. Welch, Appellant, vs. Commissioner of Revenue, Appellee.

The above entitled matter came on for hearing before the Honorable Earl B. Gustafson, Chief Judge, on January 13, 1987 in Glencoe, Minnesota. Wayne W. Welch, appellant, did not appear. Neil F. Scott, Special Assistant Attorney General appeared for the appellee, Commissioner of Revenue.

NOW THEREFORE based on the files, records and proceedings herein, the court makes the following:

FINDINGS OF FACT

1. The appellant and his wife are cash basis, calendar year, taxpayers who resided in Minnesota during 1977 through 1981.
2. The appellant and his wife did not file Minnesota income tax returns for 1977 through 1981.
3. On or about June 24, 1982 and July 22, 1982 the Department of Revenue wrote to the appellant and his wife demanding that income tax returns be filed for 1977 through 1981.
4. When the appellant and his wife failed to file income tax returns the Commissioner of Revenue filed income tax returns on their behalf in accordance with Minn. Stat. § 290.47 assessing tax, penalty and interest as follows:

| <u>PERIOD</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST TO: 12/3/82</u> | <u>TOTAL</u> | <u>BALANCE</u> |
|---------------|----------------|----------------|---------------------------------|----------------|----------------|
| 1977 | 3522.58 | 880.65 | 2076.87 | 6480.10 | 6480.10 |
| 1978 | 3812.14 | 953.04 | 1866.38 | 6631.56 | 6631.56 |
| 1979 | 3826.25 | 956.56 | 1489.61 | 6272.42 | 6272.42 |
| 1980 | 3723.27 | 930.81 | 1078.21 | 5732.29 | 5732.29 |
| 1981 | <u>3645.00</u> | <u>911.25</u> | <u>581.70</u> | <u>5137.95</u> | <u>5137.95</u> |
| | \$18,529.24 | \$4632.31 | \$7092.77 | \$30,254.32 | \$30,254.32 |

5. The appellant was notified of the assessment and appealed to Tax Court. On October 12, 1983 a hearing was held at which time the appellant presented his accounting of receipts and expenses for the years 1977 through 1981.

6. At the October 12, 1983 hearing the court continued the matter to allow the appellant and the Department of Revenue to meet and resolve the correct amount of business and itemized expenses to which the appellant and his wife were entitled.

7. By notice dated December 19, 1986 the hearing was rescheduled for January 13, 1987 at the courthouse in Glencoe, Minnesota. The appellant did not appear at the hearing but did, on January 6, 1987, send the court a document entitled "Affidavit of Revocation and Rescission."

8. It is not clear from the language of the appellant's "Affidavit of Revocation and Rescission" whether the appellant was seeking to withdraw his appeal or was continuing to contest the assessment of income tax against him. The clerk of the tax court by letter dated January 7, 1987 advised the appellant as follows:

"Failure to appear at the scheduled trial of this matter will result in a dismissal of your case and judgment by default will be granted to the appellee."

TAX COURT

9. At the hearing scheduled January 13, 1987 the Commissioner introduced evidence of the original assessment for 1977 through 1981, the appellant's written computation of receipts and expenses, the Department of Revenue's notes and revised assessment based upon its review of the appellant's documentation of business and itemized deductions and a revised computation of income tax due from the appellant and his wife for 1977 through 1981. The Department of Revenue reduced the income tax assessed for those years from \$18,529.24 to \$10,477.00.

