

Permit Information

Federal

§ 258.3 Consideration of other Federal laws.

The owner or operator of a municipal solid waste landfill unit must comply with any other applicable Federal rules, laws, regulations, or other requirements.

§ 258.4 Research, development, and demonstration permits.

(a) Except as provided in paragraph (f) of this section, the Director of an approved State may issue a research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm depth of leachate on the liner:

- (1) The run-on control systems in §258.26(a)(1); and
- (2) The liquids restrictions in §258.28(a).

(b) The Director of an approved State may issue a research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of §258.60(a)(1), (a)(2) and (b)(1), provided the MSWLF unit owner/operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause leachate depth on the liner to exceed 30-cm.

(c) Any permit issued under this section must include such terms and conditions at least as protective as the criteria for municipal solid waste landfills to assure protection of human health and the environment. Such permits shall:

- (1) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in paragraph (e) of this section;
- (2) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and non-hazardous wastes which the State Director deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;
- (3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the State Director with respect to the operation of the facility;
- (4) Require the owner or operator of a MSWLF unit permitted under this section to submit an annual report to the State Director showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all

monitoring and testing results, as well as any other operating information specified by the State Director in the permit; and

(5) Require compliance with all criteria in this part, except as permitted under this section.

(d) The Director of an approved State may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the State Director determines that the overall goals of the project are not being attained, including protection of human health or the environment.

(e) Any permit issued under this section shall not exceed three years and each renewal of a permit may not exceed three years.

(1) The total term for a permit for a project including renewals may not exceed twelve years; and

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and other any other requirements that the Director determines necessary for permit renewal.

(f) *Small MSWLF units.* (1) An owner or operator of a MSWLF unit operating under an exemption set forth in §258.1(f)(1) is not eligible for any variance from §§258.26(a)(1) and 258.28(a) of the operating criteria in subpart C of this part.

(2) An owner or operator of a MSWLF unit that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, is not eligible for a variance from §258.60 (b)(1), except in accordance with §258.60(b)(3).

[69 FR 13255, Mar. 22, 2004]

§ 239.1 Purpose.

This part specifies the requirements that state permit programs must meet to be determined adequate by the EPA under section 4005(c)(1)(C) of the Resource Conservation and Recovery Act (RCRA or the Act) and the procedures EPA will follow in determining the adequacy of state Subtitle D permit programs or other systems of prior approval and conditions required to be adopted and implemented by states under RCRA section 4005(c)(1)(B).

§ 239.2 Scope and definitions.

(a) *Scope.* (1) Nothing in this part precludes a state from adopting or enforcing requirements that are more stringent or more extensive than those required under this part or from operating a permit program or other system of prior approval and conditions with more stringent requirements or a broader scope of coverage than that required under this part.

(2) All states which develop and implement a Subtitle D permit program must submit an application for an adequacy determination for purposes of this part. Except as provided in §239.12, state Subtitle D permit programs which received full approval prior to November 23, 1998 need not submit new applications for approval under this part. Similarly, except as provided in §239.12, states that received partial approval of their Subtitle D permit programs prior to November 23, 1998 need not reapply under this part for approval for those program elements EPA has already determined to be adequate.

(3) If EPA determines that a state Subtitle D permit program is inadequate, EPA will have the authority to enforce the Subtitle D federal revised criteria on the RCRA section 4010(c) regulated facilities under the state's jurisdiction.

(b) *Definitions.* (1) For purposes of this part:

Administrator means the Administrator of the U.S. Environmental Protection Agency or any authorized representative.

Approved permit program or *approved program* means a state Subtitle D permit program or other system of prior approval and conditions required under section 4005(c)(1)(B) of RCRA that has been determined to be adequate by EPA under this part.

Approved state means a state whose Subtitle D permit program or other system of prior approval and conditions required under section 4005(c)(1)(B) of RCRA has been determined to be adequate by EPA under this part.

Guidance means policy memorandum, an application for approval under this Part, or other technical or policy documents that supplement state laws and regulations. These documents provide direction with regard to how state agencies should interpret their permit program requirements and must be consistent with state laws and regulations.

Implementing agency means the state and/or local agency(ies) responsible for carrying out an approved state permit program.

Lead state agency means the state agency which has the legal authority and oversight responsibilities to implement the permit program or other system of prior approval and conditions to ensure that facilities regulated under section 4010(c) of Subtitle D of RCRA comply with the requirements of the approved state permit program and/or has been designated as lead agency.

Permit or prior approval and conditions means any authorization, license, or equivalent control document issued under the authority of the state regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

Permit documents means permit applications, draft and final permits, or other documents that include applicable design and management conditions in accordance with the Subtitle D federal revised criteria, found at 40 CFR part 257, subpart B and 40 CFR part 258, and the technical and administrative information used to explain the basis of permit conditions.

Regional Administrator means any one of the ten Regional Administrators of the U.S. Environmental Protection Agency or any authorized representative.

State Director means the chief administrative officer of the lead state agency responsible for implementing the state permit program for Subtitle D regulated facilities.

State program or permit program means all the authorities, activities, and procedures that comprise the state's system of prior approval and conditions for regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

Subtitle D regulated facilities means all solid waste disposal facilities subject to the revised criteria promulgated by EPA under the authority of RCRA Section 4010(c).

(c) The definitions in 40 CFR part 257, subpart B and 40 CFR part 258 apply to all subparts of this part.

§ 239.6 Permitting requirements.

(a) State law must require that:

(1) Documents for permit determinations are made available for public review and comment; and

(2) Final determinations on permit applications are made known to the public.

(b) The state shall have procedures that ensure that public comments on permit determinations are considered.

(c) The state must fully describe its public participation procedures for permit issuance and post-permit actions in the narrative description required under §239.4 and include a copy of these procedures in its permit program application.

(d) The state shall have the authority to collect all information necessary to issue permits that are adequate to ensure compliance with the relevant 40 CFR part 257, subpart B or 40 CFR part 258 federal revised criteria.

(e) For municipal solid waste landfill units, state law must require that:

(1) Prior to construction and operation, all new municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section;

(2) All existing municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section by the deadlines identified in 40 CFR 258.1;

(3) The state shall have the authority to impose requirements for municipal solid waste landfill units adequate to ensure compliance with 40 CFR part 258. These requirements shall include:

(i) General standards which achieve compliance with 40 CFR part 258, subpart A;

- (ii) Location restrictions for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart B;
 - (iii) Operating criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart C;
 - (iv) Design criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart D;
 - (v) Ground-water monitoring and corrective action standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart E;
 - (vi) Closure and post-closure care standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart F; and
 - (vii) Financial assurance standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart G.
- (f) For non-municipal, non-hazardous waste disposal units that receive CESQG waste, state law must require that:
- (1) Prior to construction and operation, all new non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste shall have a permit incorporating the conditions identified in paragraph (f)(3) of this section;
 - (2) All existing non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste shall have a permit incorporating the conditions identified in paragraph (f)(3) of this section by the deadlines identified in 40 CFR 257.5;
 - (3) The state shall have the authority to impose requirements for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste adequate to ensure compliance with 40 CFR part 257, subpart B. These requirements shall include:
 - (i) General standards which achieve compliance with 40 CFR part 257, subpart B (§257.5);
 - (ii) Location restrictions for non-municipal, non-hazardous waste disposal units which achieve compliance with 40 CFR 257.7 through 257.13;
 - (iii) Ground-water monitoring and corrective action standards for non-municipal, non-hazardous waste disposal units which achieve compliance with 40 CFR 257.21 through 257.28; and,
 - (iv) Recordkeeping for non-municipal, non-hazardous waste disposal units which achieves compliance with 40 CFR 257.30.

§ 239.7 Requirements for compliance monitoring authority.

- (a) The state must have the authority to:

- (1) Obtain any and all information necessary, including records and reports, from an owner or operator of a Subtitle D regulated facility, to determine whether the owner or operator is in compliance with the state requirements;
 - (2) Conduct monitoring or testing to ensure that owners and operators are in compliance with the state requirements; and
 - (3) Enter any site or premise subject to the permit program or in which records relevant to the operation of Subtitle D regulated facilities or activities are kept.
- (b) A state must demonstrate that its compliance monitoring program provides for inspections adequate to determine compliance with the approved state permit program.
 - (c) A state must demonstrate that its compliance monitoring program provides mechanisms or processes to:
 - (1) Verify the accuracy of information submitted by owners or operators of Subtitle D regulated facilities;
 - (2) Verify the adequacy of methods (including sampling) used by owners or operators in developing that information;
 - (3) Produce evidence admissible in an enforcement proceeding; and
 - (4) Receive and ensure proper consideration of information submitted by the public.

§ 239.8 Requirements for enforcement authority.

Any state seeking approval must have the authority to impose the following remedies for violation of state program requirements:

- (a) To restrain immediately and effectively any person by administrative or court order or by suit in a court of competent jurisdiction from engaging in any activity which may endanger or cause damage to human health or the environment.
- (b) To sue in a court of competent jurisdiction to enjoin any threatened or continuing activity which violates any statute, regulation, order, or permit which is part of or issued pursuant to the state program.
- (c) To sue in a court of competent jurisdiction to recover civil penalties for violations of a statute or regulation which is part of the state program or of an order or permit which is issued pursuant to the state program.

§ 239.9 Intervention in civil enforcement proceedings.

Any state seeking approval must provide for intervention in the state civil enforcement process by providing either:

- (a) Authority that allows intervention, as a right, in any civil action to obtain remedies specified in §239.8 by any citizen having an interest that is or may be adversely affected;
- or,

(b) Assurance by the appropriate state agency that:

(1) It will provide notice and opportunity for public involvement in all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment); and,

(2) It will investigate and provide responses to citizen complaints about violations; and,

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

§ 239.10 Criteria and procedures for making adequacy determinations.

(a) The State Director seeking an adequacy determination must submit to the appropriate Regional Administrator an application in accordance with §239.3.

(b) Within 30 days of receipt of a state program application, the Regional Administrator will review the application and notify the state whether its application is administratively complete in accordance with the application components required in §239.3. The 180-day review period for final determination of adequacy, described in paragraph (d) of this section, begins when the Regional Administrator deems a state application to be administratively complete.

(c) After receipt and review of a complete application, the Regional Administrator will make a tentative determination on the adequacy of the state program. The Regional Administrator shall publish the tentative determination on the adequacy of the state program in the Federal Register. Notice of the tentative determination must:

(1) Specify the Regional Administrator's tentative determination;

(2) Afford the public at least 30 days after the notice to comment on the state application and the Regional Administrator's tentative determination;

(3) Include a specific statement of the areas of concern, if the Regional Administrator indicates the state program may not be adequate;

(4) Note the availability for inspection by the public of the state permit program application; and

(5) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period. The Regional Administrator may determine when such a hearing is necessary to clarify issues involved in the tentative adequacy determination. If held, the public hearing will be scheduled at least 45 days from public notice of such hearing. The public comment period may be continued after the hearing at the discretion of the Regional Administrator.

(d) Within 180 days of determining that a state program application is administratively complete, the Regional Administrator will make a final determination of adequacy after review and consideration of all public comments, unless the Regional Administrator, after consultation with the State Director, agrees to extend the review period. The

Regional Administrator will give notice of the final determination in the Federal Register. The document must include a statement of the reasons for the determination and a response to significant comments received.

(e) For all states that do not submit an application, the Administrator or Regional Administrator may issue a final determination of inadequacy in the Federal Register declaring those state permit programs inadequate to ensure compliance with the relevant Subtitle D federal revised criteria. Such states may apply later for a determination of adequacy.

§ 239.11 Approval procedures for partial approval.

(a) EPA may partially approve state permit programs that do not meet all of the requirements in §239.6(e)(3) (i.e., do not incorporate all of the relevant Subtitle D federal revised criteria). Such permit programs may be partially approved if:

(1) The appropriate Regional Administrator determines that the state's permit program largely meets the technical requirements of §239.6 and meets all other requirements of this part;

(2) Changes to a specific part(s) of the state permit program are required in order for the state program to fully meet the requirements of §239.6; and

(3) Provisions not included in the partially approved portions of the state permit program are clearly identifiable and separable subsets of the relevant Subtitle D federal revised criteria.

(b) A state applying for partial approval must include in its application a schedule to revise the necessary laws, regulations, and/or guidance to obtain full approval within two years of final approval of the partial permit program. The Regional Administrator and the State Director must agree to the schedule.

(c) The application for partial approval must fully meet the requirements of subparts B and C of this part.

(d) States with partially approved permit programs are only approved for those relevant provisions of the Subtitle D criteria included in the partial approval.

(e) Any partial approval adequacy determination made by the Regional Administrator pursuant to this section and §239.10 shall expire two years from the effective date of the final partial program adequacy determination unless the Regional Administrator grants an extension. States seeking an extension must submit a request to the appropriate Regional Administrator, must provide good cause for missing the deadline, and must supply a new schedule to revise necessary laws, regulations, and/or guidance to obtain full approval. The appropriate Regional Administrator will decide if there is good cause and if the new schedule is realistic. If the Regional Administrator extends the expiration date, the Region will publish a document in the Federal Register along with the new expiration date. A state with partial approval shall submit an amended application meeting all of the

requirements of this part and have that application approved by the two-year deadline or the amended date set by the Regional Administrator.

(f) The Regional Administrator will follow the adequacy determination procedures in §239.10 for all initial applications for partial program approval and follow the adequacy determination procedures in §239.12(f) for any amendments for approval for unapproved sections of the relevant Subtitle D federal revised criteria.

§ 239.12 Modifications of state programs.

(a) Approved state permit programs may be modified for various reasons, such as changes in federal or state statutory or regulatory authority.

(b) If the federal statutory or regulatory authorities that have significant implications for state permit programs change, approved states may be required to revise their permit programs. These changes may necessitate submission of a revised application. Such a change at the federal level and resultant state requirements would be made known to the states either in a Federal Register document containing the change or through the appropriate EPA Regional Office.

(c) States that modify their programs must notify the Regional Administrator of the modifications. Program modifications include changes in state statutory or regulatory authority or relevant guidance or shifting of responsibility for the state program within the lead agency or to a new or different state agency or agencies. Changes to the state's permit program, as described in its application which may result in the program becoming inadequate, must be reported to the Regional Administrator. In addition, changes to a state's basic statutory or regulatory authority or guidance which were not part of the state's initial application, but may have a significant impact on the adequacy of the state's permit program, also must be reported to the Regional Administrator.

(d) States must notify the appropriate Regional Administrator of all permit program modifications required in paragraphs (b) and (c) of this section within a time-frame agreed to by the State Director and the Regional Administrator.

(e) The Regional Administrator will review the modifications and determine whether the State Director must submit a revised application. If a revised application is necessary, the Regional Administrator will inform the State Director in writing that a revised application is necessary, specifying the required revisions and establishing a schedule for submission of the revised application.

(f) For all revised municipal solid waste landfill permit program applications, and for all amended applications in the case of partially approved programs, the state must submit to the appropriate Regional Administrator an amended application that addresses those portions of its program that have changed or are being amended. For such revised programs, as well as for those from states seeking EPA approval of permit programs for state regulation of non-municipal, non-hazardous waste disposal units which receive conditionally exempt small quantity generator hazardous waste, the Regional Administrator will make an adequacy determination using the criteria found in §239.10.

(g) For revised applications that do not incorporate permit programs for additional classifications of Subtitle D regulated facilities and for all amended applications in the case of partially approved programs, the appropriate Regional Administrator shall provide for public participation using the procedures outlined in §239.10 or, at the Regional Administrator's discretion, using the following procedures.

(1) The Regional Administrator will publish an adequacy determination in the Federal Register summarizing the Agency's decision and the portion(s) of the state permit program affected and providing an opportunity to comment for a period of at least 60 days.

(2) The adequacy determination will become effective 60 days following publication, if no adverse comments are received. If EPA receives comments opposing its adequacy determination, the Regional Administrator will review these comments and publish another Federal Register document responding to public comments and either affirming or revising the initial decision.

§ 239.13 Criteria and procedures for withdrawal of determination of adequacy.

(a) The Regional Administrator may initiate withdrawal of a determination of adequacy when the Regional Administrator has reason to believe that:

(1) A state no longer has an adequate permit program; or

(2) The state no longer has adequate authority to administer and enforce an approved program in accordance with this part.

(b) Upon receipt of substantive information sufficient to indicate that a state program may no longer be adequate, the Regional Administrator shall inform the state in writing of the information.

(c) If, within 45 days of the state's receipt of the information in paragraph (b) of this section, the state demonstrates to the satisfaction of the Regional Administrator that the state program is adequate (i.e., in compliance with this part), the Regional Administrator shall take no further action toward withdrawal of the determination of adequacy and shall so notify the state and any person(s) who submitted information regarding the adequacy of the state's program and authorities.

(d) If the State Director does not demonstrate the state's compliance with this part to the satisfaction of the Regional Administrator, the Regional Administrator shall list the deficiencies in the program and negotiate with the state a reasonable time for the state to complete such action to correct deficiencies as the Regional Administrator determines necessary. If these negotiations reach an impasse, the Regional Administrator shall establish a time period within which the state must correct any program deficiencies and inform the State Director of the time period in writing.

(e) Within the schedule negotiated by the Regional Administrator and the State Director, or set by the Regional Administrator, the state shall take appropriate action to correct

deficiencies and shall file with the Regional Administrator a statement certified by the State Director describing the steps taken to correct the deficiencies.

(f) If the state takes appropriate action to correct deficiencies, the Regional Administrator shall take no further action toward withdrawal of determination of adequacy and shall so notify the state and any person(s) who submitted information regarding the adequacy of the state's permit program. If the state has not demonstrated its compliance with this part to the satisfaction of the Regional Administrator, the Regional Administrator shall inform the State Director and may initiate withdrawal of all or part of the determination of state program adequacy.

(g) The Regional Administrator shall initiate withdrawal of determination of adequacy by publishing the tentative withdrawal of determination of adequacy of the state program in the Federal Register. Notice of the tentative determination must:

(1) Afford the public at least 60 days after the notice to comment on the Regional Administrator's tentative determination;

(2) Include a specific statement of the Regional Administrator's areas of concern and reason to believe the state program may no longer be adequate; and

(3) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period or when the Regional Administrator determines that such a hearing might clarify issues involved in the tentative withdrawal determination.

(h) If the Regional Administrator finds, after the public hearing (if any) and review and consideration of all public comments, that the state is in compliance with this part, the withdrawal proceedings shall be terminated and the decision shall be published in the Federal Register. The document must include a statement of the reasons for this determination and a response to significant comments received. If the Regional Administrator finds that the state program is not in compliance with this Part by the date prescribed by the Regional Administrator or any extension approved by the Regional Administrator, a final notice of inadequacy shall be published in the Federal Register declaring the state permit program inadequate to ensure compliance with the relevant Subtitle D federal revised criteria. The document will include a statement of the reasons for this determination and response to significant comments received.

(i) States may seek a determination of adequacy at any time after a determination of inadequacy.

