

Comments responding to Land Houskeeping Preliminary Draft Public-noticed 6-13-14

Subp. 29. **Free liquids.** "Free liquids" means liquids which readily separate from the solid portion of a waste 205 under ambient temperature and pressure. Waste sorbents used with solvents or other liquids must be assumed to 206 contain free liquids unless the sorbents have been: 207

A. mechanically wrung, including by hand, with a minimum mean pressure of 10 pounds per square inch; 208

B. centrifuged, with a minimum applied centripetal acceleration of 100 times the mean acceleration of 209 gravity; or 210

C. shown by the generator to be dry in use or otherwise not contain free liquids.

Comment [MLR1]: Does this include, rags and wipes used for cleaning? Maybe the definition for "sorbent" in 7045.0220 needs to be changed. If the rules don't spell out what they apply to, I think many folks will interpret them narrowly as materials used to clean up spills. Then you'll have to define what you mean in guidance...it's always best for the rules to just say what they mean. See proposed definition.

I propose the following language:

Sorbent or sorb.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorbent materials include, but are not limited to, granular materials, rags, wipes, towels, pads, socks, and pillows. The free liquids may be applied to the sorbent material either before use (e.g., to wipe a surface) or after use (e.g., to soak up a spill or to wipe a surface being cleaned). "Sorb" means to either adsorb or absorb, or both.

7045.0135 LISTS OF HAZARDOUS WASTES. 370

[For text of subps. 1 to 2a, see M.R.] 371

Subp. 2b. Additions, modifications, or exceptions to incorporated provisions. 372

[For text of items A to C, see M.R.] 373

D. With the exception of subitem (2), wastes adopted under subpart 1a of this part that were listed solely 374 because they exhibited one or more of the characteristics defined by subitem (1) are not regulated as listed 375 hazardous wastes when they do not exhibit those characteristics at the point of generation or after treatment. 376

Mixtures of wastes listed under this item and wastes generated from management of such wastes are not 377 regulated as listed hazardous wastes, if they do not exhibit any of the characteristics listed under subitem (1). 378

(1) For the purposes of this item, characteristics of ignitability, corrosivity, and reactivity, are defined 379 in the Code of Federal Regulations, sections 261.21, 261.22, and 261.23, as amended, except as modified in subitem 380 (2). 381

(2) Sorbents potentially subject to regulation solely due to mixture with a listed solvent do not exhibit 382 the characteristic of ignitability if they do not contain free liquid as defined in part 7045.0020, subpart 29. 383

(3) Wastes excluded under this item remain subject to the land disposal restrictions adopted under 384 part 7045.1390, if the restrictions would otherwise apply to the waste. 385

[For text of subps. 3 to 5, see M.R.]

7045.0208 HAZARDOUS WASTE MANAGEMENT. 389

Subp. 1. Management by generator. A generator must manage hazardous waste by using one of the methods 390 described in items A to H, unless otherwise specifically exempted under this chapter. 391

A. A generator may treat or dispose of hazardous waste at an on-site facility as provided under part parts 392 7045.0211 and 7045.0552, subpart 3, item K. 393

Comment [MLR2]: This is poorly worded. I think what's being described is mixtures of different wastes, but this doesn't say that. I at first took it to me wastes covered by this item. I suggest rewording it to make it more clear.

[For text of items B to H and subp. 1a, see M.R.] 394

Subp. 2. Relinquishing control. A generator must not relinquish control of a hazardous waste if: 395

A. the generator has reason to believe that the hazardous waste will not be properly managed; or 396

B. the transporter or the treatment, storage, or disposal facility is not exempt under this chapter and has 397 not notified the commissioner of its hazardous waste activity and received obtained an identification number;. or 398

C. the transporter is not currently licensed or permitted by the Minnesota Department of Transportation as 399 a hazardous waste transporter, except as exempted in part 7045.0120. If the transporter already has an 400 identification number, it must provide that number to the commissioner.

Comment [MLR3]: See suggested change in wording below.

I suggest that the last sentence be reworded as follows: If the transporter has an identification number not issued by the commissioner, it must provide the number to the commissioner before transporting hazardous waste that originates or terminates in Minnesota.

