

Ground Water & Solid Waste Division
Program Development Section

File Name

Sub File Name

Initial

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of The Amendments to Rules
Governing Procedures for Establishing
a Permanent List of Releases and
Threatened Releases of Hazardous
Substances, Pollutants or Contaminants
Under the Environmental Response and Liability
Act, Minnesota Rules, Parts 7044.0100 through
7044.1100

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the proposed amendments to rules containing procedures for determining priorities among releases and threatened releases of hazardous substances, pollutants, or contaminants, Minn. Rule pts. 7044.0100-7044.1200. The authority for the existing rules is contained in the Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. section 115B.17, subd. 13.

In its proposed amendments, the Minnesota Pollution Control Agency (Agency) does not propose to make wholesale revisions to the procedures provided for in the current rules. The current procedures for evaluating, listing, and determining priorities among releases and threatened releases throughout the state of Minnesota have proven generally effective and workable. However, the Agency has determined that amendment of the rules is necessary for two reasons. The existing rules adopted the U.S. Environmental Protection Agency's (EPA's) Hazard Ranking System (HRS) scoring model, as published in the July 16, 1982, Federal Register, for use in scoring sites for listing on the Permanent List of Priorities (PLP). In December 1990, EPA published its revised HRS rules in the Federal Register. The Agency proposes to amend the rules to adopt EPA's revised HRS model for use in scoring sites for listing on the PLP.

Secondly, in 1990, the Legislature amended Minn. Stat. ch. 115B to grant the Commissioner of Agriculture authority relating to releases or threatened releases of agricultural chemicals. The Agency is proposing to amend these rules to define the role of the Commissioner of Agriculture in scoring of sites and administering the PLP. Finally, the rules have been reorganized to clarify some provisions and to make the rules easier to use.

II. AGENCY STATUTORY AUTHORITY

The authority to adopt rules establishing the criteria for determining priority among releases or threatened releases is contained in Minn. Stat. section 115B.17, subd. 13:

By November 1, 1983, the pollution control agency shall establish a temporary list of priorities among releases or threatened releases for the purpose of taking remedial action and, to the extent practicable consistent with the urgency of the action, for taking removal action under this section. The temporary list, with any necessary modifications, shall remain in effect until the pollution control agency adopts rules establishing state criteria for determining priorities among releases and threatened releases. The pollution control agency shall adopt the rules by July 1, 1984. After rules are adopted, a permanent priority list shall be established, and may be modified from time to time, according to the criteria set forth in the rules.

The Agency is further given authority to adopt and amend the rules under Minn. Stat. section 116.07, subd. 3:

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules governing its own administration and procedure and its staff and employees.

The Agency also has authority to adopt and amend the rules under Minn. Stat. section 14.06.

Minn. Stat. ch. chapter 14 (1990) requires the Agency to make an affirmative presentation of facts establishing the need for, and the reasonableness of, the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal and the reasons must not be arbitrary or capricious. To the extent that need and reasonableness are separate, "need" is interpreted to mean that a problem exists which requires administrative attention. "Reasonableness" means the solutions proposed by the Agency are appropriate.

III. NEED FOR THE PROPOSED RULES

"Need" means that a problem exists that requires administrative attention. These rules need to be amended to reflect state statutory and federal regulatory developments since the rules were promulgated in 1983. In the existing rules, the Agency adopted EPA's HRS scoring model for use in evaluating sites for listing on the PLP. In 1990, EPA revised its HRS scoring model. Because EPA has revised its HRS scoring model, the Agency is proposing to amend the rules to adopt the revised model. Adoption of the revised HRS will reduce confusion among the public which might otherwise occur if two different scoring systems were applied to Superfund sites in Minnesota, the revised HRS for sites to be proposed for listing on EPA's National Priorities List (NPL), and the original HRS for non-NPL sites to be proposed for listing on Minnesota's PLP. Adoption of the revised HRS will also make it easier to administer the site investigation and listing processes, because a site would not have to be scored using two different scoring systems if the site is a potential site for listing on the NPL.

