

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendment of Hazardous Waste
Rules Governing Availability
of References, Facilities
Governed by Interim Status,
Interim Status Landfills and
Rule Appendices, Minn. Rules
Pts. 7045.0065, 7045.0552,
7045.0638, 7045.1240, 7045.1250,
and 7045.1260

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the revision of rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the availability of references, Minn. Rules, pt. 7045.0065, facilities governed by interim status, Minn. Rules pt. 7045.0552, interim status landfills, Minn. Rules pt. 7045.0638 and appendices to the hazardous waste rules, Minn. Rules pts. 7045.1240, 7045.1250, and 7045.1260. These rules are proposed for amendment pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (1984).

The proposed amendments to the Agency's rules update a reference document, clarify the applicability of the interim status requirements, add management requirements for interim status landfills and repeal three appendices to the hazardous waste rules.

This Statement of Need and Reasonableness is divided into several parts. Part II contains the Agency's explanation of the need for the proposed amendments. Part III contains the Agency's explanation of the reasonableness of the proposed amendments. Pursuant to the requirements of Minn. Stat. § 14.115 (1984), Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses. Part VI

contains a reference to the exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's office at 1935 West County Road B-2, Roseville, Minnesota 55113.

II. NEED FOR THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

Minn. Stat. ch. 14 (1984) requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms this means that an agency must set forth the reasons for its proposal and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by the Agency is appropriate.

Need is a broad test that does not easily lend itself to an evaluation of each proposed revision. In this broad sense the need for amendments to the Agency's rules has two bases: the need for consistency with the federal hazardous waste regulations and the need to update the rules to remove obsolete information.

A. Need for Consistency with Federal Regulations.

In 1976, Congress adopted the Resource Conservation and Recovery Act (hereinafter "RCRA") to regulate the management of hazardous waste 42 U.S.C. §§ 6901 et seq. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and set up the mechanism for the United States Environmental Protection Agency (hereinafter "EPA") to grant authority to states to operate the program. In states that receive authorization, the

state program operates in lieu of the federal program. To receive and maintain authorization, the state must have a program which is "equivalent" to the federal program and consistent with federal or state programs applicable in other states. EPA has defined "equivalent" to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, EPA's goal is to achieve an integrated national program which requires that final state programs do not conflict with each other or with the federal program.

Minnesota received final authorization for its hazardous waste program from EPA effective February 11, 1985. See 50 Fed. Reg. 3756 (January 28, 1985). A state with final authorization administers its hazardous waste program entirely in lieu of the EPA. When new more stringent federal requirements are promulgated by EPA, the state is required, within specified time frames, to enact equivalent requirements. Under 40 C.F.R. § 271.21, an authorized state is required to enact equivalent provisions within one year of the date of promulgation of the federal requirement, unless a statutory amendment is required, in which case the time limit is two years. However, until they are adopted as state requirements, the federal requirements promulgated under RCRA do not take effect in an authorized state.

Congress enacted the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA") when they reauthorized RCRA. Under HSWA, EPA is directed to promulgate new hazardous waste regulations and amendments within specified time frames to address specific areas of concern. In order to address these concerns in a timely manner, Congress has directed EPA to require regulations

and amendments promulgated under HSWA to become effective nationwide on the specified effective date without regard for any states' authorization status. Therefore, regulations and amendments promulgated under HSWA become effective in Minnesota prior to any amendments of state rules. However, under 40 C.F.R. § 271.21, authorized states are required, within specified time frames, to enact requirements equivalent to those self-implementing provisions promulgated under HSWA.

The amendments proposed here are in response to amendments to the federal regulations which revise, clarify and add requirements which cause the federal regulations to be more stringent than the current State rules. One of them is promulgated under HSWA, the others under RCRA.

EPA has adopted an amendment to 40 C.F.R. Part 260 to update the document which provides the reference for analytical procedures. 50 Fed. Reg. 18370 (April 30, 1985) (Exhibit 1). This amendment is promulgated under HSWA and makes EPA's regulations referencing this document more current and complete and therefore could be more stringent than the Agency's existing rules. Additional amendments to this document were recently promulgated to correct previous errors and to clarify certain provisions. 49 Fed. Reg. 47390 (December 4, 1984) (Exhibit 4). These amendments should be incorporated into the State rules to ensure correctness and consistency. The proposed amendment to Minn. Rules pt. 7045.0065 will provide for the incorporation of revisions to this document as they are published. Since such revisions are done under HSWA, they will be in effect in Minnesota as they are published. By referencing SW 846 as amended, the rule will not need to be amended every time EPA publishes a revision to this

document.