CONCLUSIONS OF LAW

1. The appellant and his wife owe income tax to the State of Minnesota Commissioner of Revenue for 1977 through 1981 together with late payment penalty and interest (computed through February 1, 1987) as follows:

| <u>YEAR</u> | <u>TAX</u> | <u>PENALTY</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------|----------------|-----------------|--------------------|
| 1977 | 1734.00 | 434.00 | 2111.68 | 4279.68 |
| 1978 | 1623.00 | 405.00 | 1813.08 | 3841.08 |
| 1979 | 1801.00 | 450.00 | 1831.87 | 4082.87 |
| 1980 | 2580.00 | 645.00 | 2367.22 | 5592.22 |
| 1981 | 2736.00 | 684.00 | 2154.68 | 5574.68 |
| | | | | <u>\$23,370.53</u> |

2. The appellant failed to file the income tax returns and instituted this appeal based on frivolous grounds and merely for the purpose of delay and putting the Commissioner of Revenue to additional and unnecessary expenses.

3. The appellant is assessed costs in the amount of \$200 to defray the costs to the Commissioner of Revenue of assessing the tax and defending this action.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT
Earl B. Gustafson
Judge of Tax Court

Order for Judgment Dated: 25 February 1987

DOCKET NO. 4603

Roy A. and Elizabeth A. Bauer, Appellants, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable Earl B. Gustafson, Chief Judge of the Minnesota Tax Court, on January 14, 1987 at the Olmsted County Courthouse in Rochester, Minnesota.

Roy A. Bauer appeared pro se for the appellants.

Thomas M. O'Hern, Jr., Special Assistant Attorney General, appeared for the appellee.

The appeal is from the Commissioner of Revenue's Orders dated December 27, 1985 and March 28, 1986, relating to income tax for the years 1982 and 1983. The issue is whether appellants were residents of Minnesota for tax purposes during 1982 and 1983.

Post-trial briefs were submitted by the parties.

The Court, having heard and considered the evidence adduced, being fully advised and upon all of the files and records herein, now makes the following:

FINDINGS OF FACT

1. Appellants, husband and wife, are cash basis taxpayers.
2. Appellants were residents and domiciliaries of the State of Minnesota prior to March, 1982, when they moved to the State of Connecticut.
3. The move to Connecticut was temporary in nature and appellants returned to the State of Minnesota in May, 1983.
4. Throughout this period of time appellants owned a single-family residence in Rochester, Minnesota. This property was home-steaded for property taxes for the January 2, 1983 assessment date.
5. Appellants at no time intended to make Connecticut their home.

CONCLUSIONS OF LAW

1. Appellants were residents and domiciliaries of the State of Minnesota for income tax purposes during the period January 1, 1982 through December 31, 1983.

2. The Orders of the Commissioner of Revenue dated December 27, 1985 and March 28, 1986 are hereby affirmed.
LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

BY THE COURT,
Earl B. Gustafson, Chief Judge
Minnesota Tax Court

MEMORANDUM

This case involves the question of appellants' "residence" for income tax purposes. The income Minnesota residents earn in other states is allocated to Minnesota under Minn. Stat. § 290.17 (1986). The term "resident" means any individual "domiciled" in Minnesota. Minn. Stat. § 290.01, subd. 7 (1986).

Appellant Roy Bauer is an employee of International Business Machines (IBM) and was a resident of the City of Rochester in the State of Minnesota for 16 years prior to 1982. In March, 1982, Mr. and Mrs. Bauer and their children moved to Connecticut while Mr. Bauer worked at the IBM corporate headquarters in New York on a temporary assignment. They returned to Rochester 14 months later in May, 1983.

While appellants were gone, their Rochester home remained vacant but homesteaded for real estate taxes for the 1983 assessment year. In Connecticut they leased a home for one year with an option to renew for an additional year.

Neither Mr. or Mrs. Bauer changed their voter's registration or driver's licenses to Connecticut. This is understandable because they did not know where Mr. Bauer's next work assignment might take them.

The question is whether they lost their domicile in Minnesota for tax purposes during this 14 month period. A person does not lose "residence" for tax purposes merely by being present in another state. An existing domicile is presumed to continue until the contrary is shown. *Commissioner v. Stamp*, 296 N.W.2d 867 (Minn. 1980). This move to another state must be accompanied by an intention to make this new state, Connecticut in this case, one's home. *Miller v. Commissioner*, 240 Minn. 18, 19, 59 N.W.2d 925, 926 (1953). The testimony of Mr. Bauer proves the contrary. This assignment was temporary and there was no assurance about where he might be permanently assigned.