Subp. 3. General conditions. Each license must include the general conditions described in items A to J and the 433 commissioner shall incorporate these conditions into all licenses either expressly or by specific reference to this 434 part. Licensees must comply with all conditions of the license at all times. 435

[For text of items A to F, see M.R.] 436

G. If the licensee begins generation of a hazardous waste that was not included on the license application 437 and is therefore not authorized under the existing license, the licensee must submit an amended application 438 providing information required in part 7045.0230 7045.0205 7045.0325 7045.0245 7045.0208 7045.0245 within 75 days of first producing the new hazardous waste. The 439 generator must at all times manage the new waste in full compliance with parts to . The 440 generator must not treat, dispose of, or relinquish control of the new waste until at least 15 days after the 441 amended license application is received by the commissioner. The date of receipt is the postmark date if mailed or 442 the agency date of receipt if hand delivered. In the period between 15 days after receipt and the commissioner's 443 action under part , the generator may treat, dispose of, and relinquish control of the new waste as 444 provided in part until written response to the generator's amended license application is received under 445 part . After the commissioner acts on the amended license application, the generator must manage the 446 new waste according to the amended license conditions and the requirements of this chapter or the generator must 447 cease producing the new waste if the amended license application is denied. 448

H. If the licensee changes management of a hazardous waste during the term of the license, the licensee 449 must report the change in the next license renewal application required under part 7045.0248. 450

I. G The license is not transferable. If the owner or operator to whom the license has been issued changes, 451 during the term of the license, the license is transferred to the new owner or operator. Tthe new owner or 452 operator must apply for a new license not later than 30 days after the change, but at the end of the existing 453 license term. 454

J. H. The license authorizes the licensee to perform the activities described in or referenced by the license 455 under the conditions of the license. In issuing the license, the state and agency assume no responsibility for 456 damage to persons, property, or the environment caused by the activities of the licensee in the conduct of its 457 actions, including those activities authorized under the license. To the extent the state and agency may be 458 liable for the activities of its employees, that

Comment [MLR4]: Should this be G? I noticed the next paragraph is I and G and the next is J and H. Are these typos?

7045.0361 IDENTIFICATION NUMBERS. 535

A person who transports hazardous waste that originates or terminates in Minnesota must obtain an 536 identification number before transporting the hazardous waste. The transporter may obtain the number by 537

notifying the commissioner of their hazardous waste transport activity obtain an identification number on forms 538 provided by the agency before transporting the hazardous waste. If the transporter already has an identification 539 number, it must provide that number to the commissioner.

Comment [MLR5]: See suggested change in wording below.

I suggest that the last sentence be reworded as follows: If the transporter has an identification number not issued by the commissioner, it must provide the number to the commissioner before transporting hazardous waste that originates or terminates in Minnesota.

**7045.0310 SPECIAL REQUIREMENTS FOR WASTE COLLECTED AS A RESULT OF HOUSEHOLD HAZARDOUS WASTE
481 MANAGEMENT PROGRAM. 482**

[For text of subps. 1 to 2, see M.R.] 483

Subp. 3. Management requirements. *An operator who establishes or operates all or part of a household hazardous 484 waste management program must comply with the standards applicable to large quantity generators established 485 in parts 7045.0205 to 7045.0325, except as modified in items A to EG. 486*

[For text of items A to E, see M.R.] 487

F. The operator need not comply with the requirements of part 7045.0625, subpart 1, item D, and subpart 4, 488 item A, to submit copies of hazardous waste manifests or shipping papers to the commissioner. 489
G. An operator who is operating only a designated collection point for waste architectural paint under 490 Minnesota Statutes section 115A.1415 must comply with the standards applicable to small quantity generators in 491 parts 7045.0205 to 7045.0325, except as modified in this part, for the waste architectural paint collected. In lieu of 492 the time limit contained in subpart 3, item D, and subpart 6 of this part, the operator must meet the small quantity 493 generator accumulation volume and time limits established in part 7045.0292, subpart 5 for the waste architectural 494 paint collected. In addition to other destinations allowed by this part, the operator may also transport waste 495 architectural paint to or accept waste architectural paint from another collection program authorized under this 496 part or part 7045.0320 without a manifest. The operator must meet all otherwise applicable requirements for other 497 hazardous waste activities at the site.

