STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules Governing the Management of Hazardous Waste From Small Quantity Generators, Minn. Rules Pts. 7045.0075, 7045.0219, 7045.0261, 7045,0292, and 7045.0381

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the management of hazardous waste from small quantity generators. The amendments are based in part on amendments promulgated by the U.S. Environmental Protection Agency (hereinafter "EPA") under the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA"), Public Law 98-616 (Exhibit 1). The federal small quantity generator requirements were proposed in the August 1, 1985 Federal Register (50 FR 31277-31306) (Exhibit 2) and published as final rules in the March 24, 1986 Federal Register (51 FR 10146-10176) (Exhibit 3).

The Agency is also proposing changes to Minn. Rules pt. 7045.0075 (Petitions) and Minn. Rules pt. 7045.0219 (Special Requirements for Small Quantity Generators of Hazardous Waste) which are not based on the federal regulations but which are the result of suggestions and comments by the public.

These rules are proposed for amendment pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (supp. 1985).

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 an explanation of the reasonableness of the

proposed amendments. Pursuant to the requirements of Minn. Stat. § 14.115 (supp. 1985), Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses. Part V contains a list of the exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's offices at 520 Lafayette Road, St. Paul, Minnesota 55155.

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 an agency is appropriate.

Need is a broad test that does not easily lend itself to evaluation of each proposed revision. In the broad sense, the need for amendments to the Agency's rules governing the management of hazardous waste from small quantity generators has two bases: the need for consistency with the federal hazardous waste regulations and the need for rules which provide an acceptable level of protection for human health and the environment without unduly restricting normal business practices.

A. Need for Consistency with Federal Regulations.

In 1976, Congress adopted the Resource Conservation and Recovery Act (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 EPA to grant authority to states to operate the program. In states that receive authorization, the state environmental agency administers the state program in lieu of the federal program. To receive and maintain authorization, the state program must be "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 pursuant to the 1976 and 1980 RCRA amendments from EPA effective February 11, 1985. See 50 FR 3756 (January 28, 1985). A state with final authorization administers its hazardous waste program in lieu of the EPA program for those regulations which were promulgated pursuant to RCRA as adopted in 1976 and as amended in 1980.

However, the authorization did not extend to those requirements promulgated pursuant to HSWA. A state must obtain authorization specifically under HSWA. Before the Agency can apply for authorization under HSWA, any rule amendments intended to maintain equivalency to the federal program must be in effect in Minnesota. The existing federal regulations establish specific time frames for the adoption of state rules intended to maintain equivalency to the federal

rules.

Although federal regulations promulgated under RCRA are not in effect in Minnesota until the state rules are amended to incorporate the federal changes, federal regulations promulgated under HSWA go into effect in all states on the federal effective date regardless of the state's authorization status or the fact that the existing state rules have not been amended to reflect the federal program.

The federal regulations governing small quantity generators were promulgated under HSWA and have been in effect in Minnesota since September 22, 1986. At this time, small quantity generators in Minnesota must comply with the most stringent aspects of the state and federal regulations. Therefore, there is a need to incorporate the more stringent portions of the federal regulations into the state rules to eliminate the dual regulation that currently exists.

Although some aspects of the existing state program are more stringent than the federal requirements and states are not required to adopt less stringent federal standards, the Agency believes it is important to maintain as much consistency as possible between Minnesota's rules and the federal program. The need to comply with multiple sets of rules makes compliance difficult for generators who must frequently transport their waste to other states for final disposal. Therefore, to the extent it can be accomplished without posing a threat to human health and the environment, amendment of Minnesota's hazardous waste rules to incorporate EPA's amendments is desirable.

B. Need for Managing Hazardous Waste Consistent with the Protection of Human Health and the Environment.

The amendments to the Minnesota hazardous waste rules include provisions protective of human health and the environment by expanding some aspects of the requirements for the management of hazardous waste from small quantity generators beyond the level required by the federal regulations. The amendments retain most of the current State provisions, including requirements for disclosures, identification numbers, spill management, containers, record keeping and annual reporting. These State requirements, in additional to the federal requirements, provide more complete management of hazardous wastes to minimize the potential for harm to human health and the environment.

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

The Agency is required by Minn. Stat. ch. 14 (supp. 1985) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. 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.

Although no official comments were received in direct response to the Agency's Notice to Solicit Outside Opinion on the small quantity generator amendments, as published in the June 16, 1986 State Register, the Agency has been asked to consider reductions in the level of regulation of small quantity generators. Members of the regulated community in Minnesota have requested that

the Agency specifically provide a reduction in the requirements for the use of a hazardous waste manifest under certain conditions (Exhibits 4, 5, 6 and 7). A number of comments and suggestions which support the amendments discussed in this Statement of Need and Reasonableness were provided in the Agency's discussions with the public. A public meeting was held on July 25, 1986 and the opportunity for further discussion was provided at meetings of the Agency Rules Committee on August 25, 1986 and October 27, 1986.

