

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Adoption of Minnesota Rules Parts
7042.0010 - 7042.0060, Low-Level
Radioactive Waste Generator Fee Rules

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The Minnesota Pollution Control Agency (hereinafter "MPCA" or "Agency") was directed by the 1983 Minnesota Legislature to assess fees for costs incurred by the MPCA in carrying out its responsibilities under the Midwest Low-Level Radioactive Waste Compact (hereinafter "Compact") and its companion legislation. The Compact was established pursuant to Minn. Stat. §116C.831 (Supp. 1983) and its companion legislation is codified as Minn. Stat. §§116C.833 - 116.843 (Supp. 1983).

Under the proposed rules, all generators of low-level radioactive waste shipping 100 cubic feet or more of low-level radioactive waste for disposal per calendar year shall be subject to fees. The rules establish the amount of the fees and describe the method of payment.

The MPCA proposes to adopt these rules according to the procedure for rulemaking provided in Minn. Stat. §§14.21 through 14.28, except that no hearing will be held in the event that 25 or more persons request a public hearing. The legislature has specifically provided that no public hearing may be held on these proposed rules. Minn. Stat. §116C.834 provides: "The agency shall assess the fees in the manner provided in section 16A.128." Minn. Stat. §16A.128, recently amended by Minn. Laws 1984, art.

2, section 1, requires these fees to be set by rule. The manner in which they are to be set by rule is found in subdivision 2a of the statute, which provides:

Procedure. Other fees not fixed by law must be fixed by rule. The procedure for noncontroversial rules in sections 14.21 to 14.28 may be used except that no public hearing may be held. The notice of intention to adopt the rules must state that no hearing will be held. This procedure may be used only when the total fees estimated for the biennium do not exceed the sum of direct appropriations, indirect costs, transfers in, and salary supplements for that purpose. A public hearing is required for adjustments of fees spent under open appropriations of dedicated receipts.

(Emphasis supplied.)

A Notice of Intent to Solicit Outside Opinion regarding development of the rules was published in the State Register on August 13, 1984 (9 S.R. 339). The notice was mailed to 260 persons who are known to be licensed by the United States Nuclear Regulatory Commission (NRC) to possess and use radioactive materials, or who are registered with the Minnesota Department of Health as generators or users of low-level radioactive waste. As a result of this notice, a meeting was held with the major generators/shippers on September 21, 1984. Draft rules were prepared and sent to the affected generators and other persons who had indicated an interest in the rules. The proposed rules were brought before the MPCA Rules Committee on January 9, 1985. During the entire rulemaking process the MPCA staff has attempted to keep the regulated parties informed of developments.

A part of the statutory requirement for the rulemaking process is review and approval of the fee schedules in the rules by the Minnesota Commissioner of Finance. The approval, Exhibit 1, is hereby incorporated by reference into this Statement of Need and Reasonableness.

II. STATEMENT OF THE AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the proposed rules is set forth in Minn. Stat. §116C.834 (Supp. 1983), which provides:

Subdivision 1. Costs. All costs incurred by the state to carry out its responsibilities under the compact and under sections 116C.833 to 116C.943 shall be paid by generators of low-level radioactive waste in this state through fees assessed by the pollution control agency. The agency shall assess the fees in the manner provided in section 16A.128. Fees may be reasonably assessed on the basis of volume or degree of hazard of the waste produced by a generator. Costs for which fees may be assessed include, but are not limited to:

- (a) the state contribution required to join the compact;
- (b) the expenses of the Commission member and costs incurred to support the work of the interstate commission;
- (c) regulatory costs, including but not limited to costs of adopting and enforcing regulations if the state enters into a limited agreement with the U. S. Nuclear Regulatory Commission to assume state regulation of transportation and packaging, or disposal, low-level radioactive wastes; and
- (d) any liability the state may incur as a party state to the compact.

Subd. 2. Collection and deposit. Fees assessed under

subdivision 1 shall be collected by the commissioner of revenue. All money received pursuant to this subdivision shall be deposited in the general fund.

The rationale behind the legislature's enactment of the statute was that persons generating low-level radioactive waste should pay the costs incurred to carry out the State's responsibilities under the Compact and any costs of regulating low-level radioactive waste.

The appropriation which the fees are intended to cover was in the amount of \$75,000. This appropriation was intended to cover:

1. The payment required by Article III.j. of the Compact, which provides:

Each state, upon becoming a party state, shall pay \$50,000 or \$1,000 per cubic meter of waste shipped from that state in 1980, whichever is lower, to the Commission, which shall be used for the administrative costs of the Commission.

Under this provision, Minnesota's share was \$50,000.