[63 FR 57040, Oct. 23, 1999, as amended at 64 FR 4315, Jan. 28, 1999]

Illinois

Section 807.102 Repeals

These rules and regulations replace and supersede Rules and Regulations for Refuse Disposal Sites and Facilities, adopted by the Illinois Department of Public Health on March 22, 1966 and continuing in effect pursuant to Section 49(c) of the Act "*Until*

repealed, amended or superseded by regulations under this Act," (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1049(c)) except that any proceeding arising from any occurrence happening prior to the applicable provision of these rules and regulations shall be governed by the above described Rule.

Section 807.103 Severability

If any provision of these regulations or the application thereof to any person or in any circumstance is adjudged invalid, such adjudication shall not affect the validity of these Regulations as a whole or of any part thereof not adjudged invalid.

Section 807.105 Relation to Other Rules

- a) Persons and facilities regulated pursuant to 35 Ill. Adm. Code 700 through 749 are not subject to the requirements of this Part or of 35 Ill. Adm. Code 811 through 817. However, if such a facility also contains one or more units used solely for the disposal of solid wastes, as defined in 35 Ill. Adm. Code 810.103, such units are subject to requirements of this Part and 35 Ill. Adm. Code 811 through 817.
- b) Persons and facilities subject to 35 Ill. Adm. Code 807, 809 or 811 through 817 may be subject to other applicable Parts of 35 Ill. Adm. Code: Chapter I based on the language of those other Parts. Specific examples of such applicability are provided as explained at 35 Ill. Adm. Code 700.102.
- c) The requirements of 35 Ill. Adm. Code 810 through 817 are intended to supersede the requirements of this Part. Persons and facilities regulated pursuant to 35 Ill. Adm. Code 810 through 817 are not subject to the requirements of this Part. This Part does not apply to new units as defined in 35 Ill. Adm. Code 810.103

Section 807.201 Development Permits

Subject to such exemption as expressly provided in Section 21(e) (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1021(e)) of the Act as to the requirement of obtaining a permit, no person shall cause or allow the development of any new solid waste management site or cause or allow the modification of an existing solid waste management site without a Development Permit issued by the Agency.

Section 807.202 Operating Permits

- a) New Solid Waste Management Sites. Subject to such exemption as expressly provided in Section 21(e) of the Act (Ill. Rev. Stat. 1982, ch. 111 1/2, par. 1021(e)) as to the requirement of obtaining a permit, no person shall cause or allow the use or operation of any solid waste management site for which a Development Permit is required under Section 807.201 without an Operating Permit issued by the Agency, except for such testing operations as may be authorized by the Development Permit.
- b) Existing Solid Waste Management Sites.
 - 1) Subject to such exemption as expressly provided in Section 21(e) of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1021(e)) as to the requirement of obtaining a permit, no person shall cause or allow the use or operation of any existing solid waste management site without an Operating Permit issued by the Agency not later than one year after the effective date of these Regulations.

- 2) All applications for Operating Permits shall be submitted to the Agency at least 90 days prior to the date on which such permit is required; however, the Agency may waive such provision when appropriate.
 - 3) The Agency may, if necessary to prevent an unmanageable workload, extend the date by which Operating Permits are required for a period not to exceed 180 days. The Agency shall notify the persons affected and the Board, in writing, of such extension at least ninety days in advance of the date set forth in Section 202(b)(1).
- c) Duration of Operating Permits.
All operating permits shall remain valid until the site is completed or closed, or until revoked, as provided herein.

Section 807.203 Experimental Permits

- a) To best aid the improvement of solid waste management technology, the Agency may issue Experimental Permits for processes or techniques that do not satisfy the standards for issuance set forth in Section 807.207, if the applicant can provide proof that the process or technique has a reasonable chance for success and that the environmental hazards are minimal.
- b) A valid Experimental Permit shall constitute a prima facie defense to any action brought against the permit holder for a violation of the Act or Regulations, but only to the extent that such action is based upon the failure of the process or technique.
- c) All Experimental Permits shall have a duration not to exceed two years.
- d) Application for renewal of an experimental permit shall be submitted to the Agency at least 90 days prior to the expiration of the existing permit. To the extent the information to be supplied for renewal is identical with that contained in the prior permit application, the applicant shall so note on the renewal application, and the Agency shall not require the resubmittal of data and information so previously supplied to it

Section 807.204 Former Authorization

- a) The issuance of any authorization to operate a solid waste management site prior to July 1, 1970 from any person does not excuse compliance with the requirements for obtaining an Operating Permit.
- b) The issuance of an Operating Permit by the Agency on July 1, 1970 or thereafter, but prior to the effective date of these regulations, is a valid permit.

Section 807.206 Permit Conditions

- a) *As provided by Sections 39(a) and 21(d) of the Act, the Agency may impose such conditions in a permit as may be necessary to accomplish the purposes of the Act, and as are not inconsistent with Regulations promulgated by the Board thereunder, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder;*
- b) The applicant may deem any condition imposed by the Agency as a denial of the permit for purposes of review pursuant to Section 40 of the Act.
- c) All permits issued after March 1, 1985 shall include the following conditions:
 - 1) A closure plan;

- 2) A post-closure care plan if required;
- 3) A requirement that the operator notify the Agency within 30 days after receiving the final volume of waste;
- 4) A requirement that the operator initiate implementation of the closure plan within 30 days after the site receives its final volume of waste;
- 5) A requirement that the operator not file any application to modify a closure plan less than 180 days prior to receipt of the final volume of waste;
- 6) A requirement that the operator provide financial assurance in accordance with Subpart F, in an amount equal to the current cost estimate for closure and post-closure care;
- 7) A requirement that the operator file revised cost estimates for closure and post-closure care at least every two years in accordance with Subpart F.

(Source: Amended at 9 Ill. Reg. 18942, effective November 25, 1985)

Section 807.207 Standards for Issuance

The Agency shall not grant any permit, except an Experimental Permit under Section 807.203 unless the applicant submits adequate proof that the solid waste management site:

- a) will be developed, modified, or operated so as not to cause a violation of the Act or the Rules, or has been granted a variance pursuant to Title IX of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 1035 - 1038); and
- b) conforms to the design criteria promulgated by the Agency under Section 807.213, or conforms to such other criteria which the applicant demonstrates will achieve consistently satisfactory results; and
- c) in the case of operating permits only, conforms to all conditions contained in the development permit.

Section 807.208 Permit No Defense

The existence of a permit under this Part shall not constitute a defense to a violation of the Act or this Part, except for development, modification or operation without a permit.

Section 807.209 Permit Revision

- a) The agency shall revise any permit issued by it to make the permit compatible with any relevant new regulations adopted by the Board.
- b) The permittee may request modification of a permit at any time by filing pursuant to Section 807.205 an application reflecting the modification requested.

(Source: Amended at 9 Ill. Reg. 18942, effective November 25, 1985)

Section 807.210 Supplemental Permits

No person shall cause or allow modification of any solid waste management site, or accept any type of waste except under conditions specified in a permit issued by the Agency. Development, operating and experimental permits may be modified by a supplemental permit issued by the Agency to allow such modifications.

Section 807.211 Transfer of Permits

No permit is transferable from one person to another except as approved by the Agency under procedures it adopts pursuant to Section 807.213.

Section 807.212 Permit Revocation

Violation of any permit conditions or failure to comply with any rule or regulation of this Part shall be grounds for sanctions as provided in the Act, including revocation of permit. Such sanctions shall be sought by filing a complaint with the Board pursuant to Title VIII of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, pars. 1046 - 1051).

Section 807.213 Design, Operation, and Maintenance Criteria

a) The Agency may adopt procedures which set forth criteria for the design, operation, and maintenance of solid waste management sites and other procedures the Agency deems reasonably necessary to perform its duties under this Part and as are consistent with Subpart C thereof. All such procedures shall be revised from time to time to reflect current engineering judgment and advances in the state of the art. Such procedures and revisions thereto shall not become effective until filed with the Administrative Code Unit of the Office of the Secretary of State pursuant to the Illinois Administrative Procedure Act, as amended (Ill. Rev. Stat. 1981, ch. 127, pars. 1001, et seq.).

b) Before adopting new criteria or making substantive changes to any criteria adopted by the Agency, the Agency shall:

- 1) publish a summary of the proposed changes in the Board Newsletter; and
- 2) provide a copy of full text of the proposed changes to all persons who hold Agency permits or have active applications pending, and any person who in writing so requests; and
- 3) defer adoption of the changes for 60 days from the date of publication to allow submission and consideration of written comments on the proposed changes.

Section 807.214 Revised Cost Estimates

a) A revised cost estimate is any cost estimate other than one which results from modification of a closure or post-closure care plan.

b) A revised cost estimate shall identify the operator, site and closure or post-closure care plan to which it relates, but need not include any additional information required pursuant to Section 807.205.

c) A revised cost estimate is a permit modification application. The revised cost estimate shall be deemed incorporated into the permit unless the Agency takes final action on the revised cost estimate within 90 days after its receipt as provided by Section 39(a) of the Act.

(Source: Amended at 9 Ill. Reg. 18942, effective November 25, 1985)

Section 810.102 Severability

If any provision of this Part or of 35 Ill. Adm. Code 811 through 817 or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of this Part or of 35 Ill. Adm. Code 811 through 817 as a whole or of any portion not adjudged invalid.

(Source: Amended at 20 Ill. Reg. 11985, effective August 15, 1996)

Section 813.101 Scope and Applicability

- a) This Subpart contains the procedures to be followed by all applicants and the Agency for applications for permits required pursuant to Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1021(d)) and 35 Ill. Adm. Code 811, 812, 814 and 817. The procedures in this Part apply to applications to issue a permit to develop and operate a landfill, to modify a permit, to renew an expired permit, and to conduct an experimental practice.
- b) All general provisions of 35 Ill. Adm. Code 810 apply to this Part.

(Source: Amended at 18 Ill. Reg. 12388, effective August 1, 1994)

Section 813.103 Agency Decision Deadlines

a) IF THERE IS NO FINAL ACTION BY THE AGENCY WITHIN 90 DAYS AFTER THE FILING OF THE APPLICATION FOR PERMIT, THE APPLICANT MAY DEEM THE PERMIT ISSUED; EXCEPT THAT THIS TIME PERIOD SHALL BE EXTENDED TO 180 DAYS WHEN:

- 1) NOTICE AND OPPORTUNITY FOR PUBLIC HEARING ARE REQUIRED BY STATE OR FEDERAL LAW OR REGULATION, OR
- 2) THE APPLICATION WHICH WAS FILED IS FOR ANY PERMIT TO DEVELOP A LANDFILL. (Section 39 of the Act)

b) An application for permit pursuant to this Subpart shall not be deemed to be filed until the Agency has received all information and documentation in the form and with the content required by this Part and 35 Ill. Adm. Code 811, 812, and 814. However, if, pursuant to the standards of Section 813.105, the Agency fails to notify the applicant within 30 days after the filing of a purported application that the application is incomplete and the reason the Agency deems it incomplete, the application shall be deemed to have been filed as of the date of such purported filing as calculated pursuant to Section 813.102. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for the purposes of review pursuant to Section 813.106.

c) The applicant may waive the right to a final decision in writing prior to the applicable deadline in subsection (a).

d) The applicant may modify a permit application at any time prior to the Agency decision deadline date, provided that, for any permit application modification received by the Agency within 30 days before the Agency decision deadline, the applicant waives the Agency decision deadline for 30 days from the date of receipt of the modification, to allow the Agency time to determine whether the modification meets the definition of significant modification and, for permit applications modifications not meeting the

definition of significant modification, to take final action. Any modification of a permit application that would otherwise be considered a significant modification of an approved permit shall constitute a new application for the purposes of calculating the Agency decision deadline date. The Agency shall notify the applicant in writing within 30 days after the filing of a proposed permit modification if it deems the modification to be a significant modification. A determination by the Agency as to whether a modification is a significant modification is a final determination, appealable in the manner provided for the review of permit decisions under Section 40 of the Act. The Agency's decision deadline date shall be stayed as of the date of such written notice of the Agency's determination during the pendency of any timely-filed appeal challenging such an Agency determination.

e) The Agency shall mail all notices of final action by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.

(Source: Amended at 22 Ill. Reg. 11483, effective June 23, 1998.)

Section 813.104 Standards for Issuance of a Permit

a) THE AGENCY SHALL ISSUE A PERMIT UPON PROOF THAT THE FACILITY, UNIT, OR EQUIPMENT WILL NOT CAUSE A VIOLATION OF THIS ACT OR OF BOARD REGULATIONS SET FORTH IN 35 ILL. ADM. CODE: CHAPTER I.

b) IN GRANTING PERMITS, THE AGENCY SHALL IMPOSE SUCH CONDITIONS AS MAY BE NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ACT, AND AS ARE NOT INCONSISTENT WITH BOARD REGULATIONS SET FORTH IN 35 ILL. ADM. CODE: CHAPTER I.

c) EXCEPT FOR THOSE FACILITIES OWNED OR OPERATED BY SANITARY DISTRICTS ORGANIZED UNDER "AN ACT TO CREATE SANITARY DISTRICTS AND TO REMOVE OBSTRUCTIONS IN THE DES PLAINES AND ILLINOIS RIVERS", APPROVED MAY 29, 1889, AS NOW OR HEREAFTER AMENDED (ILL. REV. STAT. 1989, CH. 42, PAR. 320 ET SEQ.), NO PERMIT FOR THE DEVELOPMENT OR CONSTRUCTION OF A NEW REGIONAL POLLUTION CONTROL FACILITY MAY BE GRANTED BY THE AGENCY UNLESS THE APPLICANT SUBMITS PROOF TO THE AGENCY THAT THE LOCATION OF SAID FACILITY HAS BEEN APPROVED BY THE COUNTY BOARD OF THE COUNTY IF IN AN UNINCORPORATED AREA, OR THE GOVERNING BODY OF THE MUNICIPALITY WHEN IN AN INCORPORATED AREA IN WHICH THE FACILITY IS TO BE LOCATED IN ACCORDANCE WITH SECTION 39.2 OF THE ACT.

d) NO PERMIT SHALL BE ISSUED BY THE AGENCY FOR DEVELOPMENT OR OPERATION OF ANY FACILITY OR SITE LOCATED WITHIN THE BOUNDARIES OF ANY SETBACK ZONE ESTABLISHED PURSUANT TO THE ACT IN WHICH SUCH DEVELOPMENT OR OPERATION IS PROHIBITED.

(Section 39 of the Act)

Section 813.105 Standards for Denial of a Permit

IF THE AGENCY DENIES ANY PERMIT UNDER THIS SECTION, THE AGENCY SHALL TRANSMIT TO THE APPLICANT WITHIN THE TIME LIMITATIONS OF SECTION 813.103 SPECIFIC, DETAILED STATEMENTS AS TO THE REASONS THE PERMIT APPLICATION WAS DENIED. SUCH A STATEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

- a) THE SECTIONS OF THE ACT WHICH MAY BE VIOLATED IF THE PERMIT WERE GRANTED;
- b) THE PROVISION OF THE REGULATIONS SET FORTH IN 35 ILL. ADM. CODE: CHAPTER I PROMULGATED UNDER THE ACT, WHICH MAY BE VIOLATED IF THE PERMIT WERE GRANTED;
- c) THE SPECIFIC TYPE OF INFORMATION, IF ANY, WHICH THE AGENCY DEEMS THE APPLICANT DID NOT PROVIDE THE AGENCY; AND
- d) A STATEMENT OF SPECIFIC REASONS WHY THE ACT AND BOARD REGULATIONS SET FORTH IN 35 ILL. ADM. CODE: CHAPTER I MIGHT NOT BE MET IF THE PERMIT WERE GRANTED. (Section 39 of the Act)

Section 813.106 Permit Appeals

IF THE AGENCY REFUSES TO GRANT OR GRANTS WITH CONDITIONS A PERMIT THE APPLICANT MAY, WITHIN 35 DAYS, PETITION FOR A HEARING BEFORE THE BOARD TO CONTEST THE DECISION OF THE AGENCY. (Section 40(a)(1) of the Act) The petition shall be filed, and the proceeding conducted, pursuant to the procedures of Section 40 of the Act and 35 Ill. Adm. Code 105.

(Source: Amended at 18 Ill. Reg. 7501, effective July 19, 1993)

Section 813.107 Permit No Defense

The issuance and possession of a permit shall not constitute a defense to a violation of the Act or any Board regulations set forth in 35 Ill. Adm. Code: Chapter I except for the development and operation of a landfill without a permit.

Section 813.108 Term of Permit

- a) No permit issued pursuant to this Part shall have a term of more than five years.
- b) A DEVELOPMENT PERMIT ISSUED UNDER SUBSECTION (A) OF SECTION 39 FOR ANY FACILITY OR SITE WHICH IS REQUIRED TO HAVE A PERMIT UNDER SUBSECTION (D) OF SECTION 21 SHALL EXPIRE AT THE END OF TWO CALENDAR YEARS FROM THE DATE UPON WHICH IT WAS ISSUED, UNLESS WITHIN THAT PERIOD THE APPLICANT HAS TAKEN ACTION TO DEVELOP THE FACILITY OR THE SITE. IN THE EVENT THAT REVIEW OF THE CONDITIONS OF THE DEVELOPMENT PERMIT IS SOUGHT PURSUANT TO SECTIONS 40 OR 41, OR THE PERMITTEE IS PREVENTED FROM COMMENCING DEVELOPMENT OF THE FACILITY OR SITE BY ANY OTHER LITIGATION BEYOND THE PERMITTEE'S CONTROL, SUCH TWO-YEAR PERIOD SHALL BE DEEMED TO BEGIN ON THE DATE UPON WHICH SUCH REVIEW PROCESS OR LITIGATION IS CONCLUDED. (Section 39(c) of the Act)

Section 813.109 Transfer of Permits

No permit is transferable from one person to another except as approved by the Agency. Approval shall be granted only if a new operator seeking transfer of a permit can demonstrate the ability to comply with all applicable financial requirements of Section 21.1 of the Act and 35 Ill. Adm. Code Part 811.Subpart G.