The amendments are also needed because of amendments to Minn. Stat. ch. 115B which expanded the role of Commissioner of Agriculture in implementing the provisions of chapter 115B. The proposed rule amendments define the role of the Commissioner of Agriculture in scoring sites and administering the PLP.

IV. REASONABLENESS OF THE PROPOSED RULES

A. Introduction.

The Agency is also required by Minn. Stat. ch. 14 to establish the reasonableness of the proposed rules. "Reasonableness" means that solutions proposed by the Agency are appropriate. When amending an existing rule, the Agency need only establish the reasonableness of the proposed amendments.

B. Reasonableness of Individual Rules.

The following discussion addresses the reasonableness of the proposed rules. Portions of the existing rules have been reorganized from the order appearing in the current rules to better reflect the chronological progression of the procedures as they are implemented by the Agency and the Commissioner of

Agriculture.

Part 7044.0100 SCOPE.

Reference to the statutory authority has been amended to add the specific subdivision of the statute that provides the authority for adoption of these rules (Minn. Stat. section 115B.17, subd. 13). This change is made for accuracy of the rules.

Part 7044.0200 DEFINITIONS.

Where necessary and appropriate, the Agency has proposed that terms be modified or new terms be added to the definitions in part 7044.0200 to clarify the rule. In addition, the proposed amendments delete three terms, because they either do not appear in the proposed rules or are no longer necessary for implementation of the rules. The definitions have been re-numbered in the proposed rules to accommodate these additions and deletions of definitions.

Subpart 2. Miscellaneous terms.

The Agency proposes to delete the term "agency" in subpart 2 and to specifically define it in subpart 4. A definition for "agricultural chemical" (by reference to the definition in MERLA) has been added due to the role of the Commissioner of Agriculture in implementing the provisions of MERLA.

The definition of "director" has been removed, because those appointed to hold the top administrative posts in state agencies and departments are now termed "commissioners," and the Agency has proposed a definition for "Commissioner" in subpart 6.

The Agency proposes that "account" replace "fund" in the definitions because that term reflects current terminology for the source of funding provided under MERLA.

Subpart 3. Advisory.

In the definition of "advisory," "director" has been replaced by "commissioner," for the reasons explained above, under subpart 2. "Pollutant or contaminant" is proposed to replace "pollution or contamination," because it reflects the language used in Minn. Stat. ch. 115B. "Site" is proposed to

replace "facility," because "site" is currently defined in subpart 10 of the definitions and that definition is the same as the definition of "facility" in Minn. Stat. section 115B.02, subd. 5. Since the term "site," and not "facility" is used throughout the rules, this change is being proposed.

Subpart 4. Agency.

A new, separate definition is proposed for "agency," to help clarify the respective roles of the Agency and the Commissioner of Agriculture in implementing the rules. The proposed definition of agency is the same as the definition of agency in Minn. Stat. section 115B.02, subd. 3. The definition has been specifically spelled out in these rules to make clear that the term agency refers to the Commissioner of Agriculture when dealing with agricultural chemicals and to the Agency for other substances. Where the roles of the agencies differ in the rules from this definition, the rules specifically identify the agency by name.

Subpart 5. Agricultural Chemical Site.

A definition for "agricultural chemical site" has been added because this term is used in the proposed amendments to help distinguish between the types of sites for which the Pollution Control Agency (PCA) and the Department of Agriculture (MDA) will be responsible in their respective roles in administering the PLP. Addition of this definition in the amendments would ensure that the rules are consistent with MERLA, and that they are clear concerning the types of sites which each agency must address, including the site scoring and listing process.

Subpart 6. Commissioner.

The Agency proposes to add a separate definition of "commissioner," to help clarify the respective roles of the Agency and the Commissioner of Agriculture in implementing the rules. The proposed definition of commissioner is the same as the definition of commissioner in Minn. Stat. section 115B.02, subd. 4. The definition has been specifically spelled out in these rules to make clear that the term commissioner refers to the Commissioner of Agriculture when dealing with agricultural chemicals and to the Commissioner of the PCA for other substances. Where the roles of the commissioners differ in the rules from this

definition, the rules specifically identify the commissioner by name.