Comment [MLR6]: This is a typo. There is no 7045.0625. 7045.0265?



Protecting, maintaining and improving the health of all Minnesotans

July 16, 2014

Ms. Yolanda Letnes
520 Lafayette Road North
St. Paul, MN 55155-4194

Dear Ms. Letnes:

The Health Risk Assessment Unit (HRA) of the Minnesota Department of Health (MDH) appreciates the opportunity to provide input on the preliminary draft rule language for the Land Housekeeping Amendments. We would like to offer the attached comments on Minnesota Rules Chapter 7035, part 2815 and Chapter 7045.

We welcome questions or further discussion on any of our suggestions. Please contact me at 651-201-4923 or nancy.rice@state.mn.us.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Rice".

Nancy Rice
Health Risk Assessment Unit
Minnesota Department of Health

Encl.

Minnesota Rules part 7035.2815, Subp. 4, Item F - proposed language from Minnesota Pollution Control Agency (MPCA)

*Subp. 4. **Ground water performance standards.** The owner or operator must design, construct, operate, and maintain the facility to achieve compliance with items A to J. 100*

[For text of items A to E, see M.R.] 101

F. Except as provided in items E and H and this item, pollutant concentrations in ground water must not exceed the intervention limit of the standards in this item at or beyond the compliance boundary and at or below the lower compliance boundary. The intervention limit is defined as 25% of the lowest concentration of the applicable standard in subitems (1) or (2). The standards and intervention limits for these two boundaries are as follows:

- (1) Health-Based Guidance for Water standards established by the Minnesota Department of Health.*
- (2) If no standard is established for a particular pollutant under (1), then the standard shall be the National Primary Water Regulations found in 40 CFR Part 141.*

Minnesota Department of Health (MDH) Comment

The Health Risk Assessment (HRA) unit supports the changes proposed, including the reference in subitem (1) to the Health-Based Guidance for Water developed by MDH, and removal of the table following subitem (2) We suggest the following to further strengthen and clarify the rule update:

In subitem (1) the term “Health-Based Guidance for Water” should be defined in the rule to clarify which forms of health-based guidance developed by MDH are acceptable for use because MDH has not defined health-based guidance for water in rule or policy. Instead, that term is used to describe the grouping of the following types of guidance:

- Health Risk Limits (HRLs) (adopted into rule)
- Health-Based Guidance (HGB) values (not adopted into rule: adoption might be pending or not planned)
- Risk Assessment Advice (developed using limited data or new methodology; not adopted into rule)

MPCA might consider, as a way of defining health-based guidance for water, adding to the rule the reference to the MDH health-based water guidance table. Please see <http://www.health.state.mn.us/divs/eh/risk/guidance/gw/index.html> for more information on MDH water guidance types.

MDH is currently developing newer types of guidance, benchmarks for pharmaceuticals and rapid assessments for pesticides that could also be grouped into the broad category of “Health-Based Guidance.” We encourage MPCA to consider which types of guidance will be suitable for the rule. MDH welcomes more discussion on this important aspect of the proposed rule change.

MDH agrees with the proposed hierarchy of guidance values in the updated rule, as follows:

- (1) Health-Based Guidance for Water standards established by the Minnesota Department of Health.*
- (2) If no standard is established for a particular pollutant under (1), then the standard shall be the National Primary Water Regulations found in 40 CFR Part 141.*

However, as the table of guidance values is being stricken from the rule, it is important to consider that neither MDH nor 40 CFR Part 141 (subitems (1) and (2)) contains guidance on all chemicals that could be found in landfill leachate affecting groundwater. Under the proposed changes, the following chemicals would have no guidance value under (1) or (2):

Acrylamide (under review by MDH for guidance as of July 2014)
Acrylonitrile
1,3-dichlorobenzene (meta)

MDH does not currently have plans to review acrylonitrile or 1,3-dichlorobenzene for guidance development. We encourage MPCA to consider if intervention limits for these three chemicals are important to retain during the rule revision. MDH also suggests that these chemicals can be nominated to the HRL or CEC program for a new review that would lead to new guidance.

Minnesota Rules part 7035.2815, Subp. 4 Item H.