Pages 9 and 10 of the transcript reads in pertinent part as follows:

"A. Yes. That was the understanding when I went there; it was a one to two year assignment. And the resultant job after that, basically, would be determined by what opportunity was available to me somewhere in the corporation; whether that be back in Rochester or somewhere else. Typically people will—it varies by the opportunity available. They will either come back or they will go somewhere else.

Q. Was there some understanding of where you would go after the assignment was over?

A. No...."

There is no proof in the record that appellants intended to make Connecticut their new home. Absent that proof, Minnesota remained their tax domicile.

E.B.G.

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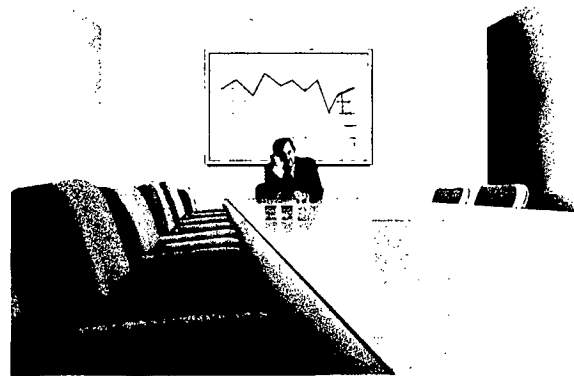
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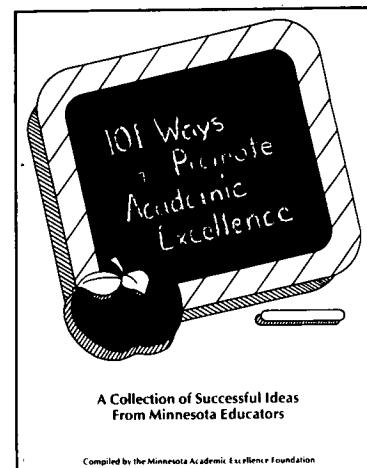
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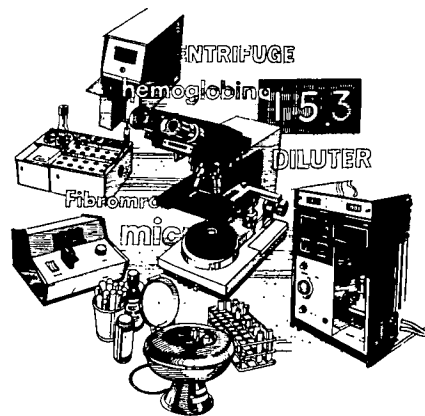
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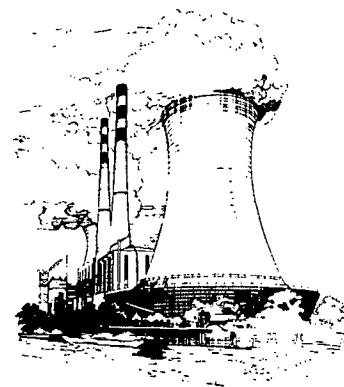
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U.S. SMALL BUSINESS ADMINISTRATION PUBLICATIONS:

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| Insurance and Risk Management for Small Business | Code No. 16-50. \$3.00. |
| Small Business Finance | Code No. 16-42. \$4.50. |
| Starting and Managing a Small Business of Your Own | Code No. 16-40. \$4.75. |

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Woodworking for Wildlife

Woodworking for Wildlife, delightfully written and carefully illustrated with a variety of game bird and mammal box designs. Includes important information on the placement of nests in proper habitat areas and maintenance requirements. Diagrams, 48 pp. Code #9-14, \$6.00.