Subpart 7. Emergency.

The definition of "emergency" has been changed to reflect the broad statutory emergency authority granted the commissioners of the PCA and the MDA in Minn. Stat. section 115B.17, subd. 1(b), which provides that: "The commissioner may take removal action which the commissioner deems necessary to protect the public health or welfare or the environment if the commissioner determines that the release or threatened release constitutes an emergency requiring immediate action to prevent, minimize or mitigate damage to the public health or welfare or the environment." The definition of "emergency" is important because declaring an emergency effectively assigns a site to Class A, under part 7044.0500, and the site receives immediate funding under part 7044.0800.

Subpart 5. (existing) Ground water or underground water.

The Agency proposes to delete this definition from the rules for the following reasons. First, the term "ground water" does not appear in the text of the existing rules or proposed amendments. The definition was included in the existing rules, because the drafters believed that the original HRS made a distinction between "aquifers" and "ground water", which is more broadly defined than aquifer. The rules therefore required, in adopting the HRS, that the word "ground water" should replace the word "aquifer" where it appeared in the HRS in order to ensure that, in using the HRS to score sites, ground water would be considered more broadly, consistent with the definition of "water" under MERLA (section 115B.02, subdivision 19).

However, ground water use is no longer explicitly considered as a separate factor under the "Target" factors category of the revised HRS when calculating the Ground Water Migration Pathway score. Thus, there remains nothing in the structure of the HRS which could be construed as conflicting with the requirements of MERLA that ground water, broadly defined, be protected. Specifically, the Agency may apply the HRS scoring system in such a way that the HRS score reflects the existence, of threats or potential threats, if any, to "waters of the state" without being explicitly limited by considerations of ground water use, to the exclusion of consideration of environmental or other benefits attributable to the existence of a specific area or volume of ground

water. Furthermore, because the rules do not require that a site have a minimum HRS score to be eligible for listing on the PLP, a site with a low score, but which impacts, or may impact, environmentally significant or otherwise valuable ground water, may merit listing on the PLP.

Subpart 8. Operation and Maintenance.

The Agency proposes to add this definition in order to clarify what is meant in the rules by the phrase "operation and maintenance," and thus, at what point sites may be classified under Class "B." This is reasonable because the meaning of this term as it is used in the state Superfund program may not be obvious to all members of the public.

Subpart 6. (existing) Rater.

The Agency proposes to delete this definition from the rules because the term "rater" is not used in the rules. Furthermore, the term "rate" has been replaced in the proposed rules with the term "score," a more accurately descriptive term, when referring to application of the HRS scoring system to derive an HRS score for a particular site.

Subpart 9. PCA Site.

The Agency proposes to add a definition of "PCA site," because this term is used in the proposed amendments to help distinguish between the types of sites for which the Agency and the Commissioner of Agriculture are responsible in their respective roles in administering the PLP. Addition of this definition in the amendments would ensure that the rules are consistent with MERLA, and that they are clear concerning the types of sites which each agency must address, including the site scoring and listing process.

Subpart 10. Site.

The phrase ("including a pipe into a sewer or publicly owned treatment works") is proposed to be added to the existing definition of "site" because the statutory definition of "facility" in Minn. Stat. section 115B.02, subd. 5, from which the definition of site was taken, contains this phrase. The addition of this phrase makes the definition complete and consistent with the statute.

Subpart 8. (existing) Target.

The term "target" has been deleted from the existing rules. The term is not used in either the current or proposed amended rules. It is a term which is used frequently in the HRS, but its meaning and significance are clear within the HRS rules. Therefore, no definition is needed in these rules.