2. Costs incurred by the MPCA Director and his staff to attend Compact Commission meetings and participate in Compact Commission activities. Pursuant to Minn. Stat. §116C.833, the Director of the MPCA is Minnesota's voting member of the Compact Commission.

Based on the provisions of Minn. Stat. §116C.834 and the 1983 legislature's appropriation, the Agency has the statutory authority to adopt fees which would result in the collection of \$75,000.

III. STATEMENT OF NEED

The need to adopt the proposed rules arises as a result of Congress' enactment of the National Low-Level Radioactive Waste Policy Act of 1980 (42 United States Code §§2021a - 2021d). The Act encourages the establishment of regional compacts for the management of low-level radioactive waste.

In 1983 the Minnesota Legislature enacted Minn. Stat. §116.831 (Supp. 1983) by which Minnesota joined the Midwest Interstate Low-Level Radioactive Waste Compact. As previously noted, the terms of the Compact require each party state to contribute a sum of money in order to fund the Commission's activities. Minnesota's share was \$50,000. The Legislature appropriated \$75,000 to cover this cost and to cover the other expenses of the Agency Director and his staff in participating in the Commission's activities. In order to comply with the Legislature's direction in Minn. Stat. §116C.834 (Supp. 1983) to collect these expenses from generators, there is a need to adopt rules establishing fees to collect these costs.

The Agency does not expect that the entire appropriation of \$75,000 will be spent by the end of the biennium for which it was appropriated. The following disbursements have been made during fiscal years 1984 and 1985:

Contribution to Compact:	\$50,000
Travel and Expenses	<u>2,500</u>
Total	\$52,500

The Agency estimates that five to six thousand dollars will be spent during the remainder of fiscal year 1985 for travel and expenses. Therefore, the Agency only needs to use \$60,000 to cover all expenses for the biennium. Therefore, in order to collect the amounts actually needed, there is a need to adopt rules which will result in the collection of \$60,000. The funds remaining from the appropriation will be returned to the general fund.

IV. STATEMENT OF REASONABLENESS

The proposed rules are reasonable because they are directed toward the Legislature's objective that the MPCA assess fees to support costs incurred as a result of Minnesota's membership in the Midwest Interstate Low-Level Radioactive Waste Compact. The fees are to be collected from generators of low-level radioactive waste. The primary goal of these rules is to set forth the requirements for payment of fees to recover the money appropriated by Legislature and used by the MPCA to fund the Commission's activities, including the expenses for MPCA staff to attend Commission meetings.

Before calculating the fees to be established in this rule the Agency sought information on how much low level radioactive waste is generated and shipped, or managed by other methods, in Minnesota. The Agency sent out a questionnaire to holders of

U. S. Nuclear Regulatory Commission licenses and to generators/users registered with the Minnesota Department of Health. It was learned that there are four entities which generate and ship the vast majority, in terms of volume, of low-level radioactive waste in Minnesota. These entities are Honeywell, Northern States Power Company (hereinafter "NSP"), the University of Minnesota (hereinafter "U of M") and Minnesota Mining and Manufacturing (hereinafter "3M"). There are also many other generators who generate and ship much smaller amounts of low-level radioactive waste.

After gathering this information it was decided to base the Agency's fees on the volume of low-level radioactive wastes shipped to disposal facilities. The highest rate is imposed upon those who ship 1,000 cubic feet or more per year of low level radioactive waste. The only generators who fall into this category at the present time are the four largest generators listed above. This means that most of the financial burden of the fee program will be placed on these four entities. However, the Agency staff has met with representatives of these four entities, and they have not expressed opposition to the approach of basing fees on volume.

Basing the fees on volume and placing most of the financial burden on the largest generators is reasonable because those who generate and ship the larger volumes of low-level radioactive

wastes are contributing the most to the need to manage, dispose of, and regulate these wastes. In addition, basing the fees on volume is consistent with the current practice of shippers, whose charges are also based on volume. It is also reasonable to expect that, once a regional management/disposal facility is established by the Compact, that the charges for accepting wastes will be based on volume. The Agency's approach to setting fees is therefore consistent with other fee structures with which generators and shippers are familiar.

The proposed rules would impose a lesser fee upon persons who ship low-level radioactive waste if the waste shipped during the previous calendar year was 100 cubic feet or more and less than 1,000 cubic feet. Imposing fees on shippers in this volume range is reasonable because they are a part of the national dilemma regarding sound disposal of low-level radioactive waste and would be considered in making decisions as to the size of a disposal facility sited by the Compact Commission.