Section 813.110 Adjusted Standards to Engage in Experimental Practices

- a) Experimental practices are design, construction, and operation methods and techniques which are not expressly authorized by, and whose employment cannot be demonstrated by the applicant to be in compliance with, 35 Ill. Adm. Code 811, 812, and 814. Experimental practices may be implemented only at permitted landfills.
- b) Pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 106.Subpart G, any person may, at any time, petition the Board for an adjusted standard to any standard in 35 Ill. Adm. Code 811, 812, or 814 in order to engage in an experimental practice at a permitted landfill in accordance with the requirements of this Section.
- c) The petition for adjusted standard shall contain the following information in addition to that required by 35 Ill. Adm. Code 106.Subpart G. However, if the applicant believes that any of the information required by this Section is inapplicable, the applicant may so state provided that the petition contains an explanation of the inapplicability.
 - 1) A narrative description of the experiment, describing the necessity of this experiment and an assessment of the expected outcome of this experiment;
 - 2) A list of all standards in 35 Ill. Adm. Code 811 that must be adjusted in order to conduct the experiment and a reason why each standard must be adjusted;
 - 3) A description of the monitoring program (see 35 Ill. Adm. Code 811) to be implemented during the experiment;
 - 4) Criteria for evaluating the experimental practice. The criteria shall be specific enough to allow the Agency to evaluate the performance of the experimental practice from the monitoring results pursuant to subsection (f)(1);
 - 5) A description of the methods to be implemented and the total costs to restore the facility to compliance with all standards in 35 Ill. Adm. Code 811, 812, or 814 if the experiment is determined to be a failure. The methods must be feasible with existing methods in use; and
 - 6) The time period requested in which to conduct the experiment and documentation to show that this is the shortest practical time period in which success or failure can be determined.
- d) The Board will review all petitions to conduct experimental practices submitted in accordance with subsection (b), Section 28.1 of the Act, or 35 Ill. Adm. Code 106.Subpart G and an Agency recommendation regarding the experimental practice under the following assumptions:
 - 1) There is no way in which to conduct the experiment in compliance with all requirements of 35 Ill. Adm. Code 811, 812 or 814;
 - 2) The experiment will be conducted in as short a time as possible if the information submitted in the petition and the Agency recommendation are not in conflict;
 - 3) A monitoring plan to evaluate the experiment will be implemented; and

- 4) The site of the experiment will be restored to meet all requirements of 35 Ill. Adm. Code 811, 812 or 814 should the experiment fail.
- e) Implementation of the Experimental Practice
Upon approval of the experimental practice pursuant to subsection (d) by the Board, the operator shall file an application for significant modification of the permit with the Agency pursuant to Section 813.Subpart B. The application shall contain the following information:
 - 1) Detailed designs of all items to be constructed for use during the experiment;
 - 2) The monitoring plan to be implemented during the experiment;
 - 3) A plan for decommissioning and closing the experiment;
 - 4) A time schedule for constructing the necessary items and closing, removing and stabilizing the area upon completion of the experiment;
 - 5) An emergency cleanup plan describing the methods to be used to restore the facility to compliance with all standards in 35 Ill. Adm. Code 811 if the experiment is unsuccessful;
 - 6) Cost estimates and financial assurance (see 35 Ill. Adm. Code 811.Subpart G) in an amount equal to the costs necessary to restore the facility to compliance with 35 Ill. Adm. Code: Chapter I.
- f) Evaluation of Experimental Practice
 - 1) After completion of the experiment all monitoring data shall be submitted to the Agency for evaluation of the experimental practice in accordance with the evaluation criteria included in the adjusted standard petition in accordance with subsection (c)(4). The Agency shall determine if the experimental practice is acceptable for implementation pursuant to Section 39 of the Act, and the following additional criteria:
 - A) An experimental practice shall be considered acceptable for implementation if the monitoring results meet or exceed the evaluation criteria included in the adjusted standard petition in accordance with subsection (c)(4); and
 - B) If the experiment does not cause or contribute to a violation of the Act or 35 Ill. Adm. Code: Chapter I.
 - 2) Upon completion of the experiment and an Agency determination that the experimental practice is acceptable for implementation, the Agency shall return the financial assurance instrument to the operator and, shall approve permit modifications allowing the operation of the experimental practice. If the experimental practice is determined to be unacceptable for implementation, then the Agency shall return the financial assurance instrument when the facility has been restored to comply with 35 Ill. Adm. Code: Chapter I.

Section 813.111 Agency Review of Contaminant Transport Models

- a) At the request of any person, consistent with any resource limitations, the Agency may review a groundwater contaminant transport (GCT) model for acceptance. The person shall demonstrate that the model meets the minimum requirements of 35 Ill. Adm. Code 811.317(c)(1), (c)(2) and (c)(3).

- b) The Agency may designate GCT models as acceptable for use by the applicant for a groundwater impact assessment. Such Agency designations shall be accompanied by limitations or conditions under which the model can or cannot be used. The applicant shall be relieved from demonstrating compliance with 35 Ill. Adm. Code 811.317(c)(1), (c)(2) and (c)(3) in a permit application if a model accepted by the Agency has been used.
- c) An applicant using a model accepted by the Agency shall submit documentation in a permit application showing that the model used in the groundwater impact assessment was the same model previously reviewed and accepted by the Agency and shall demonstrate that the model is acceptable for use in the site specific hydrogeology of the proposed facility.
- d) The requirements of this Section shall in no way require an applicant to utilize a model accepted by the Agency. If a model is utilized that has not been reviewed and accepted by the Agency then the applicant shall include in the permit application all of the documentation necessary to demonstrate compliance with 35 Ill. Adm. Code 811.317(c)(1), (c)(2), and (c)(3).

Section 813.201 Initiation of a Modification or Significant Modification

a) Operator Initiated Modification

A modification or significant modification to an approved permit shall be initiated at the request of an operator at any time after the permit is approved. The operator initiates a modification or significant modification by application to the Agency.

b) Agency Initiated Modification

- 1) The Agency may modify a permit under the following conditions:
 - A) Discovery of a typographical or calculation error;
 - B) Discovery that a determination or condition was based upon false or misleading information;
 - C) An order of the Board issued in an action brought pursuant to Title VIII, IX or X of the Act; or
 - D) Promulgation of new statutes or regulations affecting the permit.
- 2) Modifications initiated by the Agency shall not become effective until after 45 days of receipt by the operator, unless stayed during the pendency of an appeal to the Board. All other time periods and procedures in 813.203 shall apply. The operator may request the Agency to reconsider the modification, or may file a petition with the Board pursuant to Section 813.106. All other time periods and procedures in 813.203 shall apply.

Section 813.202 Information Required for a Significant Modification of an Approved Permit

The applicant shall submit all information required by 35 Ill. Adm. Code 812 that will be changed from that in the original or most recent approved permit.

Section 813.203 Specific Information Required for a Significant Modification To Obtain Operating Authorization

Prior to placing into service any structure constructed at a landfill, pursuant to a construction quality assurance program in accordance with 35 Ill. Adm. Code 811.Subpart E., the applicant shall submit an acceptance report prepared in accordance

with the requirements of 35 Ill. Adm. Code 811.505(d) in order to obtain an operating authorization issued by the Agency. The Agency shall issue operating authorizations as a permit condition pursuant to Section 39 of the Act and this Part.

Section 813.204 Procedures for a Significant Modification of an Approved Permit

Application for significant modifications shall be subject to all requirements and time schedules in Subpart A.

Section 813.301 Time of Filing

An application for renewal of a permit shall be filed with the Agency at least 90 or 180 days, depending upon which Agency final action deadline applies pursuant to Section 39(a) of the Act, prior to the expiration date of the existing permit.

Section 813.302 Effect of Timely Filing

WHEN A PERMITTEE HAS MADE TIMELY AND SUFFICIENT APPLICATION FOR THE RENEWAL OF A PERMIT, THE EXISTING PERMIT SHALL CONTINUE IN FULL FORCE AND EFFECT UNTIL THE FINAL AGENCY DECISION ON THE APPLICATION HAS BEEN MADE AND ANY FINAL BOARD DECISION ON ANY APPEAL PURSUANT TO SECTION 40 HAS BEEN MADE UNLESS A LATER DATE IS FIXED BY ORDER OF A REVIEWING COURT. (Section 16(b) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1989, ch. 127, par. 1016(b))

Section 813.303 Information Required for a Permit Renewal

- a) The operator shall submit only that information required by 35 Ill. Adm. Code 812 that has changed since the last permit review by the Agency.
- b) The operator shall update the groundwater impact assessment in accordance with Section 813.304; and
- c) The operator shall provide a new cost estimate for closure and postclosure care pursuant to 35 Ill. Adm. Code 811.Subpart F based upon the operations expected to occur in the next permit term.

Section 813.304 Updated Groundwater Impact Assessment

- a) The applicant shall conduct a new groundwater impact assessment in accordance with 35 Ill. Adm. Code 811.317 if any of the following changes in the facility or its operation will result in an increase in the probability of exceeding a groundwater standard beyond the zone of attenuation:
 - 1) New or changed operating conditions;
 - 2) Changes in the design and operation of the liner and leachate collection system;
 - 3) Changes due to more accurate geological data;
 - 4) Changes due to modified groundwater conditions due to offsite activity;
 - 5) Changes due to leachate characteristics.
- b) If the operator certifies that the conditions applicable to the original assessment have not changed in such a way as to result in violation of groundwater standards pursuant to 35 Ill. Adm. Code 811.320, outside the zone of attenuation and no monitoring well

shows concentrations of constituents in groundwater greater than such groundwater standards, then a new groundwater impact assessment need not be performed.

Section 813.305 Procedures for Permit Renewal

Applications for permit renewal shall be subject to all requirements and time schedules in Subpart A.

Section 813.401 Agency Notification Requirements

- a) The operator shall send to the Agency a notice of closure within 30 days after the date the final volume of waste is received.
- b) The operator shall notify the Agency within 30 days after any temporary suspension of waste acceptance. The operator must comply with the requirements included in a permitted closure plan in accordance with 35 Ill. Adm. Code 812.114(d) that are applicable during any such period.
- c) Until closure has been completed, the operator shall maintain a copy of the closure plan at the site or at a definite location, specified in the permit, so as to be available during inspection of the site. BOARD NOTE: 35 Ill. Adm. Code 807.Subpart E includes requirements for closure and temporary suspension and for closure and temporary suspension plans.

Section 813.402 Certification of Closure

- a) When closure of a unit is completed, the operator shall submit to the Agency:
 - 1) Documentation concerning closure of the closed unit including plans or diagrams of the unit as closed and date closure was completed.
 - 2) An affidavit by the operator and the seal of a professional engineer that the unit has been closed in accordance with the closure plan and all requirements of 35 Ill. Adm. Code 811.
- b) When the Agency determines, pursuant to the information received pursuant to subsection (a) and any Agency site inspection, that the unit has been closed in accordance with the specifications of the closure plan, and the closure requirements of this Part, the Agency shall:
 - 1) Issue a certificate of closure; and
 - 2) Specify the date the postclosure care period begins, based on the date that closure was completed.

Section 813.403 Termination of the Permit

- a) At the end of the postclosure care period the operator and a professional engineer shall certify that postclosure care is no longer necessary. The certification shall include the affidavit of the operator, the seal of a professional engineer and documentation demonstrating that, due to compliance with the requirements of 35 Ill. Adm. Code 811, 812 and 814:
 - 1) Leachate removal is no longer necessary;
 - 2) Landfill gas collection is no longer necessary;
 - 3) Gas monitoring is no longer necessary;
 - 4) Groundwater monitoring is no longer necessary;
 - 5) The surface has stabilized sufficiently with respect to settling and erosion so

that further stabilization measures, pursuant to the postclosure care plan, are no longer necessary;

- 6) The facility does not constitute a threat of pollution to surface water; and
 - 7) The operator has completed all requirements of the postclosure plan.
- b) Within 90 days after receiving the certification required by subsection (a), the Agency shall notify the operator in writing that it is no longer required to maintain financial assurance for postclosure care of the site, unless the Agency determines, pursuant to the information received pursuant to subsection (a) and any Agency site inspection, that continued postclosure care is required pursuant to the postclosure care plan and this Part.
- c) If the operator is not required to give financial assurance, then within 90 days after receiving the certification required by subsection (a), the Agency shall notify the operator in writing that the permit is terminated, unless the Agency determines, pursuant to the information received pursuant to subsection (a) and any Agency site inspection, that continued postclosure care is required pursuant to the postclosure care plan and this Part.
- d) The operator may deem the Agency action pursuant to this Section as a denial or grant of permit with conditions for purposes of appeal pursuant to Section 40(d) of the Act and Subpart

Kansas

65-3407. Permits to construct, alter or operate solid waste processing facilities and solid waste disposal areas.

- (a) Except as otherwise provided by K.S.A. 2001 Supp. 65-3407c and amendments thereto, no person shall construct, alter or operate a solid waste processing facility or a solid waste disposal area of a solid waste management system, except for clean rubble disposal sites, without first obtaining a permit from the secretary.
- (c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the applicant as conditions for issuance of a permit. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that:
- (1) The applicant currently holds, or in the past has held, a permit under this section and while the applicant held a permit under this section the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and amendments thereto; or
 - (2) the applicant previously held a permit under this section and that permit was revoked by the secretary; or
 - (3) the applicant failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including rules and regulations issued thereunder, relating to environmental protection or to the protection of public health in this or any other state or the federal government of the United States, or any condition of any permit or license issued by the secretary; or if the secretary finds that the applicant has shown a lack of ability or intention to comply with any provision of any law referred to in this subsection or any rule and regulation or order or permit issued pursuant to any such law as indicated by past or continuing violations; or
 - (4) the applicant is a corporation and any principal, shareholder, or other person

capable of exercising total or partial control of such corporation could be determined ineligible to receive a permit pursuant to subsection (c)(1), (2) or (3) above

(d) Before reviewing any application for a permit, the secretary may request that the attorney general perform a comprehensive criminal background investigation of the applicant; or in the case of a corporate applicant, any principal, shareholder or other person capable of exercising total or partial control of the corporation. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that serious criminal violations have been committed by the applicant or a principal of the corporation.

(e) (1) The fees for a solid waste processing or disposal permit shall be established by rules and regulations adopted by the secretary. The fee for the application and original permit shall not exceed \$5,000. Except as provided by paragraph (2), the annual permit renewal fee shall not exceed \$2,000. No refund shall be made in case of revocation. In establishing fees for a construction and demolition landfill, the secretary shall adopt a differential fee schedule based upon the volume of construction and demolition waste to be disposed of at such landfill. All fees shall be deposited in the state treasury and credited to the solid waste management fund. A city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(2) The annual permit renewal fee for a solid waste disposal area which is permitted by the secretary, owned and operated by the facility generating the waste and used only for industrial waste generated by such facility shall be not less than \$1,000 nor more than \$4,000. In establishing fees for such disposal areas, the secretary shall adopt a differential fee schedule based upon the characteristics of the disposal area sites.

(f) Plans, designs and relevant data for the construction of solid waste processing facilities and disposal sites shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, alteration or operation of such facility or area. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is minimal and may waive such preparation requirements provided that a review of such plans is conducted by a professional engineer licensed to practice in Kansas.

(g) Each permit granted by the secretary, as provided in this act, shall be subject to such conditions as the secretary deems necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of solid waste allowable for processing or disposal at the permitted location.

(h) As a condition of granting a permit to operate any processing facility or disposal area for solid waste, the secretary shall require the permittee to:

- (1) Provide a trust fund, surety bond guaranteeing payment, irrevocable letter of credit or insurance policy, to pay the costs of closure and postclosure care; or
- (2) pass a financial test or obtain a financial guarantee from a related entity, to guarantee the future availability of funds to pay the costs of closure and postclosure care. The secretary shall prescribe the methods to be used by a permittee to demonstrate sufficient financial strength to become eligible to use a financial test or a financial guarantee procedure in lieu of providing the financial instruments listed in (1)

above. Solid waste processing facilities or disposal areas, except municipal solid waste landfills, may also demonstrate financial assurance for closure and postclosure care costs by use of ad valorem taxing power. In addition, the secretary shall require the permittee to provide liability insurance coverage during the period that the facility or area is active, and during the term of the facility or area is subject to postclosure care, in such amount as determined by the secretary to insure the financial responsibility of the permittee for accidental occurrences at the site of the facility or area. Any such liability insurance as may be required pursuant to this subsection or pursuant to the rules and regulations of the secretary shall be issued by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b, and amendments thereto, and shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. Nothing contained in this subsection shall be deemed to apply to any state agency or department or agency of the federal government.

(i)

(1) Permits granted by the secretary as provided by this act shall not be transferable except as follows:

(A) A permit for a solid waste disposal area may be transferred if the area is permitted for only solid waste produced on site from manufacturing and industrial processes or on-site construction or demolition activities and the only change in the permit is a name change resulting from a merger, acquisition, sale, corporate restructuring or other business transaction.

(B) A permit for a solid waste disposal area or a solid waste processing facility may be transferred if the secretary approves of the transfer based upon information submitted to the secretary sufficient to conduct a background investigation of the new owner as specified in subsections (c) and (d) of K.S.A. 65-3407, and amendments thereto, and a financial assurance evaluation as specified in subsection (h) of K.S.A. 65-3407, and amendments thereto. Such information shall be submitted to the secretary not more than one year nor less than 60 days before the transfer. If the secretary does not approve or disapprove the transfer within 30 days after all required information is submitted to the secretary, the transfer shall be deemed to have been approved.

(2) Permits granted by the secretary as provided by this act shall be revocable or subject to suspension whenever the secretary shall determine that the solid waste processing or disposal facility or area is, or has been constructed or operated in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating or threatens to create a hazard to persons or property in the area or to the environment, or is creating or threatens to create a public nuisance, or upon the failure to make payment of any fee required under this act.

(3) The secretary also may revoke, suspend or refuse to issue a permit when the secretary determines that past or continuing violations of the provisions of K.S.A. 65-3409, subsection (c)(3) of K.S.A. 65-3407 or K.S.A. 65-3424b, and amendments thereto, have been committed by a permittee, or any principal, shareholder or other person capable of exercising partial or total control over a permittee.

(j) Except as otherwise provided by subsection (i)(1), the secretary may require a new permit application to be submitted for a solid waste processing facility or a solid waste disposal area in response to any change, either directly or indirectly, in ownership or control of the permitted real property or the existing permittee.

(k) In case any permit is denied, suspended or revoked the person, city, county or other political subdivision or state agency may request a hearing before the secretary in accordance with K.S.A. 65-3412, and amendments thereto.

(l) (1) No permit to construct or operate a solid waste disposal area shall be issued on or after the effective date of this act if such area is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(2) Any permit, issued before the effective date of this act, to construct or operate a solid waste disposal area is hereby declared void if such area is not yet in operation and is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(3) The provisions of this subsection shall not be construed to prohibit:

(A) Issuance of a permit for lateral expansion onto land contiguous to a permitted solid waste disposal area in operation on the effective date of this act;

(B) issuance of a permit for a solid waste disposal area for disposal of a solid waste byproduct produced on-site;

(C) renewal of an existing permit for a solid waste area in operation on the effective date of this act; or

(D) activities which are regulated under K.S.A. 65-163 through 65-165 or 65-171d, and amendments thereto.

History: L. 1970, ch. 264, § 7; L. 1974, ch. 352, § 160; L. 1977, ch. 221, § 3; L. 1981, ch. 251, § 23; L. 1991, ch. 196, § 1; L. 1992, ch. 316, § 5; L. 1993, ch. 274, § 4; L. 1994, ch. 283, § 3; L. 1997, ch. 140, § 4; July 1; L. 2001, ch. 127, §; July 1; L. 2002, ch. 101, § 1; May 23.

65-3407a. Special land use permit for operation of solid waste disposal area void, when. Any special land use permit, issued by a city before the effective date of this act, to use land for the purpose of operating a solid waste disposal area is hereby declared void if such area is not yet in operation and such land is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

History: L. 1991, ch. 196, § 2; May 16.