Part 7044.0300 SCORING OF SITES WITH RELEASES OR THREATENED RELEASES
FOR ADDITION TO THE PERMANENT LIST OF PRIORITIES

Part 7044.0300 requires that both the Agency and the Commissioner of Agriculture shall score their respective sites using the HRS. It also requires that the site of the release or threatened release be assigned to a response action class (or classes) according to the criteria in part 7044.0500.

Part 7044.0300 is reasonable, because it establishes a means to score sites for addition to the permanent list of priorities. The proposed amendments to this part are also reasonable for the following reasons. The term "score" replaces "rate" because score is the "term of art" used nationally by those who implement or utilize the HRS. The phrase "... of hazardous substances, or pollutants, or contaminants ..." has been added to clarify what types of sites the Agency and the Commissioner of Agriculture will score, and to be consistent with the statute. The Federal Register citation has been removed, because the rules propose to incorporate the revised HRS. A new reference to part 7044.0400, where the revised HRS is cited, has been included. The two new sentences which describe which agency will score which types of sites are consistent with the roles of the Agency and the Commissioner of Agriculture in MERLA. The reference to part 7044.1200 has been deleted, because that part is proposed to be deleted.

The word "annual" has been deleted from the last sentence of part 7044.0300 because Minn. Stat. section 115B.17, subd. 13 does not require that the PLP be updated at specific intervals. The statute leaves establishment of a criterion for the appropriate interval for update of the PLP to be determined by the Agency during the rulemaking process as long as the PLP is updated at least once per year. The Agency believes that it is appropriate to continue to update the PLP at least annually, as provided in proposed part 7044.0600. However, by using the phrase "... at least annually ..." in part 7044.0600, the Agency also would have the flexibility to update the PLP more often than annually, when

appropriate. During a given year, this might be desirable in order to hasten evaluation or initiation of response actions to address a release or threatened release of hazardous substances, or pollutants or contaminants at a site (or sites), or to facilitate development of the annual project list, thus helping to ensure that MERLA Fund allocation decisions are based on the most current knowledge of site conditions and environmental priorities. Therefore, the Agency proposes to delete the term "annual" from part 7044.0300 simply to ensure that the phrasing of part 7044.0300 is not inconsistent with the approach proposed in part 7044.0600.

Part 7044.0400 HAZARD RANKING SYSTEM

Part 7044.0400 is reasonable because it proposes to adopt EPA's revised HRS as the approach the Agency and the Commissioner of Agriculture will use to score sites for listing on the PLP. Adoption of the revised HRS for scoring sites to evaluate them for possible listing on the PLP is reasonable, due to improvements in the HRS model, confusion among the public otherwise likely to result from the agencies' use of two different scoring systems for PLP and NPL listing purposes, and program administrative and management inefficiencies which could be caused by using two different scoring system.

The Agency proposes to replace the term "rank" with the term "score," because the latter term is more accurate, as discussed under part 7044.0300, above. A new Federal Register citation for the location of the revised HRS replaces the citation for the original HRS. The Agency proposes to delete the modifications to the HRS in this Part because these modifications are no longer necessary. The revised HRS provides greater flexibility for use of state or regional hydrologic information when using the model to score sites.

Part 7044.0500 CLASSIFICATION AND RECLASSIFICATION OF SITES

In Subpart 1, the first sentence has been re-worded because the MDA now also assigns sites to response action classes, in addition to the Agency. "Director" has been changed to "commissioner," for the reasons described under the discussion of part 7044.0200, subpart 2. The Agency proposes to drop the acronym "RI/FS" (remedial investigation/feasibility study) because this acronym, though now considered a "term of art," is not used elsewhere in the rules, so that an abbreviated term is not needed.