Although MPCA currently does not indicate any proposed changes in Item H of Minnesota Rules 7035.2815, we found outdated terms and references in this item. In addition, proposed changes in item F appear to impact some of the requirements in Item H. We therefore offer the following suggestions:

Item H subitem (2):

Current language, Minnesota Rules part 7035.2815, Subp. 4 Item H, subitem (2):

“Upon request by the owner or operator, the commissioner may establish alternative limits for some or all substances for portions of a facility filled before November 15, 1988. Unless approved by the agency, or by the commissioner as provided in subitem (1), the alternative limits must not exceed four times the concentrations given in item F. The owner or operator must have completed a remedial investigation study evaluating the extent and severity of ground water pollution at the facility and a feasibility study evaluating the feasibility and the environmental and economic costs, risks, and benefits of the possible alternative corrective actions. The alternative approaches must include corrective actions intended to achieve compliance with the standards under items E and F and at least one additional approach intended to maintain ground water concentrations lower than four times the concentrations under item F. The feasibility study also must evaluate the pollutant concentrations that would remain in ground water after corrective action and the extent to which the use of these alternative limits may adversely affect the immediate and future use of ground water downgradient from the facility.”

MDH comment for Minnesota Rules part 7035.2815, Subp. 4, Item H, subitem (2):

The language in Item H, subitem (2), sets the intervention limit to four times the concentrations in Item F. This would set the alternative limit in item H to 100% of the current health-based guidance value for chemicals in facilities filled before November 15, 1988.

(That is: $4 \times (25\% \text{ of current HBG value}) = 100\% \text{ current HBG value}$ for some contaminants)

This practice is protective for each individual chemical alone, but because there could be several chemicals in landfill leachate, we suggest incorporating additional language to address mixtures of chemicals through use of health risk indices, such as is described in Minnesota Rules 4717.7880 and 4717.7890. Adding this provision better ensures protection of health if the water is consumed. For example, such language might add to the sentence:

“...the alternative limits must not exceed four times the concentrations given in item F. In addition, the hazard index of a mixture of pollutants must not exceed 1, where the hazard index is the sum of hazard quotients of the individual pollutants in the mixture of chemicals. A hazard quotient is the concentration of chemical (in parts per billion) in water divided by the alternative limit or standard (also in parts per billion).”

A discussion of mixture of chemicals is available on MDH's Web page called "Evaluating Concurrent Exposures to Multiple Chemicals" at <http://www.health.state.mn.us/divs/eh/risk/guidance/gw/additivity.html> (MDH, 2014). A more detailed discussion is found starting on page 60 of MDH's Health Risk Limit Statement of Need and Reasonableness (MDH, 2008), found at <http://www.health.state.mn.us/divs/eh/risk/rules/water/hrlsonar08.pdf#page=68>. MDH's Web page and SONAR discussion are based on the EPA document "Guidelines for the Health Risk Assessment of Chemical Mixtures," Federal Register, Volume 51, pages 34014-34025, September 24, 1986" (U.S. EPA, 1986), which is reference in MPCA current rule in 7035.2815, Subp. 4, Item J, as well and its supplement, "Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures" (U.S. EPA, 2000). We believe the concepts in Minnesota Rules 4717.7880 and 4717.7890 agree with the intent of Minnesota Rules 7035.2815.

Item H subitem (5):

Current language, Minnesota Rules 7035.2815, Subp 4, Item H, subitem (5)

"If a substance not listed in item F is present in ground water at a facility and is determined by the Minnesota commissioner of health to be potentially harmful to health, the commissioner may establish alternative limits for that substance. Except as provided elsewhere in this subpart, the alternative limits shall be 25 percent of the concentration given in unit (a) or (b):

(a) For a substance not classified by the United States Environmental Protection Agency as Group A (human carcinogen) or Group B (probable human carcinogen), the recommended allowable limit, as determined by the Minnesota commissioner of health; or

(b) For a substance classified by the United States Environmental Protection Agency as a Group A or Group B carcinogen, either the concentration corresponding to a risk of one additional case of cancer per 100,000 adults consuming the water over a lifetime, as estimated by the United States Environmental Protection Agency and the Minnesota commissioner of health, or the recommended allowable limit under unit (a), whichever is lower."