EPA has adopted an amendment to 40 C.F.R. Part 265 to clarify the applicability of the interim status standards. 49 Fed. Reg. 46094 (November 21, 1984) (Exhibit 2). This amendment makes EPA's rules more specific regarding the application of interim status standards and therefore could be interpreted as being more stringent than the Agency's existing rules. The proposed amendment to Minn. Rules pt. 7045.0552 incorporates the provisions of the federal regulations as amended.

EPA has adopted amendments to 40 C.F.R. Part 265 to impose more stringent requirements on the owners or operators of interim status landfills. 50 Fed. Reg. 16044 (April 23, 1985) (Exhibit 3). These amendments make EPA's rules more stringent regarding the closure and post-closure requirements and the disposal of containers at interim status landfills. The proposed amendments to Minn. Rules pt. 7045.0638, subps. 4 and 8 incorporate the provisions of the federal regulations as amended.

These three amendments are needed in order to maintain equivalency and promote consistency between federal and Agency rules regarding these aspects of hazardous waste regulation.

B. Need to Remove Obsolete Information.

When the Agency's hazardous waste rules were amended in July 1984, many provisions of the previous hazardous waste rules were no longer applicable. Most of these obsolete provisions were repealed as part of the rulemaking actions to adopt the Agency's current hazardous waste rules.

However, three appendices were inadvertently retained in the hazardous

waste rules even though they were obsolete in relation to the new rules. These three appendices address the classification of wetlands, sampling procedures, and the information required on hazardous material shipping papers. The continued presence of these irrelevant appendices in the hazardous waste rules creates confusion regarding their application. The amendments to repeal these appendices are needed in order to avoid this confusion.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

The Agency is required by Minn. Stat. ch. 14 (1984) to make an affirmative presentation of facts establishing the reasonableness of the rules or amendments proposed. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is a rational basis for the Agency's action.

The reasonableness of each of the proposed amendments is discussed below.

A. Minn. Rules Pt. 7045.0065.

The Agency is proposing to amend Minn. Rules pt. 7045.0065, item G, to update the reference document described there. This document, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, publication number SW 846, has been frequently updated and amended to incorporate additional test methods and procedures as they are developed. EPA amended 40 C.F.R. § 260.11 to refer to SW 846 as amended by Updates I and II. Update I (April, 1984) corrects previous errors and clarifies certain provisions in SW 846. Update II (April, 1985) specifies the paint filter test to be used to determine the absence or presence of free liquids in a hazardous waste. These amendments are discussed in Exhibits 1 and 4, and those discussions are hereby incorporated by reference.

In order to continue to accommodate such additions, the rules are being amended to delete references to specific updates and to instead refer to the document as amended. It is reasonable to provide this level of flexibility so that each addition to the document will be in effect if applicable. Maintaining the reference to the most current document is necessary because it could cause the effect of the Agency's rules to be less stringent than the federal program. As more precise analytical techniques are developed, it will change the application of the hazardous waste rules in certain circumstances. For example, if the test procedure for determining the Extraction Procedure toxicity of a waste is changed in the federal regulations but not in the State rules, a waste could be tested under the federal rules and be a hazardous waste, but not be a hazardous waste under the older techniques established in the State rules.

It is reasonable to amend the rules to delete the specific references to various updates of this document and to add the ongoing update to refer to this document "as amended" in order to maintain consistency with the federal regulations and to ensure that uniform procedures are used in evaluating waste. Because the amendments to update this document have been and will continue to be promulgated under HSWA, it is reasonable to add the statement "as amended" to this reference instead of citing each update as it is published because amendments promulgated under HSWA are in effect in Minnesota on the date the federal regulations become effective, regardless of the states' activities to keep the reference current. By specifying in the rule that the amended reference is in effect, the regulated community will not be subjected to conflicting provisions where two different test procedures could be cited, one

for the state rules as established in the rules and one for the most recent federal amendment.

B. Minn. Rules Pt. 7045.0552, Subp. 1.

The Agency is proposing to amend Minn. Rules pt. 7045.0552, subp. 1 to incorporate a technical amendment to the corresponding federal regulation. The proposed amendment will make the state rule equivalent to the amended federal regulation. EPA amended 40 C.F.R. § 265.1 to clarify the applicability of the interim status standards of 40 C.F.R. Part 265. The current state rule is equivalent to the previous federal regulation and uses the phrase "until final disposition of the permit" to describe the period of interim status. EPA found that this phrase could be misinterpreted to mean that facilities which are denied a permit are not regulated under interim status. As this has never been the intent or the application of the rules, it is reasonable to amend this provision to clarify the applicability of these rules, and to maintain equivalency and promote consistency with the federal regulations. The reasonableness of the amendment to the federal regulation is discussed in Exhibit 2, and that discussion is hereby incorporated by reference.