65-3407c. Exemptions from permit requirement.

(a) The secretary may authorize persons to carry out the following activities without a solid waste permit issued pursuant to K.S.A. 65-3407, and amendments thereto:

(1) Dispose of solid waste at a site where the waste has been accumulated or illegally dumped. Disposal of some or all such waste must be identified as an integral part of a site cleanup and closure plan submitted to the department by the person responsible for the site. No additional waste may be brought to the site following the department's approval of the site cleanup and closure plan.

(2) Perform temporary projects to remediate soils contaminated by organic constituents

capable of being reduced in concentration by biodegradation processes or volatilization, or both. Soil to be treated may be generated on-site or offsite. A project operating plan and a site closure plan must be submitted to the department as part of the project approval process.

(3) Dispose of demolition waste resulting from demolition of an entire building or structure if such waste is disposed of at the site where the building or structure was located. Prior to the department's authorization, written approval for the disposal must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the disposal site. The disposal area must be covered with a minimum of two feet of soil and seeded, rocked or paved. The final grades for the disposal site must be compatible with and not detract from appearance of adjacent properties.

(4) Dispose of solid waste generated as a result of a transportation accident if such waste is disposed of on property adjacent to or near the accident site. Prior to the department's authorization, written approval for the disposal must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the disposal site. A closure plan must be submitted to the department as part of the authorization process.

(5) Dispose of whole unprocessed livestock carcasses on property at, adjacent or near where the animals died if:

(A) Such animals died as a result of a natural disaster or their presence has created an emergency situation; and

(B) proper procedures are followed to minimize threats to human health and the environment. Prior to the department's authorization, written approval for the disposal must be obtained from the landowner and local governmental or zoning authority having jurisdiction over the disposal site.

(6) Dispose of solid waste resulting from natural disasters, such as storms, tornadoes, floods and fires, or other such emergencies, when a request for disposal is made by the local governmental authority having jurisdiction over the area. Authorization shall be granted by the department only when failure to act quickly could jeopardize human health or the environment. Prior to the department's authorization, written approval for the disposal must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the disposal site. The local governmental authority must agree to provide proper closure and postclosure maintenance of the disposal site as a condition of authorization.

(7) Store solid waste resulting from natural disasters, such as storms, tornadoes, floods and fires, or other such emergencies, at temporary waste transfer sites, when a request for storage is made by the local governmental authority having jurisdiction over the area. Authorization shall be granted by the department only when failure to act quickly could jeopardize human health or the environment. Prior to the department's authorization, written approval for the storage must be obtained from the landowner and the local governmental or zoning authority having jurisdiction over the storage site. The local governmental authority must agree to provide proper closure of the storage and transfer site as a condition of authorization.

(b) The secretary shall consider the following factors when determining eligibility for an exemption to the solid waste permitting requirements under this section:

(1) Potential impacts to human health and the environment.

- (2) Urgency to perform necessary work compared to typical permitting timeframes.
 - (3) Costs and impacts of alternative waste handling methods.
 - (4) Local land use restrictions.
 - (5) Financial resources of responsible parties.
 - (6) Technical feasibility of proposed project.
 - (7) Technical capabilities of persons performing proposed work.
- (c) The secretary may seek counsel from local government officials prior to exempting activities from solid waste permitting requirements under this section.
- History:** L.1997, ch.140, § 5; July 1; L. 1999, ch. 112, § 2; July 1; L. 2001, ch.127, § 3, July 1.

28-29-6. Permits and engineering plans.

(b) Design plans and engineering reports.

- (1) Design and closure plans and engineering reports required under these regulations shall bear the seal and signature of a professional engineer licensed to practice in Kansas.
- (2) Waiver. Plans, designs, and relevant data for the construction of the following solid waste disposal areas and processing facilities, need not be prepared by a professional engineer provided that a review of these plans is conducted by a professional engineer licensed to practice in Kansas:
 - (A) Solid waste processing facilities when the equipment is originally manufactured for those purposes and installation is supervised by the vendor, or when the equipment requires only fencing, buildings, and connection to utility lines to be operational;
 - (B) Construction and demolition landfills; and
 - (C) Solid waste disposal areas considered by the department to be located in secure geological formations, which are a part of a solid waste management system established pursuant to K.S.A. 65-3401 et seq., and which are expected to receive less than one hundred (100) tons of solid waste annually.

(c) **Permit considerations.** Any permit issued by the secretary shall, where appropriate, be reviewed with respect to all responsibilities within the department.

(d) **Transfer of permits.** Before any assignment, sale, conveyance, or transfer of all or any part of the property upon which a solid waste processing facility, or solid waste disposal area is or has been located, and before any change in the responsibility of operating a processing facility or disposal area is made, the permittee shall notify the department, in writing, of the intent to transfer title or operating responsibility, at least thirty (30) days in advance of the date of transfer. The person to whom the transfer is to be made shall not operate the solid waste processing facility or disposal area until the secretary issues a permit to that person. The person to whom the transfer is to be made shall submit the following:

- (1) A permit application and plans, maps, and data as required by subsection (a) of this regulation;
- (2) Plans satisfactory to the department for correcting any existing permit violations; and
- (3) Substantiation in writing that the applicant has copies of all approved maps, plans, and specifications relating to the solid waste processing facility or disposal area.

(e) Conformity with official plan. Permits shall not be issued by the secretary until the applicant has secured, from the board of county commissioners or from the mayor of an incorporated city having an official plan, certification that the proposed facility is consistent with the official plan. This approval shall not be required when the official plan does not provide for management of the solid waste(s) to be processed or disposed.

(f) Reopening closed sites or facilities. Any person proposing to reopen, excavate, disrupt, or remove any solid waste from any solid waste disposal area where operations have been terminated shall secure a new permit as specified in paragraph (a) of this regulation. Applications for a permit shall include, where applicable, an operational plan stating the area involved, lines and grades defining limits of excavation, estimated number of cubic yards of material to be excavated, location where excavated solid waste is to be deposited, the estimated time required for excavation, and a plan for restoring the site.

(g) Emergency provisions. In emergency situations involving solid waste which requires storage, transportation, or disposal on a one-time basis or other special cases where strict adherence to these regulations would result in undue hardships or unnecessary delays, the department can prescribe on a case-by-case basis, the procedures and conditions necessary for the safe and effective management of the wastes. The generator shall not take action in these cases except as immediately necessary for the protection of human health or the environment, until the action is approved by the department. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-6a. Public notice of permit actions, public comment period, and public hearings.

(a) Public notice and comment period.

(1) Scope and timing. A public notice shall be given by the department when a municipal solid waste landfill permit action has been proposed under K.A.R. 28-29-6 or when a public hearing has been scheduled pursuant to subsection (b) of this regulation.

(A) Public notice shall be required for a draft permit or any proposed significant modifications to a permit by the department.

(B) Public notice shall be required for any public hearing on a permit action.

(C) A public notice shall not be required when suspension, denial or revocation, or non-significant modification of a permit is proposed by the department.

(D) A public notice may describe more than one permit action or hearing.

(E) Each public notice shall be published not less than 30 days prior to the hearing or proposed action.

(2) Procedures.

(A) Each public notice shall be published in the Kansas register.

(B) Where a proposed action or hearing may generate significant local interest, a public notice shall also be published in a newspaper having major circulation in the vicinity of the proposed action or hearing.

(3) Contents of public notice. Each public notice issued under this regulation shall contain the following information:

- (A) The name and address of the office processing the permit action for which notice is being given;
- (B) the name and location of the facility for which the permit action is proposed;
- (C) a map of the facility for which the permit action is proposed;
- (D) a brief description of the activity to be conducted at the facility for which the permit action is proposed;
- (E) the name, address, and telephone number of the person from whom interested persons may obtain or review additional information;
- (F) the time and place of any hearing that will be held; and
- (G) a brief description of the comment procedures outlined in subsections (b) and (c) of this regulation.

(b) Public comments. During the public comment period provided in subsection (a) of this regulation, any interested person may submit written comments. All comments, except those concerning determinations by local government units that the proposed permit action conforms with the official plan, shall become a part of the permit record and shall be considered in making a final decision on the proposed permit action.

(c) Public hearings. If the department determines there is sufficient local interest in a proposed permit action, a public hearing may be scheduled. All written and verbal comments received during a public hearing provided in subsection (a) of this regulation shall become a part of the permit record and be considered in making a final decision on the proposed permit action.

(d) Response to comments. A response to comments shall be issued at the time any final permit decision is issued. The response shall be available to the public and shall:

- (1) Specify what, if any, changes were made to the proposed action as a result of public comment; and
- (2) briefly respond to any significant comments received during the public comment period. (Authorized by K.S.A. 65-3406; amended by L. 1993, Ch. 274, Sec. 2; implementing K.S.A. 65-3401; effective March 21, 1994.)

28-29-7. Conditions of permits.

(a) When granting a permit, the secretary shall consider and stipulate: the types of solid wastes which may be accepted or disposed, special operating conditions, procedures, and changes necessary to comply with these and other state or federal laws and regulations.

(b) When the department determines that a solid waste has or may have value as a recoverable resource, a permit may require or may be modified to require segregation of the materials, processing, separate disposal, and marking to allow future retrieval of the materials.

(c) The department may specify conditions or a date upon which each permit will expire. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-8. Modifications of permits.

(a) The permittee shall notify the department in writing at least thirty (30) days before any proposed modification of operation or construction from that described in the plan of

operation or permit. The permittee shall not proceed with the modification until the department provides written approval.

(b) The department may at any time modify a permit or any term or condition of a permit to include: special conditions required to comply with the requirements of these regulations; to avoid hazards to public health, or the environment or to abate a public nuisance; or to include modifications proposed by the permittee and approved by the department. Permits may be modified when:

(1) The permittee is not able to comply with the terms or conditions of the permit due to an act of God, a strike against someone other than the permittee, material shortage, or other conditions over which the permittee has little or no control; or

(2) New technology that can provide significantly better protection for health and environmental resources of the state becomes available.

(c) The permittee shall take prompt action to comply with the new special conditions, or within fifteen (15) days of receipt of notification of the new special conditions, request a hearing before the secretary in accordance with K.S.A. 65-3412.

(Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-9. Suspension of permits.

(a) A permit shall be suspended by the department when in the opinion of the secretary this action is necessary to protect the public health or welfare, or the environment. The secretary shall notify the permittee of the suspension and the effective date. At the time of giving this notice, the secretary shall identify items of noncompliance with the requirements of these regulations or with conditions of the permit and shall specify deficiencies which the permittee shall correct, actions which the permittee shall perform, and the date or dates by which the permittee shall submit a plan detailing corrective action taken or to be taken in order to achieve compliance.

(b) The suspension shall remain in effect until the deficiencies are corrected to the satisfaction of the secretary or until the secretary makes a final determination based on the outcome of a hearing requested by the permittee under the provisions of K.S.A. 65-3412 or amendments of that statute. The determination may result in termination of the suspension, continuation of the suspension, or modification or revocation of the permit.

(c) Permits shall be suspended for failure to pay the permit fee required by K.S.A. 65-3407 or amendments of that statute.

(Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 6503406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E- 82-8, April 10, 1981; amended May 1, 1982.)

28-29-10. Denial or revocation of permits.

(a) A permit may be denied or revoked for any of the following reasons:

(1) Misrepresentation or omission of a significant fact by the permittee either in the application for the permit or in information subsequently reported to the department;

(2) Improper functioning or operation of processing facility or the disposal area that causes pollution or degradation of the environment or the creation of a public health hazard or a nuisance;

- (3) Violation of any provision of K.S.A. 65-3401 et seq. or these rules and regulations or other restrictions set forth in the permit or in a variance;
- (4) Failure to comply with the official plan; or
- (5) Failure to comply with an order or a modification to a permit issued by the secretary.

(b) Any person aggrieved by the denial or revocation of a permit may request a hearing under the provision of K.S.A. 65-3412 or amendments of that statute.

(Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65- 3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-16. Inspections.

(a) The secretary or any duly authorized representative of the secretary, at any reasonable hour of the day, having identified themselves and giving notice of their purpose, may:

(1) Enter a factory, plant, construction site, solid waste disposal area, solid waste processing facility, or any environment where solid wastes are generated, stored, handled, processed, or disposed, and inspect the premises and gather information of existing conditions and procedures;

(2) Obtain samples of solid waste from any person or from the property of any person, including samples from any vehicle in which solid wastes are being transported;

(3) Drill test wells on the affected property of any person holding a permit or liable for a permit under K.S.A. 65-3407 or amendments of that statute and obtain samples from the wells;

(4) Conduct tests, analyses, and evaluations of solid waste to determine whether the requirements of these regulations are otherwise applicable to, or violated by, the situation observed during the inspection;

(5) Obtain samples of any containers or labels; and

(6) Inspect and copy any records, reports, information, or test results relating to wastes generated, stored, transported, processed, or disposed.

(b) If during the inspection, unidentified or unpermitted waste storage or handling procedures are discovered, the department's representative may instruct the operator of the facility to retain and properly store solid or hazardous wastes, pertinent records, samples, and other items. These materials shall be retained by the operator until the identification and handling of the waste is approved by the department.

(c) When obtaining samples, the department's representative shall allow the facility operator to collect duplicate samples for separate analysis. Analytical data that might reveal trade secrets shall be treated as confidential by the department, when requested by the owner.

(Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-19. Monitoring required. As a condition for issuing a permit, the secretary may require the approval, installation, and operation of environmental quality monitoring systems before the acceptance of solid wastes for storage, processing, or disposal.

Approval of the monitoring system(s) will be based on the following:

(a) The location of monitoring wells, air monitoring stations, and other required sampling points;

(b) Plans and specifications for the construction of the monitoring systems;

(c) Frequency of sampling; and

(d) Analyses to be performed.

(Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E- 82-8, April 10, 1981; amended May 1, 1982.)

28-29-20. Restrictive covenants and easements.

(a) **Permitted solid waste disposal areas.** Each owner of a solid waste disposal area that is required to have a permit and where wastes will remain at the solid waste disposal area after closure may be required by the secretary to execute a restrictive covenant or easement, or both. The restrictive covenant with the register of deeds' stamp or the easement, or both, shall be submitted to the department before the permit is issued.

(b) **Solid waste disposal areas without a permit.** Each owner of a solid waste disposal area approved by the secretary under K.S.A. 65-3407c, and amendments thereto, may be required by the secretary to execute a restrictive covenant.

(c) **Restrictive covenant.** If required, the owner shall execute and file with the county register of deeds a restrictive covenant to run with the land that fulfills the following requirements:

(1) Covers all areas that have been or will be used for waste disposal;

(2) specifies the location of the solid waste disposal area. Acceptable methods to determine the location shall include the following:

(A) Obtaining a legal description by measuring from the property boundaries;

(B) obtaining a legal description by measuring from a permanent survey marker or benchmark; and

(C) obtaining the latitude and longitude, accurate to within five meters, using a global positioning system;

(3) specifies the uses that may be made of the solid waste disposal area after closure;

(4) requires that use of the property after closure be conducted in a manner that preserves the integrity of waste containment systems designed, installed, and used during operation of the solid waste disposal areas, or installed or used during the postclosure maintenance period;

(5) requires the owner or tenant to preserve and protect all permanent survey markers and benchmarks installed at the solid waste disposal area;

(6) requires the owner or tenant to preserve and protect all environmental monitoring stations installed at the solid waste disposal area;

(7) requires subsequent property owners or tenants to consult with the department during planning of any improvement to the site and to receive approval from the department before commencing any of the following:

(A) Excavation or construction of permanent structures;

(B) construction of drainage ditches;

(C) alteration of contours;

(D) removal of waste materials stored on the site;

(E) changes in vegetation grown on areas used for waste disposal;

(F) production, use, or sale of food chain crops grown on land used for waste disposal; or

(G) removal of security fencing, signs, or other devices installed or used to restrict public access to waste storage or solid waste disposal areas; and

(8) provides terms whereby modifications to the restrictive covenant or other land uses may be initiated or proposed by property owners.

(d) Easement. If required, the owner shall execute an easement allowing the secretary, or the secretary's designee, to enter the premises to perform any of the following:

(1) Complete items of work specified in the site closure plan;

(2) perform any item of work necessary to maintain or monitor the area during the postclosure period; or

(3) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or postclosure requirements.

(e) Conveyance of easement, title, or other interest to real estate. Each offer or contract for the conveyance of easement, title, or other interest to real estate used for the long-term storage or disposal of solid waste shall contain a complete disclosure of all terms, conditions, and provisions for long-term care and subsequent land uses that are imposed by these solid waste regulations or the solid waste disposal area permit. The conveyance of title, easement, or other interest in the property shall not be consummated without adequate and complete provisions for the continued maintenance of waste containment and monitoring systems.

(f) Permanence. All covenants, easements, and other documents related to this regulation shall be permanent, unless extinguished by agreement between the property owner and the secretary.

(g) Fees. All document recording fees shall be paid by the property owner.

(h) Federal government applicants and owners.

(1) For federal government applicants and owners, the term "restrictive covenant" shall be replaced with "notice of restrictions" throughout this regulation.

(2) The restrictions shall be recorded in the base master plans or similar documents.

(3) If property that is owned by the federal government and that has a notice of restrictions filed according to this regulation is transferred to an entity other than the federal government, at the time of transfer the owner shall file a restrictive covenant that meets the requirements of this regulation.

(Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended May 30, 2003.)

Minnesota

7035.0600 VARIANCES.

Any person who applies for a variance from any requirement of parts 7035.0300 to 7035.2915 shall comply with part 7000.7000. An application for a variance must be acted upon by the agency according to Minnesota Statutes, section 116.07, subdivision 5, and part 7000.7000. However, no variance may be granted that would result in noncompliance with applicable federal rules and regulations for solid waste.

STAT AUTH: MS s 115.03; 115A.97; 116.07

HIST: 13 SR 1150; 16 SR 2321; 19 SR 1310
Current as of 03/16/04

7001.0010 DEFINITIONS.

Subpart 1. **Scope.** The definitions in part 7000.0100 in the agency's procedural rules apply to the terms used in parts 7001.0010 to 7001.0210 and the definitions in part 7045.0020 in the agency's hazardous waste rules apply to the terms used in parts 7001.0500 to 7001.0730 unless the terms are defined as follows.

Subp. 2. **Draft permit.** "Draft permit" means a document prepared by the commissioner under part 7001.0100 that indicates the commissioner's preliminary decision to issue, modify, revoke and reissue, or reissue a permit, and that indicates the proposed terms and conditions of the permit; or a notice prepared by the commissioner under part 7001.0100 that indicates the commissioner's preliminary decision to deny, to refuse to reissue, or to revoke a permit without reissuance.