MDH comment:

Several terms and references in this subpart are outdated. Because the current rule language essentially defers to determinations made by the commissioner of Health, we recommend the following revision:

"If a substance not listed in item F is present in ground water at a facility and is determined by the Minnesota commissioner of health to be potentially harmful to health, the commissioner may establish alternative limits for that substance. Except as provided elsewhere in this subpart, the alternative limits shall be 25 percent of the concentration recommended by Minnesota Department of Health:

~~(a) For a substance not classified by the United States Environmental Protection Agency as Group A (human carcinogen) or Group B (probable human carcinogen), the recommended allowable limit, as determined by the Minnesota commissioner of health; or~~

~~(b) For a substance classified by the United States Environmental Protection Agency as a Group A or Group B carcinogen, either the concentration corresponding to a risk of one additional case of cancer per 100,000 adults consuming the water over a lifetime, as~~

~~estimated by the United States Environmental Protection Agency and the Minnesota commissioner of health, or the recommended allowable limit under unit (a), whichever is lower."~~

We believe this revision would also align with the proposed language for item F of this part 7035.2815.

Item H, subitem (6)

Current language, Minnesota Rules, 7035.2815, Subp.4, Item H, subitem 6

"6) If a substance which has a standard or an alternative standard under subitems (2) to (5) is present in ground water at a facility, and if the recommended allowable limit or the concentration corresponding to the one-in-100,000 cancer risk under subitem (5) is changed, the commissioner may establish alternative limits for that substance. The alternative limits shall be 25 percent of the concentration given in subitem (5), unit (a) or (b), whichever is applicable."

MDH comment

The content of this subitem is outdated or would not be applicable if suggested changes are proposed. MDH suggests removing this subitem, or altering to only indicate the commissioner of MPCA may establish an alternate value when needed.

Item J, subitem (2)

Current language Minnesota Rules 7035.2815 Subp. 4, Item J, subitem 2

"(2) based on the additive carcinogenicity or toxicity of a combination of pollutants in the ground water, in lieu of the limits for individual substances under items E, F, and H. The additive carcinogenicity or toxicity must be computed using the approach given in "Guidelines for the Health Risk Assessment of Chemical Mixtures," Federal Register, Volume 51, pages 34014-34025, September 24, 1986. Where quantification using this approach is feasible, the commissioner may require response actions if the sum total risk of consuming the water over a lifetime would exceed either 2.5 additional cases of cancer in a population of 1,000,000 persons or for noncarcinogens, 25 percent of the acceptable concentration for long-term consumption."

MDH comment

There are several parts of this rule that are out of date. In addition to our comments above for Subp 4, Item H, subpart 2, we suggest the following wording changes:

Ms. Yolanda Letnes

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"2) based on the additive carcinogenicity or toxicity of a combination of pollutants in the ground water, in lieu of the limits for individual substances under items E, F, and H. The additive carcinogenicity or toxicity must be computed using the approach given in Minnesota Rules 4717.7880 and 4717.7890, "Guidelines for the Health Risk Assessment of Chemical Mixtures," Federal Register, Volume 51, pages 34014-34025, September 24, 1986. Where quantification using this approach is feasible, the commissioner may require response actions if the sum total risk of consuming the water over a lifetime would exceed the health risk index of 0.25 for either cancer or noncancer. ~~either 2.5 additional cases of cancer in a population of 1,000,000 persons or for noncarcinogens, 25 percent of the acceptable concentration for long-term consumption."~~

Minnesota Rules Chapter 7045

MPCA notes on its Housekeeping Rulemakings Web page that one of its goals is to update outdated cross references. In the process of reviewing the proposed language for Minnesota Rules Chapter 7045, we discovered another part (7045.0484) that could be amended to correct an outdated reference. While this part is currently not in the proposed revisions, we would like to note it in our comments:

Current language Minnesota Rules. 7045.0484 Subp. 6, Item B

"B. for any of the constituents listed as health risk levels in parts 4717.7100 to 4717.7800 or as maximum concentration limits in Code of Federal Regulations, title 40, part 141, must not exceed the lower of the respective values given in those parts if the background level of the constituent is below the lower of the values given in those parts; or"

MDH comment:

The reference in 7045.0484 Subp. 6, Item B to the Health Risk Limits in parts 4717.7100 to 4717.7800 is out of date as of September 2009 and does not encompass many of MDH's most recent Health Risk Limits. A current reference is Minnesota Rules 4717.7500 to 4717.7900. We suggest updating the reference.