Under Subpart 2, the PCA proposes to delete the last sentence of the first

paragraph, because this sentence has been moved to the newly proposed Subpart 3. The Agency also proposes new language explaining that, at the time of proposing a site for listing on the PLP, the Agency (in the case of a PCA site) or the Commissioner of Agriculture (for an agricultural chemical site) will indicate the appropriate classification(s) for the site. This provision is reasonable because it recognizes that, since the Commissioner of Agriculture has authority to implement investigation, remediation, and enforcement provisions of MERLA concerning releases of hazardous substances, or pollutants or contaminants that are agricultural chemicals, and the Agency has authority to implement such activities for releases of other hazardous substances, or pollutants or contaminants, it is therefore most appropriate that each agency respective areas make determinations for classifications in its respective areas.

Subpart 3 provides that the commissioners of PCA and MDA may reclassify their respective sites between updates of the PLP when response actions for a particular class for that site are completed between updates. Depending upon priorities and the availability of funds for investigation and remediation activities at reclassified sites, this may allow the cleanup process to proceed more quickly and efficiently.

Part 7044.0600 ANNUAL UPDATE OF THE PERMANENT LIST OF PRIORITIES

Part 7044.0600 is reasonable because it provides for a process of coordination between the PCA and the Commissioner of Agriculture to be followed in updating the PLP. The proposed language is being added formally include the Commissioner of Agriculture in the update process.

The proposed language also provides that the PCA shall update the PLP "at least annually," rather than "annually." This change allows the possibility of more than one update within a given year. This is reasonable because there may be circumstances where it is in the public and environmental interest to add sites to the PLP more often than annually. Conditions at a site may require that actions be initiated sooner than would be possible if listing were delayed several months or more until the next planned update.

The PCA proposes that only sites proposed for listing or deletion be published in the State Register, rather than publishing the entire PLP containing not only proposed additions and deletions but also all sites previously listed on the PLP. This approach is reasonable because the public will know which sites are involved in the update and therefore which sites upon which they can comment.

At the time of each update, after the PCA Board and the Commissioner of Agriculture have made their final determinations regarding listing and deletion, the PCA will publish a complete, updated PLP in the State Register. The PCA further proposes that the PCA and the Commissioner of Agriculture respond to any comments submitted regarding their respective proposed sites. This is reasonable because it best reflects the role that the Commissioner of Agriculture has under Minn. Stat., ch. 115B for addressing releases or threatened releases of agricultural chemicals. Moreover, it is reasonable because each respective agency is best able to respond to public comments concerning the site circumstances which have led that particular agency to score a site and to propose to add a site to, or to delete a site from, the permanent list of priorities.

The PCA proposes to add language to the last sentence of the third paragraph of Part 7044.0600, explaining that neither the PCA nor the Commissioner of Agriculture will rescore sites based on removal, remedial, or response actions conducted following commencement of site investigation and scoring activities. This language is reasonable and necessary to clarify the language already in the rules. The purpose of the language is to discourage a party (or parties) from conducting a relatively limited response action at a site in order to reduce the site score and to lower the priority of the site for attention by the PCA or the Commissioner of Agriculture. Thus this provision is also reasonable and necessary because some parties might otherwise conduct such activities solely in order to bolster an argument before the PCA or the Commissioner of Agriculture that a site should not be listed on the PLP, without having fully addressed contamination or potential contamination at the site.

The PCA proposes to remove references to site reclassification in the third paragraph of Part 7044.0600. Site classification criteria are established by Part 7044.0500. Furthermore, this approach is reasonable because site classifications are reflections of the status at any given time of particular sites in the Superfund cleanup process. The classification system was designed to serve primarily as a budgetary funding allocation tool and as a priority setting guide for management. Once it has been determined by the PCA or the Commissioner of Agriculture that a site will be listed, the initial site classification decision follows logically from whatever actions are necessary to address conditions at the site at the time of listing. Likewise, following listing, and over time, as investigatory and remedial work continues at a site, the site will be reclassified as necessary to reflect the type of activities planned or ongoing at the site as it progresses through the Superfund remedial

process. These reclassification decisions will be made by the commissioners of the PCA and Agriculture, and will be reflected in each subsequent update of the PLP.