Subp. 3. **Permit.** "Permit" means a discharge, emission, and disposal authorization; a construction, installation, or operation authorization; and other agency authorizations designated "permit" in Minnesota Statutes, chapters 115 and 116, including Minnesota Statutes, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4a; 116.081; and 116.091. "Permit" does not include an "order," "variance," or "stipulation agreement" as defined in part 7000.0100 and does not include a "certification." However, the exclusion of "certification" from the definition of "permit" shall not in any way be considered to affect the applicability of parts 7001.0010 to 7001.0210 to the processing of certifications by the agency under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

Subp. 4. **General permit.** "General permit" means a permit issued under part 7001.0210 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

STAT AUTH: MS s 115.03; 116.07

HIST: 8 SR 2278; 10 SR 2235; L 1987 c 186 s 15; 20 SR 714

Current as of 06/03/04

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to items A to I.

A. An agency permit required for the storage, treatment, processing, transfer intermediate disposal, or final disposal of solid waste. Part 7001.0040 applies to permits for solid waste transfer facilities, recycling facilities, refuse-derived fuel processing facilities, and

compost facilities, except that the time period referred to in part 7001.0040, subparts 1 and 3, shall be 90 days instead of 180 days.

B. An agency permit required for the treatment, storage, or disposal of hazardous waste.

C. An agency permit required for the treatment, distribution, utilization, storage, or disposal of sewage sludge.

D. An agency permit required for the construction, installation, or operation of a disposal system. Part 7001.0040, subparts 1 and 3, apply to permits for sewer extensions, except that the time period referenced in those subparts shall be 60 days instead of 180 days. Parts 7001.0100, subparts 4 and 5; 7001.0110; and 7001.0150 do not apply to permits for sewer extensions.

E. An agency permit required for the discharge of a pollutant into the waters of the state from a point source.

F. An agency permit required for the construction or operation of an animal feedlot or manure storage area or for the correction of a pollution hazard. However, parts 7001.0040, 7001.0050, 7001.0100, subparts 4 and 5, and 7001.0110 do not apply to animal feedlot interim and construction short-form permits issued under chapter 7020.

G. An agency permit required for the construction of a facility, building, structure, or installation that attracts or may attract mobile source activity that results in emissions of an air pollutant for which there is a state standard. Parts 7001.0100, subparts 4 and 5, and 7001.0110 do not apply to permits for parking facilities described in part 7001.1270, subpart 2, with a new or increased parking capacity of 5,000 vehicles or less. Part 7001.0150, subparts 1 and 2, does not apply to these permits.

H. The processing of certifications under section 401 of the Clean Water Act, United States Code, title 33, section 1341, to the extent provided by parts 7001.1400 to 7001.1470.

I. An agency permit required for the construction or operation of a substance storage facility which:

(1) is a major facility as defined in part 7001.4205;

(2) stores:

(a) a substance as defined in part 7001.4205;

(b) asphalt; or

(c) fuel oil number 6; and

(3) is not an excluded aboveground storage tank system under part 7151.1300, subpart 2.

Part 7001.0040, subparts 1 and 3, apply to major facility substance storage permits except that the time period referenced in those subparts shall be 90 days instead of 180 days.

Parts 7001.0100, subparts 4 and 5; 7001.0110; and 7001.0150 do not apply to these permits.

Part 7001.0080 applies to the permits in this item except that the time period referenced in part 7001.0080 shall be five years instead of three years.

STAT AUTH: MS s 115.03; 116.07

HIST: 8 SR 2278; 10 SR 2235; 12 SR 1564; 12 SR 2513; 13 SR 1150; 13 SR 2154; 13 SR 2453; 16 SR 865; 18 SR 1059; 21 SR 1642; 23 SR 883; 25 SR 556; 25 SR 834; 28 SR 1086

Current as of 06/03/04

7001.0030 PERMIT REQUIRED.

No person required by statute or rule to obtain a permit may construct, install, modify, or operate the facility to be permitted, nor shall a person commence an activity for which a permit is required by statute or rule until the agency has issued a written permit for the facility or activity.

STAT AUTH: MS s 115.03 subd 1 para (e); 116.07 subd 4

HIST: 8 SR 2278

Current as of 06/03/04

7001.0100 PRELIMINARY DETERMINATION AND DRAFT PERMIT.

Subpart 1. **Preliminary determination.** After a permit application is complete, the commissioner shall make a preliminary determination as to whether the permit should be issued or denied.

Subp. 2. **Draft permit.** If the preliminary determination is to issue a permit, the commissioner shall prepare a draft permit, including a proposed schedule of compliance if a schedule is necessary to meet all applicable standards and limitations imposed by statute or rule. If the preliminary determination is to deny the permit application, the commissioner shall prepare a notice of intent to deny the permit. For the purposes of the procedures required in subparts 2 to 5, a notice of intent to deny a permit is considered a draft permit.

Subp. 3. **Fact sheet.** The commissioner shall prepare a fact sheet for each draft permit described in part 7001.1070, subpart 2 for each draft permit proposed to be issued under parts 7001.0210 and 7001.0660, item A, and for each draft permit that the commissioner finds is the subject of widespread public interest or involves issues of major importance to the agency or to the public. The commissioner shall send a copy of this fact sheet to the applicant and upon request to any other person. The fact sheet must set forth the

principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The fact sheet must include, if applicable:

A. a concise description of the type of facility or activity that is the subject of the permit application;

B. the type and quantity of wastes, fluids, or pollutants that are proposed to be or are being handled, processed, treated, stored, disposed of, emitted, or discharged;

C. a summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions;

D. reasons why requested variances or alternatives to required standards do or do not appear justified;

E. a concise statement regarding the requirements prescribed in Minnesota Statutes, chapter 116D that are or may be applicable to the facility or activity which is the subject of the permit application;

F. the preliminary determinations made by the commissioner on the permit application; and

G. a description of the procedures for reaching a final decision on the draft permit, including:

(1) the beginning and ending dates of the public comment period;

(2) procedures for requesting a public informational meeting or contested case hearing and the nature of the two types of proceedings;

(3) other procedures by which the public may participate in the agency's consideration of the permit application; and

(4) the name, address, and telephone number of a person to contact for additional information or to whom comments may be submitted.

Subp. 4. **Public notice of permit application and preliminary determination.** The commissioner shall prepare and issue a public notice of a completed application and the commissioner's preliminary determination as to whether the permit should be issued or denied. The public notice must include, at a minimum:

A. The address and telephone number of the main agency office and the applicable agency regional office and a statement that additional information may be obtained at these offices.

B. The name and address of the applicant, and if different, of the facility or activity that is the subject of the permit application.

C. A concise description of the facility or activity that is the subject of the permit application.

D. A statement of the preliminary determination of the commissioner to issue or deny the permit.

E. If the commissioner's preliminary determination is to issue the permit, a statement of the duration of the draft permit.

F. A statement that a draft permit has been prepared and, if applicable, that a fact sheet has been prepared and that a copy of these documents will be mailed to any interested person upon the agency's receipt of a written request.

G. A statement that during the public comment period a person may submit comments to the agency on the draft permit or on the preliminary determination, a statement of the dates on which the comment period commences and terminates, and a statement of the information that the person is required by part 7001.0110 to include in the comments. The public comment period shall be 30 days unless a different public comment period is specifically established by another agency rule.

H. A brief description of the procedures for reaching a final decision on the permit application, including procedures for requesting a public information meeting or a contested case hearing and the nature of the two types of proceedings; and any other procedures by which the public may participate in the agency's consideration of the permit application.

Subp. 5. Distribution of public notice. The commissioner shall distribute the public notice in the following manner:

A. The commissioner shall make a copy of the public notice available at the main agency office and at the applicable agency regional office.

B. The commissioner shall mail a copy of the public notice to the applicant, to all persons who have registered their names and addresses on the mailing list established under part 7001.0200, and to any interested person upon request. If applicable, the commissioner shall also mail copies of the public notice according to part 7001.0660, item C.

C. The commissioner shall circulate the public notice within the geographical area of the facility or activity which is the subject of the permit application. The commissioner shall designate the geographical area which shall, as a minimum, include the county in which the facility or activity is or will be located. The commissioner shall circulate the public notice in one or more of the following ways:

(1) by posting the notice in the post office, public library, or other buildings used by the general public in the designated geographical area;

(2) by posting the notice at or near the entrance of the applicant's premises, if located near the facility or activity that is the subject of the permit application;

(3) by publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area;

(4) by publishing the notice in a manner constituting legal notice to the public; or

(5) if applicable, in the manner required by part 7001.0210, subpart 4 and 7001.0660, item D.

STAT AUTH: MS s 115.03 subd 1 para (e); 116.07 subd 4

HIST: 8 SR 2278; L 1987 c 186 s 15

Current as of 06/03/04

7001.0110 PUBLIC COMMENTS.

Subpart 1. Submission of written comments. During the public comment period established in the public notice of an agency permit, an interested person, including the applicant, may submit written comments on the application or on the draft permit. If the subject of the draft permit and public notice is the modification of a permit, these comments must be limited to the portion of the permit proposed to be modified. During the public comment period, the person may also submit a petition for a public informational meeting or a contested case hearing on the application. Petitions for an informational meeting must meet the requirements of part 7000.0650, subpart 4. Petitions for a contested case hearing must meet the requirements of part 7000.1800.

Subp. 2. Contents of written comments. A person who submits comments under subpart 1 shall include in the comments the following:

- A. a statement of the person's interest in the permit application or the draft permit;
- B. a statement of the action the person wishes the agency to take, including specific references to sections of the draft permit that the person believes should be changed; and
- C. the reasons supporting the person's position, stated with sufficient specificity as to allow the commissioner to investigate the merits of the person's positions.

Subp. 3. Public informational meeting. If a person requests a public informational meeting, the comments must include the items listed in subpart 2 and a statement of the reasons the person desires the agency to hold a public informational meeting and the issues that the person would like the agency to address at the public informational meeting.

Subp. 4. Extension of comment period. The public comment period may be extended by the commissioner if the commissioner finds an extension of time is necessary to facilitate additional public comment. Comments submitted in writing by interested persons or the applicant during the public comment period must be retained and considered in the formulation of final determinations concerning the permit application.

STAT AUTH: MS s 14.06; 115.03; 116.07

HIST: 8 SR 2278; L 1987 c 186 s 15; 19 SR 1310

Current as of 06/03/04

7001.0120 PUBLIC INFORMATIONAL MEETING.

Subpart 1. **Determination of need.** If the commissioner or the agency determines that a public informational meeting would help clarify and resolve issues regarding the commissioner's preliminary determination or the terms of the draft permit or if the commissioner has received a request under part 7001.0670, subpart 1, the commissioner shall hold a public informational meeting.

Subp. 2. **Location.** If the requester desires, the public informational meeting must be held in the geographical area of the facility or activity which is the subject of the permit application. Otherwise, the public informational meeting must be held in a place selected by the commissioner which is generally convenient to persons expected to attend the meeting.

Subp. 3. **Notice.** The commissioner shall prepare a notice of the public informational meeting. The notice must contain a reference to the public notice of the application and the draft permit, including any identification numbers on the draft permit and the dates of issuance of the public notice and the draft permit; the date, time, and location of the public informational meeting; the information described in part 7001.0100, subpart 4, items A to F; a concise description of the manner in which the public informational meeting will be conducted; and the issue or issues to be discussed.

Subp. 4. **Distribution of notice.** The commissioner shall publish the notice in a newspaper of general circulation in the geographical area of the facility or activity which is the subject of the permit application, and shall mail a copy of the notice to the applicant, the appropriate city and county officials, and all other persons determined by the commissioner to have an interest in the permit application. If applicable, the commissioner shall comply with part 7001.0670, subpart 3.

Subp. 5. **Consolidation of issues.** If the commissioner or the agency determines that no person would be adversely affected by consolidation, the commissioner or the agency may consolidate two or more matters, issues, or related groups of permit applications for which a public informational meeting will be held.

STAT AUTH: MS s 115.03 subd 1 para (e); 116.07 subd 4

HIST: 8 SR 2278; L 1987 c 186 s 15

Current as of 06/03/04

7001.0125 MEETING WITH AND REPORT OF COMMISSIONER.

Subpart 1. **Meeting with commissioner.** Petitioners for a contested case hearing may request to meet with the commissioner. The commissioner shall review petitions for a contested case hearing and, upon concluding that a meeting would assist the agency in resolving controversy, narrowing issues, or in otherwise reviewing the matter, the commissioner shall arrange a meeting with petitioners to discuss:

A. whether the petition meets the criteria for a contested case hearing in parts 7000.1800 and 7001.0110; and

B. whether the issues raised in the petition can be resolved without a hearing and, if not, whether the scope of a hearing can be limited by mutual agreement of the petitioners and persons who might be parties to the hearing.

Subp. 2. **Commissioner report.** Unless the agency has held a contested case hearing on the matter, the commissioner shall prepare a report and shall serve that report upon all agency members and interested persons at least ten days before a meeting at which the agency is scheduled to take final action on the issuance, revocation, or modification of a permit. The report shall:

A. state whether the agency has received any requests for a public informational meeting and whether those requests meet the requirements of part 7000.0650, subpart 4;

B. state whether the agency has received any petitions for a contested case hearing and whether those petitions meet the requirements of parts 7000.0110 and 7000.1800. If not, the report shall describe what requirements have not been met;

C. state whether any meetings have been held under subpart 1 and, if so, the results of the meetings;

D. recommend changes to the proposed permit or other actions that the commissioner believes are reasonable in response to comments submitted during the comment period; and

E. recommend whether a contested case hearing should be held and, if so, the issues and scope of the hearing.

STAT AUTH: MS s 14.06; 116.07

HIST: 19 SR 1310

Current as of 06/03/04

7001.0130 CONTESTED CASE HEARING.

Subpart 1. **Required hearing.** Parts 7000.1750 to 7000.2200 apply to permits governed by this chapter. The agency's decisions concerning a contested case on a permit matter shall be made as provided in parts 7000.1750 to 7000.2200.

Subp. 2. **Public informational meeting.** If the agency finds that the holding of a contested case hearing is not justified under subpart 1, the agency shall nevertheless hold a public informational meeting if the agency determines that a public informational meeting would help clarify or resolve issues regarding the terms of the draft permit.

Subp. 3. **Hearing notice and order.** If the agency decides to hold a contested case hearing, the commissioner shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

A. the information required by part 1400.5600 of the Office of Administrative Hearings;

B. a reference to the public notice of the application and the draft permit, including any identification numbers on the draft permit, and the dates of issuance of the public notice and the draft permit;

C. identification of the existing parties and a concise description of the issues on which the agency has ordered a hearing; and

D. the address of the agency office or offices where interested persons may inspect or obtain copies of the public notice of the application, the draft permit, the fact sheet, and other information relevant to the permit application and the holding of the hearing.

Subp. 4. **Relevant rules.** The notice of hearing, distribution of the notice, and the conduct of the contested case hearing are governed by Minnesota Statutes, sections 14.57 to 14.62; the rules of the Office of Administrative Hearings, parts 1400.5100 to 1400.8500; and, if applicable by part 7001.0670, subparts 2, 3, and 4.

STAT AUTH: MS s 14.06; 115.03; 116.07

HIST: 8 SR 2278; L 1987 c 186 s 15; 13 SR 2453; 19 SR 1310

Current as of 06/03/04

7001.0140 FINAL DETERMINATION.

Subpart 1. **Agency action.** Except as provided in subpart 2, the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and conditions of the permit and that all applicable requirements of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have been fulfilled. For solid waste facilities, the requirements of Minnesota Statutes, section 473.823, subdivisions 3 and 6, must also be fulfilled.

Subp. 2. **Agency findings.** The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

A. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit;

B. that there exists at the facility to be permitted unresolved noncompliance with applicable state and federal pollution control statutes and rules administered by the

agency, or conditions of the permit and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

C. that the permittee has failed to disclose fully all facts relevant to the facility or activity to be permitted, or that the permittee has submitted false or misleading information to the agency or to the commissioner;

D. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;

E. that all applicable requirements of Minnesota Statutes, chapter 116D and the rules adopted under Minnesota Statutes, chapter 116D have not been fulfilled;

F. that with respect to the facility or activity to be permitted, the proposed permittee has not complied with any requirement under parts 7002.0210 to 7002.0310 or chapter 7046 to pay fees; or

G. that with respect to the facility or activity to be permitted, the proposed permittee has failed to pay a penalty owed under Minnesota Statutes, section 116.072.

Subp. 3. **Contested case hearing.** If a contested case hearing has been held, the agency shall comply with the procedures set forth in part 7000.2000 of the agency procedural rules prior to making a final determination.

Subp. 4. **Agency decision when an environmental impact statement must be prepared.** When an environmental impact statement is required to be prepared before the agency makes a final decision on a proposed permit, the agency shall not make its final decision until 25 days or more after the adequacy decision is made under part 4410.2800.

STAT AUTH: MS s 14.06; 115.03; 116.07

HIST: 8 SR 2278; L 1987 c 186 s 15; 13 SR 1150; 13 SR 2453; 17 SR 440; 18 SR 1059; 19 SR 1310; L 1995 c 233 art 4 s 2; L 1995 c 248 art 4 s 2

Current as of 06/03/04

7001.0150 TERMS AND CONDITIONS OF PERMITS.

Subpart 1. **Term of permit.** Unless specifically otherwise provided by statute or rule, an agency permit is issued for a term not to exceed five years.

Subp. 2. **Special conditions.** Each draft and final permit must contain conditions necessary for the permittee to achieve compliance with applicable Minnesota or federal statutes or rules, including each of the applicable requirements in parts 7045.0450 to 7045.0642 and 7045.1300 to 7045.1380, and any conditions that the agency determines to be necessary to protect human health and the environment. If applicable to the circumstances, the conditions must include:

A. A schedule of compliance that leads to compliance with the appropriate Minnesota or federal statute or rule. The schedule of compliance must require compliance in the

shortest reasonable period of time or by a specified deadline if required by Minnesota or federal statute or rule. If appropriate, the schedule of compliance must include interim dates, which in no case may be separated by more than one year. A permit with a schedule of compliance must require the submission to the commissioner of progress reports. The progress reports must be submitted not later than 14 days after each interim and final date of compliance regarding the permittee's compliance or noncompliance with the schedule of compliance and they must explain any instance of noncompliance and state the actions that have been taken to correct the noncompliance.

B. Requirements for monitoring and testing and reporting of monitoring and testing results. Monitoring and testing requirements must specify the type, interval, and frequency of monitoring and testing activities that are sufficient to yield representative data to determine whether there is compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. As appropriate, the permit must contain requirements for the proper use, maintenance, and installation of monitoring and testing equipment or methods. The permit must require the permittee to keep accurate records of monitoring and testing activities and to submit to the commissioner periodic reports of monitoring results required by the permit and, as requested by the commissioner, the results of other monitoring and testing undertaken by the permittee that are related to compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. Reporting of monitoring results must contain the certification in part 7001.0070.