A. Minn. Rules Pt. 7045.0075 (Petitions).

The State rules currently require that all hazardous waste be accompanied by a manifest when it is transported and do not provide any exception to this requirement for small quantity generators. The federal regulations do not require the use of a hazardous waste manifest for transporting waste for conditionally exempt generators (1 to 100 kilograms per month) and provide a conditional exemption from manifest use for small quantity generators (100 to 1,0000 kilograms per month) whose waste is being reclaimed under a contract with a facility that also owns and operates the transport vehicle and meets certain other record keeping requirements.

The Agency does not believe the adoption of the federal exemption is reasonable because it does not provide a sufficient level of assurance to the Agency or the waste generator that the waste is being properly managed. The full exemption would enable the generator, transporter and recycling facility to transport and manage hazardous waste without being required to notify the Agency or each other of their activities. The Agency would only receive information on the management of conditionally exempt small quantity generator's waste when

annual reports are submitted and would have no way to verify the information provided by the generator. Additionally, the waste generator would not receive any notification that the wastes shipped were actually received at the designated facility. The Agency does not believe that the federal exemption provides a reliable means of regulating a significant portion of Minnesota's hazardous waste stream.

However, the Agency has received comments indicating that some reduction in manifest requirements is appropriate to relieve some of the burden of compliance for small quantity generators. The Agency agrees that it is reasonable to reduce some aspects of hazardous waste regulation in recognition of the particular concerns of small quantity generators. The Agency has developed a compromise between the use of the full hazardous waste manifest and the federal exemption which addresses the concerns of the regulated community while still providing adequate tracking of waste transport.

The Agency is amending Minn. Rules pt. 7045.0075 to add a subpart addressing the requirements to obtain approval to use an alternate manifest for the transport of hazardous waste from small quantity generators to a recycling facility. A procedure is provided for the owner or operator of the facility and transport vehicles to petition the director for a reduction in the manifest requirements. It is reasonable to restrict the use of the petition process to the owners or operators of the recycling facility and the transport vehicles because these aspects of the management system have the most control over the waste and can provide the most assurance that the alternate system will provide acceptable tracking.

The conditions established under the federal regulations limit the opportunity for reduced manifest requirements to the contract transport of hazardous waste from generators of less than 1,000 kilograms a month to a recycling facility by means of vehicles owned and operated by the same company as the recycling facility. These conditions from the federal regulations are specified in the amendments in order to be equivalent with the federal program.

The amendments additionally require that the petitioner provide the generator with the option of using the full manifest if requested and that the petitioner provide monthly reports to the Agency summarizing the waste transport activities of that month. These additional requirements are reasonable because they provide two important components of the tracking system that would not be otherwise addressed unless the full manifest is used. The requirement for the recycler's monthly report to the director will provide the Agency with reasonably current information regarding waste transport activities. Without this requirement the Agency would only be notified of waste transport through the generators notice and would only be able to verify the generators data when the recycling facility submitted an annual report. The Agency believes that a one-year time lapse in notification is unacceptable for tracking waste movement. Mismanagement of the waste would not be detected until the annual report is submitted and verified, and timely enforcement actions could not be instituted to correct the situation. The monthly reporting requirement represents a reasonable compromise between immediate notification, as is provided with the use of the full manifest, and the once a year notification provided under the federal regulations.

The requirement that the petitioner provide the generator with the option of using the full manifest is reasonable because it provides generators with the assurance that they need not relinquish control of their hazardous waste under conditions providing less than the maximum level of surveillance.

The amendments establish requirements for the information required to be provided on the generator's notification to the director. The amendments require a generator using an alternate manifest system to notify the director of waste transport within five working days of each waste shipment. Because this notification is provided in lieu of the manifest, it represents the most immediate source of information to the Agency regarding the waste shipment and can be used to verify the information submitted by the facility in the monthly report. Therefore, it is reasonable to require that the notification include specific information regarding the type and quantity of waste being shipped and also adequately identify the generator shipping the waste, the transporter and the facility to which it is being shipped. The information required to be provided on the alternate manifest notification form corresponds to much of the information required on the actual manifest. It is reasonable to provide a similar level of detail because the intent and function of both systems are the same.

The amendments also require that the generator's notification form provide the mailing address of the Agency and a statement directing the generator to submit the form to the director. This is reasonable because it provides additional assistance to the generator who may be unfamiliar with the operation of an alternate system.

Subpart 5, item C of the amendments also require that the petitioner provide the director with specific information relating to the use of the alternate manifest system. It is reasonable to require such information in order for the director to evaluate whether the alternate system will provide an adequate level of waste tracking and environmental protection. The director must consider all parts of the management system in making the decision to allow the reduction in manifest requirements. This includes evaluation of the generator and type of waste in question, the transportation aspect and the operation of the facility which will be actually recycling the waste.