The proposed rules would not impose fees on persons who generate and ship less than 100 cubic feet of low-level radioactive waste per year. Limiting fee assessments to larger generators/shippers is reasonable because the Agency does not expect that tracking these generators and collecting fees from them will be cost effective. The fees collected might not exceed

the cost of such tracking and collection.

The Agency estimates that the proposed fees will generate \$60,487 by June 30, 1985. The breakdown of the revenue estimate is as follows:

Table 1: Estimated Revenues

<u>Major Generators/Shippers</u>	<u>Reported Volume Shipped*</u>	<u>Estimated Fee</u>
Honeywell	12,700	\$10,795
NSP	46,500	39,525
U of M	5,985	5,087
3M	<u>4,800</u>	<u>4,080</u>
	Total: 69,985	Total: \$59,487

Ten small quantity shippers (shipping 100 cubic feet or more but less than 1,000 cubic feet per year) at \$100 each 1,000

Total estimated revenues: \$60,487

*Volume of waste shipped in calendar year 1984 as reported in a telephone survey conducted by the Agency's Division of Solid and Hazardous Waste.

These fees are sufficient to recover the costs of the initial contribution to the Compact and the Agency's expenses for participating in the Compact's activities for the first year of the fees. In succeeding years the fees will cover the costs incurred as a result of membership in the Compact as well as costs incurred in the administration of the fee program.

The following discussion addresses the specific provisions of Minn. Rules Parts 7042.0010 - 7042.0060.

Part 7042.0010 Scope

This rule states that Parts 7042.0010 - 7042.0060 levy fees on generators of low-level radioactive waste as required by Minn. Stat. §116C.834. This rule is necessary and reasonable because it notifies the reader of the general scope and purpose of the rules which follow.

Part 7042.0020 Definitions

This rule sets forth eleven definitions of words or phrases used within the rules.

"Agency" is defined as the Minnesota Pollution Control Agency. It is reasonable to define this term in order to clarify which state agency is meant by this term.

"Compact" is defined as the Midwest Interstate Low-Level Radioactive Waste Compact. It is reasonable to define this term to clarify which compact is meant by this term.

"Director" is defined as the Executive Director of the Agency. It is reasonable to clarify to whom this term refers.

"Disposal," "facility," "generator," "low-level radioactive waste," "person," "storage," and "treatment" are defined in the same manner as they are defined in Minn. Stat. §116C.831, Article II, Definitions. It is reasonable to define these terms, as they are critical to understanding when fees are imposed and upon whom. It is necessary and reasonable to use the same definitions

set forth in the statute because the Legislature has already decided the meaning it wishes those terms to have.

Part 7042.0030 Low-Level Radioactive Waste Generator Fees

This rule is divided into two subparts. Subpart 1 provides that fees are based upon volume of waste which was shipped for disposal during the previous calendar year and requires that the data on the volume of waste shipped be provided to the Director with payment as described in Part 7042.0040. As previously discussed at pages 7-8, it is reasonable to base fees on volume due to the correlation between producing wastes and the need to manage, dispose of and regulate this waste and due to the consistency of this approach with the practices of shippers and disposal facilities. In addition, using volume as a basis for fees is reasonable because calculating fees is a simple matter of multiplication. Shippers/generators must already keep records and report shipments to comply with NRC regulations on low-level radioactive waste transportation. Therefore, the information is readily available, and shippers/generators need only forward a copy to the Director. The requirement to provide this existing information is not burdensome and is thus reasonable.

Subpart 2 establishes the amount of the fees. Item A provides that a generator who ships 1,000 cubic feet or more of a low-level radioactive waste per year to a facility for

disposal is subject to a fee of \$0.85 per cubic foot of low-level radioactive waste shipped per year. This is a reasonable level since it should generate the necessary revenue, based on 1983 shipping data. Item B provides that a generator who ships 100 cubic feet or more but less than 1,000 cubic feet of low-level radioactive waste per year to a facility for disposal is subject to a fee of \$100 per year. Levying a fee for smaller generators is reasonable since they produce waste which will have to be disposed of in a facility, but due to the disparity in size between the small generators and the four major generators/shippers, a per unit fee would be unreasonable. At this time it is reasonable to limit the collection of fees to wastes shipped to a facility for disposal because most waste generated is being disposed. However, in the future, as waste management shifts from disposal to long-term storage, it may be necessary to re-evaluate the basis for the fees.