The proposed fourth paragraph of of Part 7044.0600 provides that opportunity for a public meeting will be made available by the Commissioner of Agriculture to any party who has submitted comments on the proposed addition to, or deletion from, the permanent list of priorities of an agricultural chemical site, and who requests that such a meeting be held. This approach is reasonable because it establishes a process by which the Commissioner of Agriculture, in determining whether a site should be added to, or deleted from, the permanent list of priorities, will provide to the public the same opportunity to present public statements concerning the proposed addition or deletion of an agricultural chemical site that the PCA provides regarding the addition or deletion of a PCA site.

Part 7044.0700 ANNUAL PROJECT LISTS

Part 7044.0700 provides for a process by which the Commissioner of the PCA and the Commissioner of Agriculture will establish project lists. It is reasonable that the Commissioner of Agriculture should be responsible for developing its own project list because this reflects the role that the Commissioner of Agriculture has under Minn. Stat. ch. 115B for addressing releases or threatend releases of agricultural chemicals.

Once the Pollution Control Agency has established the PLP, it is also reasonable for the Commissioner of the PCA to establish and maintain the project list for the PCA, by planning and prioritizing activities necessary for the PCA to respond to releases or threatened releases of hazardous substances, pollutants or contaminants, subject to the provisions of parts 7044.0700, 7044.0800 and 7044.0900.

As circumstances regarding ongoing site investigation and cleanup activities change during the year, between annual project list updates, the commissioners of the respective agencies may amend their project lists as necessary.

This is reasonable because it would allow the commissioners to amend and adjust priorities among site response activities between annual project list updates in response to unforeseen site circumstances. This would enable the agencies to respond most effectively and efficiently to releases or threatened releases of hazardous substances, pollutants or contaminants, without waiting

for the next annual project list update to adjust priorities for action.

Part 7044.0800 FUNDING PRIORITY OF CLASSES

In Part 7044.0800, the PCA proposes to change several citations to other parts of the rule, because the order of these parts in the rule and thus the numbering of the parts, have changed. The PCA proposes to delete the terms "RI/FS" and "annual" from the rule, because these have been removed in other parts of the rule. These changes are reasonable because they ensure that Part 7044.0800 is consistent with other parts of the rule.

Part 7044.0900 FUNDING PRIORITY WITHIN CLASSIFICATIONS C AND D

The PCA proposes to replace the term "rated" with "scored." This is reasonable because the term "score" is used when referring to the numerical value obtained from application of the HRS model to conditions at a potential Superfund site. It is also reasonable in order to ensure that Part 7044.0900 remains consistent with other parts of the rule.

Though the PCA proposes to retain the requirement that ERLA funding generally may be allocated only to sites within ten HRS points of the highest scored site within the class, the PCA proposes to add language to the existing rule to allow allocation of funds to sites scoring more than ten HRS points below the highest scoring site in the class, when there are no other sites scoring within ten HRS points of the highest scoring site in the class. This is reasonable because it continues to provide a means of prioritizing sites for fund allocation while at the same time ensuring that the PCA is not prevented from working on sites because of large disparities among site scores.

Part 7044.1000 DELETION OF SITES FROM THE PERMANENT LIST OF PRIORITIES

Part 7044.1000 is reasonable because it establishes criteria for deleting sites from the PLP. The criteria remain the same in the proposed amendment as in the existing rules except that language has been modified to distinguish between the roles of the PCA and the Commissioner of Agriculture in deleting sites.

The PCA proposes to add the phrase "(including operation and maintenance)" to Part 7044.1000. This is reasonable because, as provided for in Part 7044.0500, Class "B" contains sites where operation and maintenance is ongoing,

and inclusion of the phrase in Part 7044.1000 helps to clarify deletion criterion "(a)."

The PCA proposes to drop Subpart 2 "Deletion from a response action class" from the rules. This is reasonable because, as with reclassification (discussed under 7044.0600), deletion from a response action class, as opposed to deletion from the entire list, is largely a site management decision, and can be made most effectively by the commissioner.