C. Minn. Rules Pt. 7045.0638, Subps. 4 and 8.

The Agency is proposing to amend Minn. Rules pt. 7045.0638, subps. 4 and 8 to incorporate the amendments to the federal regulations regarding interim status landfill closure and post-closure care and the management of containers at such landfills.

Subp. 4 of Minn. Rules pt. 7045.0638 addresses landfill closure and post-closure and were taken almost verbatim from the previous federal

regulation. 40 C.F.R. § 265.310 was amended on April 23, 1985 to impose more stringent closure and post-closure requirements for interim status landfills. It is proposed to incorporate that amendment into the state rules. Such amendment will make the state rule identical to the corresponding federal regulation. The reasonableness of the amendment to the federal regulation is discussed in Exhibit 3, and that discussion is hereby incorporated by reference.

The current interim status landfill requirements are very similar to the requirements for permitted facilities, although they are less explicit and less environmentally protective. EPA has decided that it is appropriate to extend certain of the requirements for permitted facilities to interim status landfills. The requirements are changed from general requirements for the owner or operator to address certain factors in their plans for closure and post-closure to specific criteria for the development of landfill covers and post-closure activities. It is reasonable to continue to parallel the federal regulations by incorporating the same requirements into the state rules and deleting the previous requirements.

Subpart 8 of Minn. Rules pt. 7045.0638 addresses the management of containers at interim status landfills. The current state rules are the same as previous federal regulations and only required that empty containers be crushed, shredded or reduced to the maximum practicable extent before disposal. EPA received comments that the regulations should exclude small containers from this requirement and should establish when a container is actually full. The amendments to 40 C.F.R. § 265.315 provide for the exclusion of small containers, such as ampules, and establish that containers must be at least 90 percent full

to be disposed of as full. It is proposed to amend Minn. Rules pt. 7045.0638, subp. 8 to incorporate that amendment and make the state rule identical to the amended corresponding federal regulation. The reasonableness of the amendment to the federal regulation is discussed in Exhibit 3, and that discussion is hereby incorporated by reference. It is reasonable to continue to parallel the federal regulations by incorporating the same requirements into the state rules.

D. Minn. Rules Pts. 7045.1240, 7045.1250, and 7045.1260.

The Agency is proposing to repeal Minn. Rules pts. 7045.1240, 7045.1250 and 7045.1260 which address the classification of wetlands, sampling procedures and shipping papers for hazardous materials. These three rules are Appendices K, L, and M of the hazardous waste rules. These appendices were applicable to the previous hazardous waste rules that were in effect in Minnesota until July 1984. At that time the current hazardous waste rules went into effect and Appendices K, L, and M were no longer referred to in the rules and were thus obsolete. It is reasonable to repeal these appendices because they do not serve any purpose in the rules and may create confusion.

IV. CONSIDERATION OF SMALL BUSINESS

Minn. Stat. § 14.115 (1984) requires Minnesota agencies, when proposing amendments to existing rules which may affect small businesses, to consider reducing the impact of the rule on small businesses. The objective of Minn. Stat. ch. 116 (1984) is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Considerations which would apply less stringent requirements to the hazardous waste generated by small businesses would be contrary to the MPCA's

mandate.

The proposed amendments will have minimal impact on small businesses. The amendments to update the document referenced in the rules and the clarifying changes regarding the applicability of the interim status requirements will not change the effect of the hazardous waste rules as they have been previously implemented in Minnesota. The more stringent requirements for interim status landfills are not expected to affect any small businesses because no such facilities are being operated in Minnesota.

V. CONCLUSION

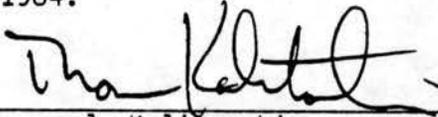
The Agency has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's hazardous waste rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to the hazardous waste rules.

VI. LIST OF EXHIBITS

The Agency is relying on the following documents to support these amendments:

<u>MPCA</u> <u>Ex. No.</u>	<u>Title</u>
1	<u>Federal Register, Volume 50, Number 83,</u> <u>pages 18370-18375, April 30, 1985.</u>
2	<u>Federal Register, Volume 49, Number 226,</u> <u>pages 46094-46095, November 21, 1984</u>
3	<u>Federal Register, Volume 50, Number 78,</u> <u>pages 16044-16048, April 23, 1985.</u>
4	<u>Federal Register, Volume 49, Number 234,</u> <u>pages 47390-47391, December 4, 1984.</u>

Dated: August 15, 1985



Thomas J. Kalitowski
Executive Director