Part 7042.0040 Payment of Fees

Minn. Stat. §116C.834, subd. 2 (Supp. 1983) provides that fees assessed shall be collected by the Commissioner of Revenue. The proposed rule provides that a generator must submit the fees and appropriate documentation to the Director no later than June 10 of each year and that fees for waste shipped in calendar year 1984 are payable by June 10, 1985. It is reasonable to require that the fees be submitted to the Director and then

transferred to the Commissioner of Revenue because it is necessary for the Agency to be able to conduct a prompt review of the amount of fees generated. It is also appropriate for the Agency to have a mechanism for evaluating the basis of the fees so that they may be modified as necessary. The routing of the fees through the Agency before they are submitted to the Commissioner of Revenue provides a valuable review mechanism for the Agency, does not impose any additional burden on generators, and is not inconsistent with the statute.

The rule also provides that checks should be made payable to the State Treasurer. The June 10 due date is reasonable because it provides sufficient time for the State to process the payment before the end of the fiscal year. The requirement to make checks payable to the State Treasurer reflects the requirement of Minn. Stat. §116C.834, subd. 2 that all moneys collected should go to the general fund.

Part 7042.0050 Exemptions

The proposed rule provides that low-level radioactive waste generated as a result of a spill or accident and sealed sources which are returned to a vendor or manufacturer are not subject to fees. It is reasonable to exempt from fees those wastes generated as a result of a spill or accident because the most important responsibility of the generator is to get the waste

cleaned up and properly disposed of. The generator may have to pay significant charges for the clean-up, transportation and disposal of the waste, and additional charges would not be reasonable or necessary. It is reasonable to exempt from fees sealed sources which are returned to a vendor or manufacturer because users of sealed sources are not true "generators" due to the fact that these sources are packed according to shipping requirements and are shipped to the manufacturer or vendor.

Part 7042.0060 Penalty Provisions

The proposed rule provides that if a generator fails to pay the generator fee by the due date, a penalty will be assessed. The penalty is five percent of the fee due for each month or fraction of a month that the fee payment is late. It is reasonable to charge a late fee to encourage payment of the fee on or before the due date.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. §14.115, subd. 2 (Supp. 1983) requires the Agency, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

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

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

There are two exemptions in the rule which may provide relief for some small businesses: 1) the exemption from fees for all generators who ship less than 100 cubic feet of low-level radioactive waste per year; and (2) the exemption for generators who use sealed sources and return them to the vendor or manufacturer. Under these exemptions, small businesses who generate wastes within these categories (e.g., small hospitals) will pay no fees. These exemptions also benefit small educational institutions which frequently have small sealed sources for teaching and demonstration.

VI. CONCLUSION

Based on the foregoing, the proposed Minn. Rules Parts 7042.0010 - 7042.0060 are both needed and reasonable.

Dated: January 7, 1985



THOMAS J. KALITOWSKI
Executive Director

Low-Level Radioactive Waste Generator Fees
January 1985

Review and Approval

Description

Pursuant to Minnesota Statutes 1983, Section 116C.834, the Minnesota Pollution Control Agency (MPCA) is establishing administration fee schedules for low-level radioactive waste generators. As provided by law, these fees will be established by rule without public hearing. However, when the rule is placed on public notice, the approval of the Commissioner of Finance will be included as an exhibit into the statement of need and reasonableness.

Generators of low-level radioactive waste shall pay a fee. Fees are based upon the volume of waste shipped for disposal by the generator. The volume figure is based on shipping data for the previous calendar year.

All fees collected by the MPCA under this rule will be deposited in the State's general fund as non-dedicated receipts. It is the intent of the MPCA to use the fees to recover the direct costs incurred by membership in the Midwest Low-Level Radioactive Waste Compact including expenses for attending meetings and one staff position. Salary and fringe of senior MPCA staff for time involved in administering the compact will not be included.

In evaluating the low-level radioactive waste shipped from Minnesota for out-of-state disposal it became clear that four generators were shipping the major portion of the waste. The smallest of these four is approximately ten times larger than the next largest. Because of this size disparity, four generators will bear the major burden of the fees.

Purpose

The purpose of these fees is to recover a portion of the MPCA's fund appropriation for expenses incurred by Minnesota's membership in the Midwest Low-Level Radioactive Waste Compact authorized by Minnesota Statutes, 1983 Section 116C.331. The Legislature appropriated \$75,000 to the MPCA through fiscal year 1985 for costs incurred by Minnesota's membership in the compact. However, the MPCA does not anticipate spending the entire appropriation and estimates that no more than \$50,000 will be needed to support the program's expenses through June 30, 1985.

Current estimates indicate that \$60,487 will be received through the fee program as required by statute. The fees shall be reviewed at least once every six months and adjusted if necessary.

Reviewed and Approved - to be included in the MPCA's statement of need and reasonableness for the proposed rule.

Gordon M. Donhowe
Gordon M. Donhowe, Commissioner
Department of Finance

1-25-85
Date