C. A requirement that the permittee retain the following items for at least three years from the date of the sample, measurement, report, certification, or application, after which time this period must be automatically extended during the course of an unresolved enforcement action or at the request of the commissioner:

- (1) copies of all reports required by the conditions of the permit;
- (2) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation;
- (3) records of the date, exact location, and time of monitoring and testing which is related to compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules, the name of the individual who performed the sampling or measurements, the date the analysis was performed, the name of the individual who performed the analysis, the analytical techniques or methods used, and the results of the analysis;
- (4) if applicable, reports required by part 7001.0720, subpart 2, item E; and
- (5) if applicable, the certification required by part 7045.0478, subpart 3.

D. A requirement that all documents and reports, including monitoring reports, submitted to the agency for any reason by the permittee, are signed by the permittee or the duly authorized representative of the permittee. For hazardous waste facility permits, duly authorized representative is defined by part 7001.0720.

Subp. 3. **General conditions.** Unless specifically exempted by statute or rule, each draft and final permit must include the following general conditions and the agency shall incorporate these conditions into all permits either expressly or by specific reference to this part:

A. The agency's issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the permit.

B. The agency's issuance of a permit does not prevent the future adoption by the agency of pollution control rules, standards, or orders more stringent than those now in existence and does not prevent the enforcement of these rules, standards, or orders against the permittee.

C. The permit does not convey a property right or an exclusive privilege.

D. The agency's issuance of a permit does not obligate the agency to enforce local laws, rules, or plans beyond that authorized by Minnesota statutes.

E. The permittee shall perform the actions or conduct the activity authorized by the permit in accordance with the plans and specifications approved by the agency and in compliance with the conditions of the permit.

F. The permittee shall at all times properly operate and maintain the facilities and systems of treatment and control and the appurtenances related to them which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. The permittee shall install and maintain appropriate backup or auxiliary facilities if they are necessary to achieve compliance with the conditions of the permit and, for all permits other than hazardous waste facility permits, if these backup or auxiliary facilities are technically and economically feasible.

G. The permittee may not knowingly make a false or misleading statement, representation, or certification in a record, report, plan, or other document required to be submitted to the agency or to the commissioner by the permit. The permittee shall immediately upon discovery report to the commissioner an error or omission in these records, reports, plans, or other documents.

H. The permittee shall, when requested by the commissioner, submit within a reasonable time the information and reports that are relevant to the control of pollution regarding the construction, modification, or operation of the facility covered by the permit or regarding the conduct of the activity covered by the permit.

I. When authorized by Minnesota Statutes, sections 115.04; 115B.17, subdivision 4; and 116.091, and upon presentation of proper credentials, the agency, or an authorized employee or agent of the agency, shall be allowed by the permittee to enter at reasonable times upon the property of the permittee to examine and copy books, papers, records, or memoranda pertaining to the construction, modification, or operation of the facility

covered by the permit or pertaining to the activity covered by the permit; and to conduct surveys and investigations, including sampling or monitoring, pertaining to the construction, modification, or operation of the facility covered by the permit or pertaining to the activity covered by the permit.

J. If the permittee discovers, through any means, including notification by the agency, that noncompliance with a condition of the permit has occurred, the permittee shall take all reasonable steps to minimize the adverse impacts on human health, public drinking water supplies, or the environment resulting from the noncompliance.

K. If the permittee discovers that noncompliance with a condition of the permit has occurred which could endanger human health, public drinking water supplies, or the environment, the permittee shall, within 24 hours of the discovery of the noncompliance, orally notify the commissioner. Within five days of the discovery of the noncompliance, the permittee shall submit to the commissioner a written description of the noncompliance; the cause of the noncompliance; the exact dates of the period of the noncompliance; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

L. The permittee shall report noncompliance with the permit not reported under item K as a part of the next report which the permittee is required to submit under this permit. If no reports are required within 30 days of the discovery of the noncompliance, the permittee shall submit the information listed in item K within 30 days of the discovery of the noncompliance.

M. The permittee shall give advance notice to the commissioner as soon as possible of planned physical alterations or additions to the permitted facility or activity that may result in noncompliance with a Minnesota or federal pollution control statute or rule or a condition of the permit.

N. The permit is not transferable to any person without the express written approval of the agency after compliance with the requirements of part 7001.0190. A person to whom the permit has been transferred shall comply with the conditions of the permit.

O. The permit authorizes the permittee to perform the activities described in the permit under the conditions of the permit. In issuing the permit, the state and agency assume no responsibility for damage to persons, property, or the environment caused by the activities of the permittee in the conduct of its actions, including those activities authorized, directed, or undertaken under the permit. To the extent the state and agency may be liable for the activities of its employees, that liability is explicitly limited to that provided in the Tort Claims Act, Minnesota Statutes, section 3.736.

P. Compliance with an RCRA permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) become effective by statute;

(2) are adopted under parts 7045.1300 to 7045.1380, restricting the placement of hazardous wastes in or on the land; or

(3) are adopted under parts 7045.0450 to 7045.0548 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of part 7001.0730, minor permit modifications.

STAT AUTH: MS s 115.03; 116.07; 116.37

HIST: 8 SR 2278; 11 SR 1832; L 1987 c 186 s 15; 13 SR 1238; 18 SR 1886

Current as of 06/03/04

7001.0160 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit, other than a permit described in part 7001.0020, item B, and who has submitted a timely application for reissuance of the permit may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the agency takes final action on the application unless the commissioner determines that any of the following are true:

A. the permittee is not in substantial compliance with the terms and conditions of the expired permit or with a stipulation agreement or compliance schedule designed to bring the permittee in compliance with the permit;

B. the agency, as a result of an action or failure to act of the permittee, has been unable to take final action on the application on or before the expiration date of the permit; or

C. the permittee has submitted an application with major deficiencies or has failed to properly supplement the application in a timely manner after being informed of deficiencies.

STAT AUTH: MS s 115.03 subd 1 para (e); 116.07 subd 4

HIST: 8 SR 2278; L 1987 c 186 s 15; 13 SR 2453

Current as of 06/03/04

7001.0170 JUSTIFICATION TO COMMENCE MODIFICATION OF PERMIT OR REVOCATION AND REISSUANCE OF PERMIT.

The following constitute justification for the commissioner to commence proceedings to modify a permit or to revoke and reissue a permit:

- A. alterations or modifications to the permitted facility or activity that will result in or have the potential to result in significant alteration in the nature or quantity of permitted materials to be stored, processed, discharged, emitted, or disposed of by the permittee;
- B. the commissioner receives information previously unavailable to the agency that shows that the terms and conditions of the permit do not accurately represent the actual circumstances relating to the permitted facility or activity;
- C. the agency or the federal government promulgates a new or amended pollution standard, limitation, or effluent guideline that is applicable to the permitted facility or activity;
- D. a court of competent jurisdiction invalidates or modifies a Minnesota or federal statute or rule or federal guideline upon which a condition of the permit is based;
- E. an event occurs that is beyond the control of the permittee that necessitates modification of a compliance schedule in the permit;
- F. the commissioner finds that the permitted facility or activity endangers human health or the environment and that a change in the operation of the permitted facility or in the conduct of the permitted activity would remove the danger to human health or the environment;
- G. the commissioner receives a request for transfer of the permit; or
- H. if applicable, there exists any justification listed in part 7001.0730, subpart 1 or 7001.3550, subpart 2.

STAT AUTH: MS s 115.03 subd 1; 116.07 subds 2,4,4g,4h

HIST: 8 SR 2278; L 1987 c 186 s 15; 13 SR 1150

Current as of 06/03/04

7001.0180 JUSTIFICATION TO COMMENCE REVOCATION WITHOUT REISSUANCE OF PERMIT.

The following constitute justification for the commissioner to commence proceedings to revoke a permit without reissuance:

- A. existence at the permitted facility of unresolved noncompliance with applicable state and federal pollution statutes and rules or a condition of the permit, and refusal of the permittee to undertake a schedule of compliance to resolve the noncompliance;
- B. the permittee fails to disclose fully the facts relevant to issuance of the permit or submits false or misleading information to the agency or to the commissioner;
- C. the commissioner finds that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;

D. the permittee has failed to comply with any requirement under parts 7002.0210 to 7002.0310 or chapter 7046 to pay fees; or

E. the permittee has failed to pay a penalty owed under Minnesota Statutes, section 116.072.

STAT AUTH: MS s 115.03; 116.07

HIST: 8 SR 2278; L 1987 c 186 s 15; 13 SR 2453; 17 SR 440; 18 SR 1059; L 1995 c 233 art 4 s 3; L 1995 c 248 art 4 s 3

Current as of 06/03/04

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

Subpart 1. **In general.** If the permittee requests the modification or the revocation and reissuance of a permit, the commissioner shall require and review a permit application as provided in parts 7001.0040 to 7001.0090. Except as provided in subparts 2 and 3, in modifying permits and in revoking and reissuing permits the agency shall follow the procedures set forth in parts 7001.0100 to 7001.0130 to the same extent required for the issuance of the permit. In permit modification proceedings, only those portions of the permit that are proposed to be modified are open for comment and a contested case hearing. In proceedings to revoke and reissue a permit, the entire permit is open for comment and a contested case hearing.

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the commissioner 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 commissioner 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 commissioner 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. If the permit is a permit described in part 7001.0020, item A, the commissioner shall comply with the requirements of Minnesota Statutes, section 116.074, before approving the permit modification. The commissioner 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 commissioner 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 commissioner. 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 commissioner, the commissioner 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. **Minor modification.** Upon obtaining the consent of the permittee, the commissioner may modify a permit to make the following corrections or allowances without following the procedures in parts 7001.0100 to 7001.0130:

A. to correct typographical errors;

B. to change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the permit and does not interfere with the attainment of the final compliance date;

C. to change a provision in the permit that will not result in allowing an actual or potential increase in the emission or discharge of a pollutant into the environment, or that will not result in a reduction of the agency's ability to monitor the permittee's compliance with applicable statutes and rules; and

D. if applicable, to make a change as provided in parts 7001.0730, subpart 3; 7001.3550, subpart 3; and 7023.9050.

Subp. 4. **Revocation without reissuance.** The commissioner 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 1400.8402.

STAT AUTH: MS s 115.03 subd 1; 116.07 subd 4

HIST: 8 SR 2278; 11 SR 2415; L 1987 c 186 s 15; 12 SR 1564; 12 SR 2513; 13 SR 1150; 13 SR 2453

Current as of 06/03/04

7001.0200 MAILING LIST.

A person who desires to receive copies of public notices issued by the commissioner under part 7001.0100, subpart 4 shall submit to the commissioner a written request that the person's name and address be placed on a mailing list kept by the commissioner for the purpose of issuing public notices on permit applications. The person may request notice of all permit applications or may limit the request only to notice of permit applications for facilities or activities of a certain type or for facilities or activities in a defined geographical area. The commissioner shall periodically update this list by mailing to persons on the list a notice asking whether the person wishes to continue to receive notices concerning permit applications. Failure to respond to the commissioner's notice constitutes justification for the commissioner to remove the person's name and address from the list. The commissioner shall also annually publish in the public press and in the State Register notice of the opportunity to be placed on the mailing list.

STAT AUTH: MS s 115.03 subd 1 para (e); 116.07 subd 4

HIST: 8 SR 2278; L 1987 c 186 s 15

Current as of 06/03/04

7001.0210 GENERAL PERMITS.

Subpart 1. **Scope.** This part applies to the permits listed in part 7001.0020, except for agency permits required for the treatment, storage, and disposal of hazardous waste.

Subp. 2. **Determination by agency.** If the agency finds that it is appropriate to issue a single permit to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar, the agency shall proceed under subparts 3 to 6. This permit is known as a general permit.

Subp. 3. **Requirements.** The agency shall not issue a general permit unless the agency finds that:

A. there are several permit applicants or potential permit applicants who have the same or substantially similar operations, emissions, activities, discharges, or facilities;

B. the permit applicants or potential permit applicants discharge, emit, process, handle, or dispose of the same types of waste;

C. the operations, emissions, activities, discharges, or facilities are subject to the same or substantially similar standards, limitations, and operating requirements; and

D. the operations, emissions, activities, discharges, or facilities are subject to the same or substantially similar monitoring requirements.

Subp. 4. **Notice of intent.** The applicant and the agency shall follow the same procedures to issue a general permit as are required for the issuance of an individual permit. However, to comply with part 7001.0100, subpart 3, item C, the agency shall publish notice of intent to issue a general permit in the State Register.

Subp. 5. **Geographical area.** A general permit issued by the agency must state specifically the geographical area covered by the permit.

Subp. 6. **Issuance of individual permit.** If a permit applicant who is eligible to be covered by a general permit requests an individual permit, the agency shall process the application as an application for an individual permit. If the agency finds that the operations, emissions, activities, discharges, or facilities of a permit applicant or a permittee covered by a general permit would be more appropriately controlled by an individual permit, the agency shall issue an individual permit to the applicant or the permittee. Upon issuance of the individual permit, a general permit previously applicable to the permittee no longer applies to that permittee. In considering whether it is appropriate to issue an individual permit, the agency shall consider:

A. whether the operations, emissions, activities, discharges, or facilities of the permit applicant or permittee have characteristics creating the potential for significant environmental effects;

B. whether the permittee has been in compliance with the terms of the general permit and applicable statutes and rules; and

C. whether the operations, emissions, activities, discharges, or facilities have been altered such that they no longer fit within the category covered by the general permit.

STAT AUTH: MS s 115.03 subd 1 para (e); 116.07 subd 4

HIST: 8 SR 2278

Current as of 06/03/04

7001.3000 SCOPE.

Parts 7001.0010 to 7001.0210 and 7001.3000 to 7001.3550 govern the application procedures, the issuance, and the conditions of solid waste management facility permits. Chapter 7000 and parts 7001.0010 to 7001.0210 and 7001.3000 to 7001.3550 are construed to complement each other.

STAT AUTH: MS s 14.06; 115.03; 116.07

HIST: 13 SR 1150; 19 SR 1310

Current as of 06/03/04

7001.3025 DEFINITIONS.

The definitions in parts 7001.0010 and 7035.0300 apply to the terms used in parts 7001.3000 to 7001.3550.

STAT AUTH: MS s 115.03 subd 1; 116.07 subds 2,4,4g,4h

HIST: 13 SR 1150

Current as of 06/03/04

7001.3050 PERMIT REQUIREMENTS.

Subpart 1. **Permit required.** Except as provided in subpart 2, a solid waste management facility permit or permit modification is required to:

A. treat, store, process, or dispose of solid waste;

B. establish, construct, or operate a solid waste management facility; or

C. change, add, or expand a permitted solid waste management facility.

Subp. 2. **Exclusions.** A solid waste management facility permit is not required:

- A. for backyard compost sites as defined in part 7035.0300;
- B. for demonstration/research projects authorized by part 7035.0450 unless the project is required to have a permit under federal law;
- C. for beneficial use of solid waste done according to part 7035.2860;
- D. for storage of a solid waste prior to its beneficial use when done according to parts 7035.2855 and 7035.2860;
- E. for disposal of solid waste on the same property on which it was discovered, when a person has made a request to the commissioner for review, investigation, and oversight under Minnesota Statutes, section 115B.17, subdivision 14, and is conducting response actions in accordance with a plan approved by the commissioner under Minnesota Statutes, section 115B.175; or
- F. when the commissioner has granted an exemption to allow operation without a permit to expedite the proper management of solid waste and to prevent, abate, or control pollution if the commissioner determines that such an exemption is necessary as an immediate response to an emergency. A permit application must be submitted within 90 days after such an exemption is granted.

Subp. 3. **Permits-by-rule.** The owner or operator of the following facilities is deemed to have obtained a solid waste management facility permit without making application for it, unless the commissioner finds that the facility is not in compliance with the listed part:

- A. transfer facilities designed for less than 30 cubic yards capacity in compliance with parts 7035.2525 to 7035.2655, 7035.2855, and 7035.2865;
- B. demolition debris land disposal facilities designed for less than 15,000 cubic yards total capacity and operating less than a total of 12 consecutive months, not located adjacent to another demolition debris permit by rule facility, and in compliance with parts 7035.2525 to 7035.2655, 7035.2825, and 7035.2855;
- C. compost facilities receiving yard waste only and in compliance with part 7035.2836, subparts 2 and 3;
- D. recycling facilities in compliance with part 7035.2845;
- E. energy recovery facilities governed by chapters 7007, 7009, and 7011, except that facilities processing refuse-derived fuel on-site prior to incineration and energy recovery at the site, must be permitted in accordance with parts 7001.0010 to 7001.0210 and 7001.3000 to 7001.3550;
- F. storage sites for non-sludge wood waste generated from the wood preparation phase prior to processing or water treatment lime sludge and in compliance with part 7035.2855;
- G. facilities receiving solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals provided that:

(1) the owner or operator does not accept waste for storage, processing, or disposal other than solid waste generated from the exploration, mining, milling, smelting, and refining of ores and minerals;

(2) the owner or operator has obtained a permit in accordance with part 7001.0020, item D; and

(3) the owner or operator is operating the facility in compliance with chapter 6130; or

H. facilities receiving five tons or less of municipal solid waste combustor ash for the purpose of researching in a laboratory ash treatment or utilization provided that ash is stored in compliance with part 7035.2855 and disposed of in compliance with part 7035.2885 or used in accordance with agency approvals, and provided that the facility owner or operator notifies the commissioner of the source and quantity of ash and the proposed method for managing the ash after research is complete; notification must also include a description of the research methods and intent, and must be received by the commissioner before ash is received at the facility.

Subp. 4. Termination of eligibility for permit-by-rule. The agency may terminate the eligibility of a facility for permit-by-rule status as described in subpart 3, if the agency makes any of the findings of fact listed in items A to C, after notice and opportunity for a contested case hearing or a public informational meeting. An owner or operator, whose facility's eligibility to be permitted under this part has been terminated, must apply for an individual facility permit under parts 7001.3300 to 7001.3550 within 90 days or close the facility in compliance with parts 7035.2525 to 7035.2875. The agency may commence proceedings to terminate eligibility for any of the following reasons:

A. the facility does not comply with subpart 3;

B. the owner or operator is conducting other activities at the site that are required to be conducted under a solid waste management facility permit; or

C. circumstances require the facility to be permitted and subject to the requirements of parts 7035.0300 to 7035.2875 and any other rule in order to protect human health or the environment.

STAT AUTH: MS s 115.03; 115A.97; 116.07

HIST: 13 SR 1150; 16 SR 2321; 18 SR 1059; 19 SR 2330; 21 SR 327; 21 SR 1642; 28 SR 1086

Current as of 06/03/04

7001.3055 CLOSURE/POSTCLOSURE CARE.

The agency shall issue a closure document containing the closure/postclosure care requirements at the time a solid waste management facility is closed under the conditions listed in part 7035.2625, subpart 1. Based on the closure plan submitted under part 7035.2625, subpart 3, the postclosure care plan submitted under part 7035.2645, subpart 1, and the operational and monitoring reports for the facility, the closure document must

specify the length of the postclosure care period, monitoring, testing and reporting requirements, and site maintenance requirements.