In addition, there is language in 7045.0484 Subp. 6, Item B that could be updated and modified for clarity. While modification has been discussed in the past among several state agencies, MDH welcomes further conversation.

Please contact us with any question or for further discussion about any of these suggestions.

References:

Minnesota Department of Health (MDH). 2008. Statement of Need and Reasonableness, p60. Retrieved from <http://www.health.state.mn.us/divs/eh/risk/rules/water/hrlsonar08.pdf>. Accessed July 11, 2014.

MDH. 2010. Evaluating Concurrent Exposures to Multiple Chemicals. Retrieved from <http://www.health.state.mn.us/divs/eh/risk/guidance/gw/additivity.html> Accessed July 3, 2014.

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**MINNESOTA
RESOURCE
RECOVERY
ASSOCIATION**

Date: July 16, 2014

Ms. Yolanda Letnes
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: Proposed Land Housekeeping Rules

MRRA members support the MPCA's goal of transferring old variances into rule, as this provides a clearer and more understandable regulatory framework for our facilities. We understood from MPCA staff that the intent of this housekeeping rule was to craft rule language that adequately reflects the current sampling and analysis required by the variance. Unfortunately, the proposed rule as drafted doesn't appear to take into account all of the aspects of the variance issued in 1996. MRRA and its membership cannot support this as housekeeping rulemaking unless the issues raised below are incorporated. Thus, the Minnesota Resource Recovery Association (MRRA) representing all nine waste to energy facilities in the State that are impacted by the proposed draft Land Housekeeping Rule offer the following comments and recommendations related to the proposed changes to sections related to Municipal Waste Combustion Ash Testing Requirements:

1) Mercury Testing

Section 7035.2910 Municipal Waste Combustion Ash Testing Requirements as proposed includes a total composition, quarterly testing and analysis requirement for mercury. This is the original rule language and does not reflect the variances granted to each facility by which mercury levels have been monitored annually as one composite sample.

Before the variance test methodology, all waste to energy facilities in Minnesota submitted annual ash testing reports to the Agency with quarterly testing of Mercury which met the recommended holding times. The Agency used this data in its determination that the variance to annual testing for mercury was adequate to assure compliance. MRRA and its members feel that the data submitted to the MPCA in this time period is sufficient to conclude that mercury levels in the ash are well known and consistent.

The MRRA does not feel that collecting and analyzing quarterly samples in the future would yield any new data or in any way change management practices. Thus, the MRRA, in conjunction with its nine member facilities, proposes that the Agency amend

the rule to reflect that a sub-sample of one of the four quarterly samples be analyzed for mercury in compliance with the recommended lab holding times, consistent with Minn. R. 7035.2910 Subp. 3, last sentence.

This amendment will allow the Agency to receive accurate data on mercury levels in WTE ash without violating recommended lab holding times and will allow WTE facilities to comply with the revised analytical requirements without unnecessary regulatory burdens.

Alternatively, if the Agency requires quarterly testing of mercury, MRRA members would ask that language be added that allows the Commissioner to determine what number of relatively consistent sample levels is adequate to allow an ash generator to revert to analyzing only one of the four quarterly samples for mercury.

2) 1312 Leaching Potential

To accurately reflect the ash variance related to 1312 testing, lines 846-856 in the proposed rule need to be deleted. 1312 Leaching Potential was eliminated in 1996 by the variance.

3) Dioxin Testing

The dioxin sampling in line 873, Table 1, Item (c), is inconsistent with current rules which do not require sampling for bottom ash and require only two samples for fly ash and two samples for combined ash.

MRRA members, or their representatives, would appreciate the opportunity to meet with MPCA staff prior to when the rule is finalized to review and discuss any proposed or future changes which are made by the MPCA that may have an impact upon our facilities through this housekeeping rule effort.

If you have any questions about these proposed language changes, please do not hesitate to call Trudy Richter, Executive Director of the MRRA at 651-222-7227.