Part 7044.1100 REIMBURSEMENT FOR PAST RESPONSE ACTIONS

The PCA has decided to retain Part 7044.1100 in the proposed rules, even though reimbursement claims may no longer be filed under this part. This is reasonable because the Agency needs to ensure that the public is reminded that a deadline for claim submissions existed, and that the deadline has clearly expired. Accordingly, the PCA has altered the working of the existing rules, to clarify that the filing period has expired.

Part 7044.1200 PRESCREENING OF POTENTIAL HAZARDOUS WASTE SITES

The PCA proposes to delete Part 7044.1200 from the rules. This is reasonable because the part is no longer necessary. The original purpose of the part was to ensure that sites which pose virtually no risk to public health and the environment are not placed on the PLP, and that no MERLA funds are allocated for activities at such sites. Part 7044.1200 is not necessary, and therefore, amending it to better reflect the pathways of exposure and the factor categories addressed by the revised HRS model is also unnecessary. The part is redundant because it is impossible mathematically using the HRS scoring equation, to obtain a site score using the HRS model, if one answers "yes" to one or more of the questions under each pathway of exposure.

V. CONSIDERATION OF POSSIBLE IMPACTS ON SMALL BUSINESSES

Minn. Stat. section 14.115, subd. 2 (1990) requires the Agency when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;

- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

Minn. Stat. section 14.115, subd. 3 directs an agency to "incorporate into the proposed rule or amendment any of the methods specified under subdivision 2 (above) that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis for the proposed rulemaking."

The proposed rules would not have a particular impact on small businesses as defined in Minn. Stat. section 14.115, subd. 1 (1990). The proposed rules are not complex and do not place an undue burden on the financial and personnel resources of small businesses. The rules establish procedures for the Agency and the Commissioner of Agriculture to evaluate, list, and set priorities for action among potential hazardous waste sites. They do not require actions by persons who may be responsible for a release under MERLA. Furthermore, establishing different procedures for evaluating, listing, and setting priorities among sites owned or operated by small businesses would not be consistent with providing equal treatment to parties similarly affected by MERLA. To establish a process for different treatment in the evaluation, listing, and prioritization of some sites could complicate and delay implementation of response actions needed to protect public health and the environment.

Furthermore, exemption (item e) of small businesses from any or all requirements under the proposed rules would conflict with the objectives of Minn. Stat. ch. 115B (MERLA) which defines those parties who are responsible for releases of hazardous substances or pollutants or contaminants and imposes liability on those persons for the cost of cleaning up such releases. MERLA makes no distinction between small businesses and other parties who may be responsible for a release, and does not authorize the Agency to treat small businesses differently in the administration of MERLA.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the PCA is required by Minn. Stat. section 116.07, subd. 6 (1990) to give due consideration to certain economic factors. The statute states that:

"In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

The PCA has interpreted this requirement to mean that, in determining whether or not proposed rules or amendments are feasible or practicable, it must consider the economic impacts, if any, of the proposed rules."

The fundamental judgment concerning who should bear the costs and economic burden of cleaning up releases of hazardous substances has been made by the legislature in enacting MERLA. The proposed rules' sole purpose is to direct certain aspects of the administration of the Superfund program by the Agency and the Commissioner of Agriculture. The proposed rules, if adopted, would amend and update current rules, which provide criteria for the Agency and the Commissioner of Agriculture to evaluate the relative risks posed by potential hazardous waste sites, procedures for listing of sites on Minnesota's PLP, and the classification system to determine allocation of funding among sites on the list. The business community and other affected members of the public are familiar with the priority assessment rules and have operated under these rules since 1983. The proposed rules add no new or additional burdens on businesses or local governments. Thus, it is expected that adoption of the rules will have no calculable economic impacts.

VII. EXPENDITURE OF PUBLIC MONEY BY LOCAL PUBLIC BODIES

Minn. Stat. section 14.11, subd. 1 (1990) provides in relevant part:

"If the adoption of a rule by an agency will require the expenditure of public money by local public bodies, the

appropriate notice of the agency's intent to adopt a rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost of all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule if the estimated total cost exceeds \$100,000 in either of the two years."