STAT AUTH: MS s 115.03 subd 1; 116.07 subds 2,4,4g,4h

HIST: 13 SR 1150

Current as of 06/03/04

7001.3060 DESIGNATION OF PERMITTEE.

The agency shall designate the landowner, facility owner, and facility operator as copermitees when issuing a solid waste management facility permit.

STAT AUTH: MS s 115.03 subd 1; 116.07 subds 2,4,4g,4h

HIST: 13 SR 1150

Current as of 06/03/04

7001.3200 PRELIMINARY SITE EVALUATION REPORT.

The preliminary site evaluation report must contain a statement of the land disposal capacity needed, as determined under Minnesota Statutes, sections 115A.917 and 473.823. The report must contain a description of the site selection process, stating how candidate sites were chosen, how and by whom they were evaluated, and the basis for eliminating potential sites from consideration. For the site or sites recommended for detailed evaluation, the report must contain preliminary evaluations of the following conditions, accompanied by supporting technical documentation:

- A. the site's geology, ground water occurrence, horizontal and vertical directions and rates of ground water movement, and ground water quality, based on the preliminary review of available hydrogeologic maps and references, air photography, logs of previous borings and wells, and other available information required under part 7035.2815, subpart 3, item E;
- B. the site's capability to protect ground water and surface water if the leachate management system fails to contain leachate;
- C. the feasibility of the ground water monitoring required under part 7035.2815, subpart 10;
- D. the feasibility of containing and removing polluted ground water or waste and waste by-products;
- E. the site's ability to meet the location standards of parts 7035.2555 and 7035.2815, subpart 2;
- F. the availability of sufficient land for the buffer area and the setback from the property line required under part 7035.2815, subparts 2 and 5 and for the designation of a

compliance boundary surrounding the facility as required under part 7035.2815, subpart 4;

G. the availability of suitable materials for the liners and cover required under part 7035.2815, subparts 6 and 7;

H. the potential for soil erosion or surface drainage to lead to increased leachate generation, failure of leachate containment features, runoff, or other undesirable consequences; and

I. the initial efforts to secure treatment facilities for leachate generated at the facility.

STAT AUTH: MS s 115.03 subd 1; 116.07 subds 2,4,4g,4h

HIST: 13 SR 1150

Current as of 06/03/04

7001.3275 DETAILED SITE EVALUATION REPORT.

Subpart 1. **Scope.** The applicant shall submit four copies of a detailed site evaluation report for all mixed municipal solid waste land disposal facilities. The report must include the information required in subparts 2 to 8 and supporting documentation. The report must discuss whether the site meets the requirements of part 7035.2815. The applicant shall submit four copies of a detailed site evaluation report for all municipal solid waste combustor ash land disposal facilities. The report must include the information required in subparts 2 to 8 with the exception of subpart 4, item D, along with supporting documentation. The report must discuss whether the site meets the requirements of part 7035.2885.

Subp. 2. **Hydrogeologic evaluation.** The applicant must conduct a hydrogeologic investigation to define the soil, bedrock, and ground water conditions at the site. The investigation must meet the requirements of part 7035.2815, subpart 3, items A to I. A hydrogeologic evaluation must meet the requirements of part 7035.2815, subpart 3, item G, subitems (1) to (8).

Subp. 3. **Soils for cover and liner construction.** The applicant must evaluate the availability and suitability of soil for cover and liner construction. This evaluation must include a description of the source and quantity of the soil, soil descriptions and unified classifications, particle size analyses, permeability at specified moisture and densities, Atterberg limits, and, for liner materials, cation exchange capacity. The determination must consist of the evaluations required in part 7035.2815, subpart 8. The evaluation must assess whether the available soils will meet the requirements of part 7035.2815, subparts 6 and 7 for a mixed municipal solid waste land disposal facility, and part 7001.2885, subparts 10 and 11 for a municipal solid waste combustor ash land disposal facility.

Subp. 4. **Conceptual facility design.** The applicant must include a design conceptualizing the important features of the facility. The following items must be addressed in the plans and accompanying narrative:

- A. a description of the amount and types of waste to be received, the amount and type of cover needed, and the capacity of the site;
- B. a site layout showing surface drainage, existing natural screening and proposed screening, on-site and off-site surface water sources, rock outcroppings, on-site buildings, on-site wells, and property boundaries;
- C. a site development plan depicting fill areas, borrow areas, on-site roads, and surface drainage control structures;
- D. a plan sheet designating special waste handling areas such as general storage areas, recycling areas, tire storage areas, demolition debris or industrial solid waste fill areas, or compost areas;
- E. a proposed design of the fill area including the proposed number of phases and the size of each phase, the direction of filling as it relates to prevailing winds and the slope of the trench bottoms, depth of fill, final contours, and the locations and descriptions of the gas and leachate collection, storage, and treatment systems including cross-sectional plan views;
- F. a description of the leachate collection, storage, and treatment system indicating the type and size of pipe to be used, the length and spacing of pipe runs, proposed pumps, the storage system, and the proposed treatment system;
- G. a description of the liner system to be used, including type of liner, method of placement and protection, and any special design features particular to the liner;
- H. a description of the gas monitoring, venting, and collection system, based on the proximity of off-site buildings or other potentially affected areas, and on-site soils; and
- I. an estimated construction cost.

Subp. 5. **Proposed compliance boundary.** The detailed site evaluation report must propose the location and configuration of a compliance boundary meeting the requirements of part 7035.2815, subpart 4. A plan sheet must show the locations of the proposed monitoring points; the proposed compliance boundary; the proposed limits of the waste fill and leachate management system; the property lines; ground water flow directions; and any nearby surface waters. The applicant may use a single plan sheet for these requirements and those of subpart 4, item C, if all the required information can be clearly shown.

Subp. 6. **Feasibility of corrective action.** The detailed site evaluation report must discuss the feasibility of the owner or operator implementing corrective actions in accordance with items A to D.

A. The applicant must determine whether it is technically feasible to take the corrective actions required in parts 7035.2615 and 7035.2815, subpart 15, at the proposed site. The applicant also must consider the costs of corrective actions at the site and the time available for corrective action based on ground water flow conditions at the site.

B. The applicant must identify and describe the potential modes of failure or evidence of failure, including:

(1) releases, leaks, or spills of leachate through liners or through the floor or sidewalls of the fill areas; from leachate collection installations; from leachate tanks, holding ponds, or treatment facilities; and in the loading, unloading, and transportation of leachate on- and off-site;

(2) water quality monitoring results exceeding the intervention limits given in part 7035.2815, subpart 4, at the compliance boundary, or the corresponding standards at the compliance boundary or lower compliance boundary, if applicable; and

(3) gas concentrations exceeding the limits given in part 7035.2815, subpart 11, in gas monitoring points, or other evidence of adverse effects of gas migration, including damage to the facility's cover vegetation.

C. For each potential type of failure identified under item B, the applicant must:

(1) describe the actions needed to:

(a) define the extent of the problem and identify the source and routes of leachate or gas escape;

(b) alter the monitoring system or the conditions of monitoring, including frequency of monitoring and constituents analyzed;

(c) temporarily and permanently contain the migration of pollutants or gas;

(d) identify the actions necessary to repair areas of subsidence, erosion, dike breakage, and drainage disruption;

(e) repair the problem;

(f) treat and discharge the recovered ground water, leachate, or gas; and

(g) provide other remedial measures as may be necessary;

(2) identify:

(a) the funding, personnel, and equipment needed to carry out the actions in subitem (1), including the expertise needed to coordinate response actions and to provide technical support and specialized equipment and installations;

(b) the schedule for implementing corrective actions, the time needed to accomplish them, and the anticipated duration of longer term activities;

(c) the costs of these actions; and

(d) the level of financial assurance required under part 7035.2685 to fund them; and

(3) estimate the success expected from each of the actions from subitem (1).

D. Based on the analysis in items A to C, the applicant must state the conclusions reached regarding the feasibility of corrective actions, including the capability to fund the actions identified.

Subp. 7. **Final use.** The detailed site evaluation report must include a proposal for the use of the site after closure consistent with part 7035.2815, subpart 16.

Subp. 8. **Additional information.** The detailed site evaluation report must include the information needed to complete an Environmental Assessment Worksheet or an Environmental Impact Statement, if applicable, in accordance with chapters 4400 and 4410.

STAT AUTH: MS s 115.03; 115A.97; 116.07

HIST: 13 SR 1150; 16 SR 2321

Current as of 06/03/04

7001.3500 TERMS AND CONDITIONS OF SOLID WASTE MANAGEMENT FACILITY PERMITS.

Subpart 1. **Terms of permit.** A solid waste management facility permit is effective for a fixed term not to exceed five years as determined by the agency.

Subp. 2. **Site capacity.** A mixed municipal solid waste land disposal facility permit will state the certified capacity determined under Minnesota Statutes, sections 115A.917 and 473.823, subdivision 6, as well as the design capacity.

Subp. 3. **Additional general conditions.** Each draft and final solid waste management facility permit issued by the agency must contain the general conditions in part 7001.0150, subpart 3. In addition, each permit must contain the following general conditions:

A. The permittee must maintain records of all ground water monitoring data and ground water surface elevations for the active life of the facility and, for disposal facilities, for the postclosure care period. The permittee must also maintain an operating record in accordance with part 7035.2575 until closure of the facility.

B. The permittee may not start treatment, storage, or disposal of solid waste in a new solid waste management facility or in a modified portion of an existing solid waste management facility until:

(1) the commissioner has received a letter and as-built plans signed by the owner or operator and by an engineer registered in Minnesota certifying that the facility has been constructed or modified in compliance with the conditions of the permit;

(2) the commissioner has inspected the new or modified facility and has provided the owner or operator with a letter stating that the certification submitted is complete and approved; and

(3) the commissioner has approved the financial assurance amount and instrument to be used for the facility in accordance with parts 7035.2665 to 7035.2805.

STAT AUTH: MS s 115.03 subd 1; 116.07 subds 2,4,4g,4h

HIST: 13 SR 1150

Current as of 06/03/04

7001.3550 MODIFICATION OF SOLID WASTE MANAGEMENT FACILITY PERMITS; REVOCATION AND REISSUANCE OF PERMITS.

Subpart 1. **Scope.** In addition to parts 7001.0170, 7001.0180, and 7001.0190, subparts 2 and 3 apply to the modification, revocation, and reissuance of solid waste management facility permits.

Subp. 2. **Additional justification for modification of solid waste management facility permits or revocation and reissuance of permits.** In addition to the reasons listed in part 7001.0170, the commissioner may commence proceedings to modify a permit, or to revoke and reissue a permit if:

A. the commissioner determines that modification of a closure plan or a postclosure plan is required by part 7035.2625 or 7035.2645;

B. the permittee requests an extension of the 30-day or 60-day periods in parts 7035.2625 to 7035.2655;

C. the commissioner receives notification of closure under part 7035.2625 in advance of the date in the permit;

D. the commissioner determines that modification of the 20-year postclosure period provided in parts 7035.2645 and 7035.2655 is necessary;

E. the commissioner determines that the permittee has made the demonstration required by parts 7035.2645 and 7035.2655, so that disturbance of the integrity of the containment system is authorized;

F. the permittee files a request under parts 7035.2665 to 7035.2805 for a variance from the required level of financial responsibility;

G. the commissioner determines under parts 7035.2665 to 7035.2805 that an upward adjustment of the level of financial responsibility is required;

H. the commissioner determines that the corrective action program in part 7035.2615 has not brought the facility into compliance with the ground water protection standard within the specified period of time;

I. the commissioner determines that conditions applicable to facilities were not previously included in the facility's permit; and

J. the county in which the facility is located has not received a certificate of need or an amended certificate of need, as required by Minnesota Statutes, section 115A.917, or a facility owner in the metropolitan area has not received a certificate of need or an amended certificate of need in accordance with Minnesota Statutes, section 473.823, subdivision 6.

Subp. 3. Minor modifications of permits. In addition to the corrections or allowances listed in part 7001.0190, subpart 3, if the permittee consents, the commissioner may modify a permit to make the corrections or allowances in items A to G without following the procedures in parts 7001.0100 to 7001.0130:

A. change the expected year of closure under parts 7035.2625 and 7035.2635;

B. change schedules for final closure under parts 7035.2625 and 7035.2635;

C. change the list of equipment in the permittee's contingency action plan;

D. change the list of emergency contractors in the permittee's contingency or emergency plan;

E. change the construction schedule for opening and closing approved phases in the permittee's development plans;

F. change monitoring frequencies; and

G. change a provision in the permit that will not result in an increase in the emission or discharge of a pollutant into the environment, or that will not reduce the agency's ability to monitor compliance with applicable statutes and rules.

For facilities in the metropolitan area, items A, B, and F must be reviewed and approved by the Metropolitan Council prior to agency approval of the modification.

STAT AUTH: MS s 115.03 subd 1; 116.07 subds 2,4,4g,4h

HIST: 13 SR 1150

Current as of 06/03/04

Missouri

10 CSR 80-2.050 Suspension of Permits

PURPOSE: This rule authorizes the department to suspend a permit, pursuant to section 260.205.11, RSMo.

(1) The department may suspend a permit for a period of time as designated by the director. The period of time may be for a specified number of days or for such time as is necessary to perform or complete a specified action(s).

AUTHORITY: section 260.225, RSMo Supp. 1990. Original rule filed Jan. 29, 1988,*

*effective Aug. 1, 1988. *Original authority 1972, amended 1975, 1986, 1988, 1990*

Nebraska

Chapter 2 - PERMITS: APPLICATION PROCEDURES: HEARINGS REQUIRED

004 Permit Procedures: Existing Solid Waste Management Facilities. The holder of a permit shall file for renewal as described in Section 012. Owners or operators of existing facilities which are not currently permitted, shall submit an application to the department within one-hundred and eighty (180) days of May 31, 1993.

005 Local permit requirements. Local governing bodies may develop and enforce local ordinances, codes or rules and regulations on solid wastes disposal or processing equal to or more stringent than these rules and regulations. Nothing herein shall relieve the applicant from complying with any other applicable law, ordinance, code, or rule.

006 Permit Procedure: Solid Waste Management Facility. A person desiring a permit to operate a facility shall apply to the Department. The application shall be made part of the operating record. In the case of a solid waste disposal area, the required facility specifications shall be prepared by a professional engineer registered to practice in the State of Nebraska. Only those portions of the application for a construction and demolition waste disposal area which are specified in Chapter 5 shall be prepared by a professional engineer registered to practice in the State of Nebraska.

007 General Conditions. The Department shall impose such conditions in a permit as may be necessary to accomplish the purposes of applicable laws and these regulations, and as may be necessary to ensure compliance with applicable laws, regulations, and standards. The following conditions apply to all permits.

007.01 A permit shall expire at the end of five (5) years, and may be renewed according to the provisions of 012 of this chapter.

007.02 A permittee shall meet any compliance schedule imposed under its permit and shall fulfill all reporting requirements of the permit.

007.03 The permittee shall maintain an operating record near the facility or in an alternate location approved by the Department. The operating record shall include all information required by these regulations.

007.04 The permittee shall notify the Department when the records described in 007.03 have been placed in or added to the operating record.

007.04A This notification shall be received by the Department within one hundred twenty (120) days of the addition of the record to the operating record, unless an alternative time is allowed in these regulations.

007.04B For purposes of gas monitoring, required by Chapter 3, and ground water monitoring, required by Chapter 7, such notification shall be

received by the Department within thirty (30) days of the end of each calendar quarter, along with copies of all required monitoring results.

007.04C The permittee shall furnish to the Department any information contained in the operating record upon request, or make the operating record available to the Department for inspection at all reasonable times.

007.05 A permittee shall retain all operating records for the facility until the end of the post-closure care period.

007.06 A permittee shall allow full access to existing and available facility records, and shall allow Department inspectors entry and access, during reasonable hours, to any building, area, or place, for inspection purposes (except a building designed for and used exclusively as a private residence).

007.07 A permittee shall commence construction within eighteen (18) months after issuance of Departmental approval for commencement of construction.

008 Transferability of Permit. Permits, except solid waste compost site permits, may be transferred only upon the Director's approval.

009 Issuance or Denial of a Permit.

009.01 Once an application is determined to be administratively complete and has been reviewed by the Department, the Director shall make a preliminary decision whether to issue or deny the permit. Such preliminary decision shall be publicly noticed as outlined in Section 011.

009.02 The Director shall not issue a permit unless the applicant submits adequate proof that the facility will be developed, constructed, modified or operated so as to ensure compliance with all applicable laws, regulations, and standards, and so as to be protective of human health and the environment. The Director may deny a permit on any of the following grounds including, but not limited to:

009.02A The application does not meet the appropriate design criteria specified in these regulations;

009.02B Upon a request for renewal or transfer, the permittee has not complied with all terms, conditions, requirements, and schedules of compliance of the existing permit; or

009.02C In the case of a solid waste disposal area, such a facility is within three thousand three hundred (3300) feet of a residential area in a metropolitan class city.

009.02C1 For purposes of this section, "residential area" shall mean an area designated as residential under the zoning authority of the city.

009.03 If the Director determines to deny the permit and the applicant wishes to contest the decision, the procedures of Title 115 and the Administrative Procedures Act shall be followed.

009.04 An applicant shall not commence construction until written permission to construct has been received from the Department after all necessary application review and public notice and participation has been completed. The permit will be issued after construction of the facility is complete and the applicant supplies documentation verifying that the facility was constructed in accordance with the application. In the case of solid waste disposal areas, this documentation shall be signed by a professional engineer registered in the State of Nebraska.

010 Modifying, Suspending, Revoking Permits.

010.01 Any permit issued by the Department, may be modified, suspended, or revoked, in whole or in part during its term for cause including, but not limited to:

010.01A A violation of any terms or conditions of the permit;

010.01B Obtaining a permit by misrepresentation of any relevant facts or failure to disclose fully all relevant facts;

010.01C Information indicating that the activity or operation poses a threat to human health and the environment; or

010.01D Upon request by the permittee, provided such request does not create a violation of any existing applicable requirements, standards, laws, or rules and regulations. Requests for modifications shall be reviewed according to the standards of Section 009.

010.01E A violation of these rules and regulations or the Environmental Protection Act or the Integrated Solid Waste Management Act.

010.02 Permits which are modified, suspended, or revoked are subject to the public participation procedures of Section 011.

010.03 In addition to the reasons specified in 010.01 of this chapter, causes for modification, but not revocation, shall include, but not be limited to:

010.03A Any major modification;

010.03B Information received by the Director which was not available at the time the permit was issued, and which would have justified the application of different permit conditions at the time of issuance;

010.03C A change in the standards or regulations on which the permit was based; or

010.03D A determination made by the Director that good cause exists for modification of a compliance schedule, such as an act of God, strike,

flood, materials shortage, or other event over which the permittee has little or no control and for which there is no reasonable available remedy.

010.04 Permit modifications shall not require public notice and opportunity for hearing when the modification consists of:

010.04A Correcting typographical errors;

010.04B Requiring more frequent monitoring or reporting by the permittee;

010.04C Changing an interim compliance date, but not beyond one hundred twenty (120) days and not where the change would interfere with the attainment of a final compliance date; or

010.04D Alterations or additions to the permitted activity or operation which do not materially or substantively change the conditions under which the existing permit was issued.