Help Minnesota's Wildlife, feed the birds and give to the Nongame Wildlife Checkoff on your Minnesota Tax Forms. Poster. 22" x 17", full color. Code #9-2, \$4.00.

Fifty Birds of Town and City, describes the activities and habitats of these birds commonly seen today through full color paintings, Hardbound. 50 pp. Code #16-23, \$7.50.

Mammals of Minnesota, discusses wild mammals that inhabit Minnesota today, or in the recent past. Tells how to identify them, their distribution in the state, and their natural history. U of M Press, 1977, illustrated, index, bibliography, paperbound, 290 pp. Code #19-35, \$15.95.

Bird Portraits in Color, a total of 295 species of birds are depicted through magnificent illustrations, reproduced in seven-color lithography, accompanied by authoritative information about birds' activities, habitats, songs, and other characteristics, U of M Press, 1980, index, 92 color plates, hardbound. Code #19-41, \$12.95.

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Selling business and financial services to physicians?

Physicians Directory 1985

Names and addresses of licensed chiropractors, doctors of medicine, and osteopaths, optometrists, podiatrists and registered physical therapists in alphabetical order by discipline. Includes members of all the state medical profession boards. Code #1-1, \$15.00.

Medical Alley Directory 1986

A guide to more than 300 high-tech medical, bio-tech and health care companies, institutions and organizations and their products and services. Code #40-7, \$49.95.

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Pheasants in Minnesota

Pheasants in Minnesota, focusing exclusively on the ringneck pheasant, this DNR booklet tells of this popular game bird's origin, introduction and development in Minnesota. Through many full-color photos the book shows the pheasant in various settings, tells how to maintain wildlife habitat and explains the wise management of the hunt. A great gift for each member of your hunting party, or as a memento to a special Minnesota hunting vacation. Quantity discounts available. Code #9-13, \$5.95.

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Minnesota Manufacturer's Directory 1986-87

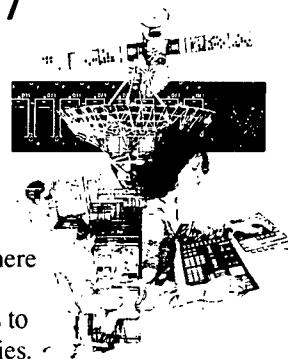


UPDATED: Name, address, phone number, staff size, sales volume, market area, year of establishment, type of firm, C.E.O., Sales or Marketing Manager, Purchasing Manager and four major manufactured products. Code #40-2, \$68.50.

NEW: In the directory this year are two titles (where applicable) Chief Engineer and Data Processing Manager.



REVISED: There are more than 7,000 changes to the 7,068 entries.



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NEW Human Services Laws and Rules

Human Services Laws 1986

An extract from the statutes. Includes legislative amendments and additions from the most recent session. Code No. 2-56. \$20.00

Human Services Rules as in effect July 7, 1986

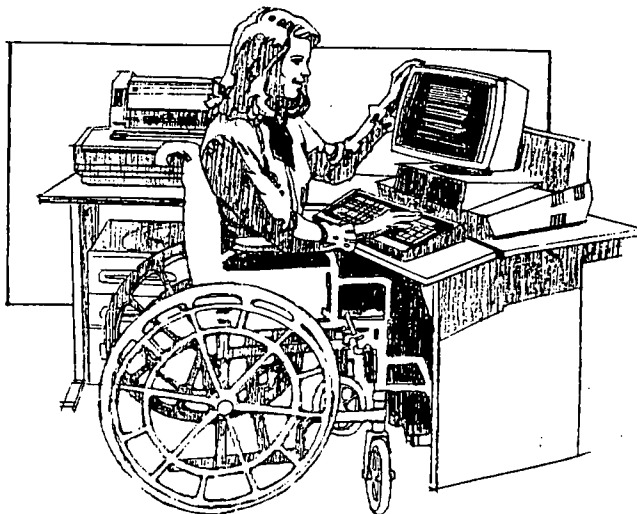
Rules governing assistance programs, eligibility grant amounts, AFDC and residence requirements. MN Rules Chapter 9500-9580. Code No. 3-95. \$24.95.