This provision is not applicable to the proposed amendments to Minn. Rules ch. 7044, because it is MERLA, rather than these rules, that determine the extent to which local public bodies, if they are determined to be responsible parties, must spend money to clean up releases of hazardous substances. The purpose of the priority assessment criteria rules in Minn. Rules ch. 7044 is to direct certain aspects of the administration of the Superfund program by the Agency and the Commissioner of Agriculture by establishing criteria for evaluating release of hazardous substances, procedures for listing sites on the permanent list of priorities among releases, and a classification system to determine allocation of state Superfund money among sites on the list. The proposed amendments do not require the expenditure of public money by local public bodies, Minn. Stat. section 14.11 is not applicable.

VIII. CONSIDERATION OF POSSIBLE IMPACTS ON AGRICULTURAL LANDS

The Agency is required by Minn. Stat. section 14.11, subd. 2 (1990) to consider the impacts of proposed rules on agricultural lands:

If the agency proposing the adoption of the rule determines that the rules may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with the requirements of sections 17.80 to 17.84.

The definition of adverse impact which applies in this case is:

"Action which adversely affects" means any of the following actions taken in respect to agricultural land which have or would have the effect of substantially restricting the agricultural use of the land: (1) acquisition for a nonagricultural use except acquisition for any unit of the outdoor recreation system described in section 86A.05, other than a trail described in subdivision 4 of that section; (2) granting of a permit, license, franchise or other official authorization for nonagricultural use; (3) lease of state-owned land for nonagricultural use except for mineral

exploration or mining; or (4) granting or loaning of state funds for purposes which are not consistent with agricultural use.

Minn. Stat. section 17.81, subd.2 (1990).

As stated above, the proposed rules amend and update existing criteria and procedures for assessing the relative threats presented by sites where there are releases or threatened releases of hazardous substances or pollutants or contaminants. The rules do not cover releases resulting from the normal use of an agricultural chemical or practice in accordance with law. The proposed rules do not adversely affect agricultural lands as that term is defined in Minn. Stat. section 17.81, subd. 2. Therefore, Minn. Stat. section 14.11, subd. 2 is not applicable to this rulemaking.

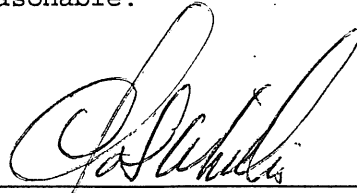
IX. CONCLUSIONS

In this document, the Agency has presented information establishing the need for, and the reasonableness of, the proposed rules governing priority assessment criteria. This document constitutes the PCA's "Statement of Need and Reasonableness" for the proposed rules.

Based on the foregoing, the proposed amendments to Minn. Rules pts. 7044.0100 to 7044.1200 are both needed and reasonable.

Dated: _____

10/28/90



Charles W. Williams
Commissioner

12/7/92

SF-00006-05 (4/86)

DEPARTMENT : POLLUTION CONTROL AGENCY

STATE OF MINNESOTA



Office Memorandum

DATE : November 20, 1992

TO : Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules

FROM : Allen Dotson *Allen Dotson*
Program Development Section
Ground Water and Solid Waste Division

PHONE : 296-7735

SUBJECT : Statement of Need and Reasonableness for Proposed Amendments to Priority Assessment Criteria

The purpose of this memorandum is simply to submit to you the Statement of Need and Reasonableness (SONAR) for proposed amendments to the Priority Assessment Criteria, Minnesota Rules, parts 7044.0100 to 7044.1200, as required by Minnesota Statutes, section 14.131.

As explained in the SONAR, our main purposes in proposing the amendments are to update and to clarify the rules. Do not hesitate to call me at 296-7735 if you have questions concerning the proposed amendments.

AD:tc

Attachment

**The Legislative Commission to
Review Administrative Rules**

DEC - 7 1992



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