010.05 Permit modifications shall not be used to extend the term of a permit.

011 Public Notice of Pending Permit Action

011.01 Public notice of every preliminary determination to issue, deny, transfer, modify, suspend, or revoke a permit shall contain the elements of 011.02 and shall be made by:

011.01A Submitting the notice as a news release and as a legal notice to the newspaper in the geographical area of the proposed activity or operation; and

011.01B Mailing the notice to the applicant, or permittee as applicable, any unit of local government having jurisdiction over the area where the activity or operation is proposed to be located, each state agency having any authority under state law with respect to the construction or operation of such activity and to any person, either upon request or whose names are on a Departmental mailing list to receive such public notices.

011.01C The legal notice, draft permit and administrative record shall be placed in a public repository in the affected geographical area to be served.

011.02 All public notices issued under these rules and regulations shall contain:

011.02A Name, address, and telephone number of the Department;

011.02B Name and address of the applicant;

011.02C A brief description of the applicant's proposed activities or operations;

011.02D A brief description of the procedures for final determinations, and means by which interested person or groups can participate in the process; or if applicable, a notice of the decision; and

011.02E The address and telephone number of the premises where interested persons may obtain further information.

011.03 Any person will have thirty (30) days from the date of the publication of the legal notice to:

011.03A Provide the Director with any written comments concerning the proposed facility for which the legal notice has been issued; or

011.03B Request a public hearing pursuant to Title 115.

011.04 After the public comment period and any public hearing, the Director shall publish notice of his or her decision. The applicant and other interested persons shall be notified of this decision.

011.05 Any aggrieved person wishing to contest the Director's decision may file a petition for a contested case within thirty (30) days of the Director's decision in accordance with the provisions of Title 115 of the Nebraska Administrative Code.

011.06 Any petition filed pursuant to 011.05 shall not act as a stay of permit.

012 Filing for Renewal: Expiring Permit.

012.01 Permits shall expire five (5) years following the date of the issuance, but may be renewed if the permittee has complied with all applicable requirements.

012.02 Forms for renewals of permits shall be available from the Department. Permit renewal requests shall be filed with the Department one hundred eighty (180) days prior to the permit expiration date and shall be reviewed according to procedures and standards of Section 009.

012.03 Prior to renewal, the permittee shall be in compliance with or have complied with all the terms, conditions, requirements, and schedules of compliance of the expiring permit.

012.04 Public notice and public participation procedures for renewal of the permit shall be those procedures specified for permits in Section 011 of this chapter.

013 Emergency Permit. In the event the Director finds an imminent and substantial endangerment to human health and the environment, the Director may issue a temporary emergency permit without notice and hearing. This emergency permit may also be issued to a non-permitted activity or operation or to one whose existing permit does not cover the authority for which the emergency permit is made. This emergency permit:

013.01 May be oral or written. If oral, it shall be followed within five (5) days by a written emergency permit;

013.02 Shall not last more than one hundred twenty (120) days but may be renewed for an additional sixty (60) days where the permittee can demonstrate that the circumstances justify such extension and that the permittee made good faith efforts to complete the permitted activity or operation within the one hundred twenty (120) days;

013.03 Shall clearly specify the wastes to be handled and the manner and location of their disposal; and

013.04 May be terminated by the Director at any time without process if the Director determines that termination is appropriate to protect human health and the environment.

Enabling Legislation: Neb. Rev. Stat. §§13-2034; 13-2036; 13-2041; 81-1504; 81-1505; 81-1507

Legal Citation: Title 132, Ch. 2, Nebraska Department of Environmental Quality

Chapter 16 - GENERAL PROVISIONS

001 Failure to comply with these regulations may be grounds for administrative enforcement proceedings as provided by §81-1507, or court proceedings brought by the county attorney or Attorney General pursuant to §81-1508, and a mandatory injunction.

002 If any clause, paragraph, subsection, or section of these regulations shall be held invalid, it shall conclusively be presumed that the Environmental Quality Council would have enacted the remainder of these regulations not directly related to such clause, paragraph, subsection or section.

003 Any appeal from any final order or final determination of the Director shall be pursuant to §81-1509.

004 These rules and regulations may be amended or repealed pursuant to the Rules of Practice and Procedures of the Department of Environmental Quality, which procedure shall conform to §84-901 through §84-919.

005 These rules and regulations shall become effective five (5) days after filing with the Secretary of State.

Enabling Legislation: Neb. Rev. Stat. §§13,2034; 81-1505(13)(d), (17), (18); 81-1507; 81-1508; 81-1509; 84-906

Legal Citation: Title 132, Ch. 16, Nebraska Department of Environmental Quality

North Dakota

33-20-01.1-14. Variances. Whereupon written application the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship or would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe.

History: Effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-02.1-01. Solid waste management permit required. Every person who treats or transports solid waste or operates a solid waste management unit or facility is required to have a valid permit issued by the department, unless the activity is an emergency, exemption, or exception as provided in this section.

1. If the department determines an emergency exists, it may issue an order citing the existence of such emergency and require that certain actions be taken as necessary to meet the emergency in accordance with the provisions of North Dakota Century Code section 23-29-10.
2. A solid waste management permit is not required for the following activities or facilities:
 - a) Backyard composting of leaves, grass clippings, or wood chips;
 - b) A collection point for parking lot or street sweepings;
 - c) Collection sites for wastes collected and received in sealed plastic bags from such activities as periodic cleanup campaigns for cities, rights of way, or roadside parks;
 - d) Places which receive one or more recyclable materials, excluding garbage, for storage or for processing after which the material is transported for resource recovery, disposal, or storage;
 - e) Onsite incinerators used by hospitals, clinics, laboratories, or other similar facilities solely for incineration of commercial waste or infectious waste generated onsite;
 - f) Rock and dirt fills that receive any combination of rock, dirt, or sand; and
 - g) Surface impoundments for storage, handling, and disposal of oil and gas exploration and production wastes on a lease or area permitted through the North Dakota industrial commission under North Dakota Century Code section 38-08-04.
 - h) The disposal into the mine spoils of the following wastes generated in the mining operation:
 - 1) Rock, boulders, and dirt; and
 - 2) Trees and brush.
 - i) The disposal of the following mining operation wastes into areas designated in a surface coal mining permit issued by the North Dakota public service commission for such disposal:
 - 1) Inert waste from inspected farmsteads;
 - 2) Wood materials including pallets, lumber, lathe, cables, pools, and fenceposts;
 - 3) Brick, concrete block, and cured concrete; and
 - 4) Plastic material and pipe.
3. A permit for the transportation of solid waste is not required by persons who:
 - a) Transport solely their own waste to a solid waste management unit or facility;

- b) Transport waste entirely within a facility regulated under this article or entirely on their property; or
- c) Transport a recyclable material other than used oil or scrap tires.

History: Effective December 1, 1992; amended effective October 1, 1994; August 1, 1995.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-02. Permits by rule. The owner or operator of the following facilities is deemed to have obtained a permit for a solid waste management facility without making application for it as long as the owner or operator remains in compliance with section 33-20-04.1-01 and the rules and requirements provided in the respective subsections of this section:

1. A facility for inert waste operated for municipalities which together have one thousand or fewer people provided:
 - a) The owner or operator of a new facility or lateral expansion of a landfill notifies the department, on forms available from the department, ninety days prior to any construction;
 - b) The facility is in compliance with sections 33-20-02.1-04, 33-20-04.1-02, and 33-20-04.1-09 and with chapter 33-20-05.1.
2. A drop box facility in compliance with subsection 2 of section 33-20-04.1-06.
3. A waste pile for composting only grass and leaves that is operated for ten thousand or fewer people in compliance with section 33-20-04.1-07 provided the owner or operator notifies the department, on forms available from the department, ninety days prior to construction.
4. A pile of scrap tires accumulated by a tire dealer, a municipality, or a county which contains either one thousand three hundred or fewer car tires, twenty-five tons [22.7 metric tons] or less of shredded tires or a pile of tires, which is equivalent in volume to one twin-axle semitrailer load or less, provided that no public nuisance is created and the following requirements are addressed:
 - a) Access to the facility is monitored or controlled;
 - b) The location is accessible by fire control and emergency equipment; and
 - c) The owner or operator has appropriate provisions and financial arrangements for the recycling or disposal of tires.

History: Effective December 1, 1992; amended effective October 1, 1994.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-03. Permit compliance. All solid waste management facilities and activities must be performed, constructed, operated, and closed in a manner consistent with the permit application and subject to any modifications specified through permit conditions.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-04. Record of notice.

1. Within sixty days of the issuance of a permit for any landfill, surface impoundment or land treatment unit if not already completed, the owner or operator shall record a notarized affidavit with the county register of deeds. The affidavit must specify that this facility, as noted in the legal description, is permitted to accept solid waste for disposal. This affidavit must specify that another affidavit must be recorded upon the facility's final closure.
2. Within sixty days of completion of final closure of any landfill, surface impoundment or land treatment facility and prior to sale or lease of the property on which the facility is located, the owner shall comply with North Dakota Century Code section 23-29-13. The record or plat shall, in perpetuity, notify any person conducting a title search that the land has been used as a solid waste disposal facility. The record or plat must indicate the types and quantities of solid waste placed in the site and details on the site's construction, operation, or closure (including precautions against any building, earth moving, or tillage on the closed site) that are necessary to ensure the long-term maintenance and integrity of the closed facility.
3. The department must be provided a certified copy of any affidavit or plat within sixty days of recording.

History: Effective December 1, 1992; amended effective October 1, 1994.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-05. Property rights. An applicant for a permit for a solid waste management unit or facility shall acquire or possess a right to the use of the property for which a permit is sought, including the access route thereto. After closure, the applicant shall maintain the right of access to the site throughout the postclosure period.

History: Effective December 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-06. Permit modification, suspension, or revocation.

1. A permit may be modified, suspended, revoked, or denied by the department for reasons pertaining to: circumstances which do not meet the purpose and provisions of this article, the provisions of the permit, or the plans and specifications submitted as part of the application for permit; or, violations of any applicable laws or rules. The department shall provide written notice to the permittee.
2. If a change occurs during the life of a permit for transporting solid waste (such as the number or type of vehicles used to transport waste, the service area, the waste categories transported, or the solid waste management facilities use), the permittee shall notify the department in writing within thirty days.
3. If a change occurs during the life of a permit for a solid waste management unit or facility, as specified in subsection 4, the permittee shall apply for and receive a modification of the permit prior to enacting the change. Routine maintenance, repair, or replacement, or an increase in hours of operations may not be considered a construction or operation change. Changes, including frequency of

monitoring and reporting, waste sampling or analysis method, schedules of compliance, and revised cost estimates for closure and postclosure may be effected through written notice to and approval by the department.

4. The following changes at a permitted solid waste management unit or facility require a permit modification:
 - a) A change to the facility boundaries or acreage;
 - b) An increase in average daily solid waste specified in the permit or permit application, calculated by weight or volume for any twelve consecutive months;
 - c) A change in the solid waste characteristics;
 - d) An increase or decrease in finished height or finished slope of a landfill;
 - e) Any increase in landfill trench or excavation depth;
 - f) A change in facility site development which will result in impact to or encroachment into a one hundred-year floodplain, a ravine, a wetland, or a drainageway;
 - g) A change in site drainage or management of runoff or run-on;
 - h) A change in facility site development which will result in disposal of wastes closer to site boundaries than originally approved;
 - i) The addition of solid waste management units, which, if sited independently, would require a permit; or
 - j) Other changes that could have an adverse affect on the safety, health, or welfare of nearby residents, property owners, or the environment.
5. An application for modification of a solid waste management unit or facility shall follow the procedures and provisions of section 33-20-03.1-02.

History: Effective December 1, 1992; amended effective October 1, 1994.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-02.1-07. Renewal of permit. An application for renewal of any permit must be submitted at least sixty days prior to the expiration date. The application for renewal must follow the procedures and provisions of section 33-20-03.1-02. The conditions of an expired permit continue in force until the effective date of a new permit, if the permittee has submitted a timely and complete application for a new permit and the department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

History: Effective December 1, 1992; amended effective October 1, 1994.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

South Dakota

74:27:07:04. No exemptions from federal laws and rules. The provisions of this article do not exempt any facility from compliance with any provisions of federal rules or laws or other requirements by any agency of the United States government.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6.

Law Implemented: SDCL 34A-6-1.34, 34A-6-1.37.

74:27:08:15. Permit conditions. The recommendation of the secretary shall specifically state all proposed terms and conditions. The board or secretary may impose conditions on a permit as necessary to ensure compliance with this article, SDCL title 34A, or any other environmental laws of this state.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.13, 34A-6-1.14.

74:27:08:16. Public notice of secretary's recommendation. The secretary shall instruct an official newspaper in the county in which the facility is to be located to publish a notice of the secretary's recommendation on the permit application, amendment, or renewal. The secretary shall mail the instructions to the newspaper at the same time the recommendation is mailed to the applicant. The secretary shall publish the notice once. The notice shall include the name and address of the applicant; the location and nature of the facility; the type, source, and amount of waste to be handled by the facility; the secretary's recommendation on the permit application including explanations and any proposed permit conditions; and information on intervention procedures. It shall also state that the recommendation will be the final decision on the permit application if a petition for hearing is not filed within 30 days after the publication of the notice of recommendation.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.14.

74:27:08:17. Procedure for contesting secretary's recommendation. A hearing may be held on an application only if a petition requesting a hearing is filed by the secretary, any member of the board, the applicant, or an interested person within 30 days after the publication of the notice and recommendation. Petitions for hearing must conform to the contested case procedures of article 74:09. If a petition for contested case hearing is not filed on time, the recommendation of the secretary becomes the final decision on the application.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.13, 34A-6-1.14.

74:27:08:18. Hearings. The board shall schedule a hearing on the permit application upon receipt of a petition complying with the requirements of chapter 74:09:01. The hearing shall be held no later than 60 days after the receipt of the last timely petition unless a later hearing date is agreed to by all parties, or as ordered by the board.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.13, 34A-6-1.14.

74:27:08:19. Application amendments prohibited after publication. The applicant may not change or amend a permit application after the publication of the notice containing the secretary's recommendation on the application.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.14.

74:27:08:20. Continuances. A party in a hearing may request a continuance of a hearing as provided in article 74:09.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.14.

74:27:08:21. Permit transfers. Permits granted pursuant to this article may be transferred with the approval of the board. Applications for the transfer must demonstrate that the transferee will comply with all terms and conditions of the permit and that the transferee satisfies the criteria specified in SDCL 34A-6-1.13. The secretary shall make a recommendation to the board on the application for transfer within 60 days after receipt and shall publish the recommendation as provided in § 74:27:08:16. The board shall conduct any contested cases on transfers in the manner specified for contested cases in article 74:09 and this chapter.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993; 20 SDR 56, effective October 24, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.14.

74:27:08:22. Notice of violation. Unless contested, a notice of violation issued under SDCL 34A-6-1.22 to 34A-6-1.25, inclusive, becomes final 20 days after receipt by the violator.

Source: 17 SDR 8, effective July 26, 1990.

General Authority: SDCL 34A-6-1.6.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.22.

74:27:08:23. Permit suspension, revocation, and reinstatement. A permit suspended under SDCL 34A-6-1.21 to 34A-6-1.27, inclusive, may be reinstated only upon timely compliance with all orders to cease violation and compliance with all required actions for preventing, abating, and controlling pollution. Upon revocation, a permit may not be reinstated.

Source: 17 SDR 8, effective July 26, 1990.

General Authority: SDCL 34A-6-1.6.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.21.

74:27:10:01. Requirements for general permits. A general permit may be written to cover a specific category of solid waste storage, processing, transportation, or disposal. The category of solid waste handling must meet the following requirements to qualify under a general permit. A solid waste facility under a general permit must meet the following requirements:

- 1) Dispose of the same or substantially similar types of waste;
- 2) Require the same or similar design;
- 3) Require the same or similar operating conditions;
- 4) Require the same or similar monitoring; and
- 5) In the opinion of the board or secretary, be more appropriately controlled under a general permit.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-58.

74:27:10:02. Solid waste handling categories for purposes of general permits. The following are the categories of solid waste handling that may be issued a general permit:

- 1) Land application of petroleum contaminated soils;
- 2) Land application of whey or whey permeate from cheese manufacturing facilities;
- 3) Rubble disposal;
- 4) Construction or demolition debris disposal;
- 5) Sludge disposal;
- 6) Transfer stations accepting more than 500 tons of solid waste a year but less than 25,000 tons of solid waste a year;
- 7) Waste tire handling facilities;
- 8) Asbestos monofills; and
- 9) Other categories that meet the criteria specified in § 74:27:10:01.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-58.

74:27:10:03. General permit procedures. The secretary shall recommend to the board the issuance of general permits for the categories found in § 74:27:10:02. The secretary shall publish the recommendation that a general permit be issued in at least three newspapers of general circulation in the state and shall mail a copy of the notice and recommendation to all municipalities, counties, and tribal government in the state. The procedures for contested cases on general permits are those found in article 74:09 and

chapter 74:27:08. If a petition for hearing is not filed on time, the recommendation of the secretary becomes the final decision on the general permit.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.14, 34A-6-58.

74:27:10:04. General permit conditions. The secretary may recommend that a general permit be issued subject to certain terms and conditions, including such conditions as specific facility design requirements, methods of operation and handling, site requirements, and geographic limitations. The board or secretary may impose terms and conditions on a general permit as may be necessary to ensure compliance with this article and the provisions of SDCL title 34A.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.14, 34A-6-58.

74:27:10:05. General permit amendments, revocations, and suspensions. A general permit may be amended upon the recommendation of the board or the secretary in the same manner as provided for under § 74:27:10:03. A general permit may be revoked or suspended as provided by SDCL 34A-6-1.21 to 34A-6-1.27, inclusive, and as provided by SDCL 34A-6-58.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6, 34A-6-1.14.

Law Implemented: SDCL 34A-6-1.6, 34A-6-1.8, 34A-6-1.14, 34A-6-1.15, 34A-6-1.21, 34A-6-58.

74:27:10:06. Board may require individual permit. The board may require a person authorized under a general permit to apply for and obtain an individual solid waste permit. The secretary or an interested person may petition the board pursuant to article 74:09 requesting the board to require a facility under a general permit to obtain an individual solid waste permit. To require a general permit facility to obtain an individual permit, the board must find that:

- 1)The storage, processing, transportation, or disposal operations are significant contributors to the pollution of the resources of the state or that they present an existing or potential health hazard;
- 2)The facility is not in compliance with the conditions of the solid waste general permit; or
- 3)A change has occurred in the availability of demonstrated technology or practices for the handling or disposal of the waste.

Source: 17 SDR 8, effective July 26, 1990; 19 SDR 186, effective June 10, 1993.

General Authority: SDCL 34A-6-1.6.

Law Implemented: SDCL 34A-6-1.6, 34A-6-58.