3 ring binder. 2" capacity. 1 required for each of above listed publications. Code No. 10-21. \$4.25.

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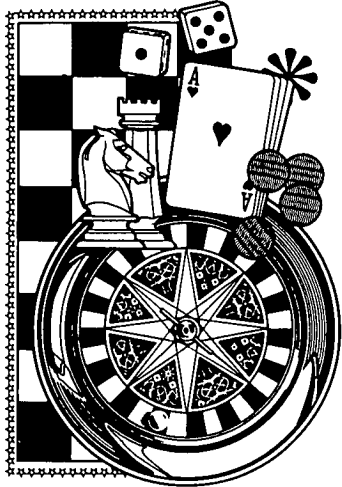


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(612) 296-3478 (I & R Direct)**

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Charitable Gambling Directory

A complete listing in alphabetical order of organizations licensed for charitable gambling in the state. Includes the name, address, zip code and name of contact person. 64 pages. Code #1-11. \$20.00.

SPECIAL NOTE: New Charitable Gambling Rules will be available Spring '87. Governs the conduct of charitable gambling events like bingo. Call for price information in the Spring.

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Voices of the Loon

Its voice severs the bonds to the world of cities, traffic, crowds, lights and noise. The lyrical magic of the loon, sometimes hauntingly eerie, makes the skin tingle, and the hair on the back of the neck stand on edge, awakening a primitive response. Its solitary wail turns the shadowy wilderness into a mysterious path into eternity.

Voices of the Loon, cassette tape, includes introduction and loon call identification, chorus from a distant lake, tremolo duet, wail duet, border confrontation, wails with morning songbird chorus, tremolos while running, wails during a thunderstorm, and coyotes calling with loons. Code #19-73, \$12.00.

The Loon: Voice of the Wilderness, hardbound with color plates and illustrations, 143 pages. Code #9-14, \$6.00.

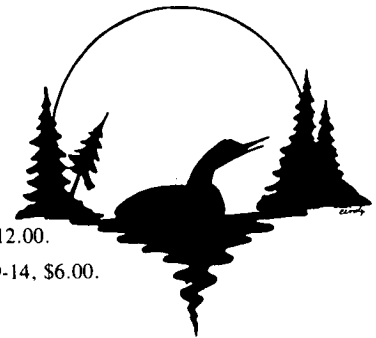
Loon Calendar 1987, beautiful photographs and scenes. Code #15-40, \$6.95.

Loon Lapel Pin. Code #15-30, \$2.49.

Loon Windsock, 56 inches long in full color. Code #15-29, \$19.95.

Loon Nature Print, full-color poster 16" x 22". Code #15-18, \$3.00.

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ROON: A Tribute to Morel Mushrooms, this delightful treatise on the "filet mignon" of mushrooms will help the stalker of this elusive prey find, and prepare in a variety of ways, its mouth-watering madness. Code #19-55, \$9.50.

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Murder: Minnesota style

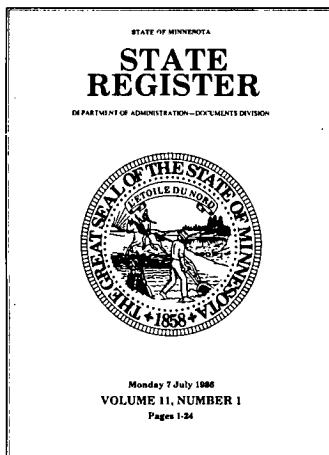
Murder in Minnesota is a treasury of vintage crimes. Characters, some famous, some obscure, come to life in all their cleverness or murderous madness. Minnesota cases from 1858-1917. 253 pp. photos, index. Code 17-35, \$5.95.

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