The amendments also require that the petitioner provide a discussion of the educational efforts that will be made to help generators adjust to the use of an alternate manifest system. It is reasonable to require that the petitioner provide information to the generators who will be affected by the new system. Generators who contract with a company using an alternate manifest are still responsible for the proper management of the waste to the same extent as if a full manifest was being used. However, because the alternate manifest represents a reduction in regulation, the generator may believe that there has been some corresponding reduction in responsibility. Because of the potential for misunderstanding and because of generator's unfamiliarity with the alternate manifest system, it is reasonable to require that some measures be made to educate generators. It is reasonable to require evidence of these educational efforts as part of the evaluation of the effectiveness of the entire system.

B. Minn. Rules Pt. 7045.0219 (Special Requirements for Small Quantity Generators.

The Agency is amending Minn. Rules pt. 7045.0219 to incorporate the requirements of the federal small quantity generator regulations and in response to comments received.

The amendments to subp. 2 only rephrase the requirements that apply to small quantity generators. This amendment does not change the effect of this subpart but is reasonable because it eliminates a source of confusion regarding the requirements that apply to small quantity generators.

Subpart 3 is amended to provide a mechanism for generators who generate waste above the specified small quantity generator levels to regain their small quantity generator status. Under the federal program, generators who exceed the small quantity generator limits one month may automatically regain their small quantity generator status the next month by simply determining that they will not again exceed the generation limits. The federal regulations do not require the generator to take any action to be reclassified and allow for month to month changes in the generator's status. The State rules do not currently allow small quantity generators to determine their status on a monthly basis. The existing State rules address the consequences of over-generation by providing that, once the generation limits have been exceeded, the generator is then subject to regulation as a full-scale generator. The Agency maintains its position that it is not reasonable to allow generators to routinely change their status on a monthly basis. However, the Agency recognizes that there are legitimate situations where the generator should be reclassified as a small quantity generator. In order to address these situations, subp. 3 is amended to require that generators who wish to be reclassified must provide a demonstration of

their eligibility to the director. The amendments establish the criteria which the director will consider in the decision to reclassify a generator. These criteria are reasonable because they will enable the director to evaluate the nature of the over-generation and to determine whether or not the over-generation is likely to recur.

The amendments specify three sets of circumstances of over-generation which will result in the loss of small quantity generator status but that do not require a demonstration by the generator to regain the original status as a small quantity generator. Although the generator must comply with the requirements for a full-scale generator for the management of the waste, the amendments provide for automatic reclassification. It is reasonable to provide for automatic reclassification for certain circumstances in order to relieve the burden on Agency staff time in evaluating and approving requests. Reclassification as a small quantity generator is automatically granted if the over-generation is a result of a spill, the result of cleanup activities, or caused by the replacement of PCB containing equipment and it occurs in only one month per calendar year. In these cases there is no need to provide the director with evidence to evaluate the short-term nature of the situation.

Subpart 4 addresses the accumulation of waste by small quantity generators. The existing rules only allow waste accumulation for 90 days after the applicable exclusion levels have been exceeded. This existing 90-day limit and the accumulation start date are the same for all small quantity generators, regardless of the amount or type of waste generated.

The federal regulations provide for different accumulation start dates and

accumulation periods depending on the amount of waste generated and the nature of the waste. In order to maintain consistency with the federal regulations and to eliminate confusion for the regulated community, the amendments parallel the federal regulations in regard to the accumulation start date and the accumulation period, and apply as follows.

Small quantity generators who generate more than 100 kilograms per month of waste that is not acute hazardous waste may accumulate waste for a period of 180 days from the start of waste accumulation. Small quantity generators who generate 100 kilograms or less per month of waste that is not acute hazardous waste may accumulate waste for 180 days from the date that the amount of accumulated waste exceeds 1,000 kilograms.

Acute hazardous waste may be accumulated for a period of 90 days after the accumulation limits are reached. The accumulation limits for acute hazardous waste are the same as the monthly generation limits, 1 kilogram for the waste and 100 kilograms for residues or contaminated material resulting from a spill of the waste.

The federal regulations also provide for accumulation of a total of 6,000 kilograms of hazardous waste. The existing State rules do not specify an accumulation limit. However, 4,000 kilograms is the maximum amount that could be accumulated during the time currently allowed for small quantity generators. This represents the maximum accumulation rate of 1,000 kilograms per month for a period of 90 days after the initial 1,000 kilograms are accumulated. The amendments are more stringent than the federal regulations and only allow the accumulation of 3,000 kilograms of hazardous waste. In the development of the

amendments, concerns were raised regarding the potential risk of storing large amounts of hazardous waste at an unlicensed facility for a period that could extend to six months or longer. The Agency believes that 6,000 kilograms is an unreasonably large volume of waste to accumulate under the requirements of the small quantity generator rules. Input from the regulated community provided the information that ten barrels is frequently the smallest unit of hazardous waste that can be contracted for transport to a facility. The Agency believes that it is reasonable to limit the amount of waste that can be accumulated to an amount generally corresponding to this ten barrel limit and have established 3,000 kilograms as the maximum amount that can be accumulated. This amount of waste significantly reduces the potential risks during storage and still provides a reasonable amount of waste accumulation to minimize the costs associated with waste transport and disposal.

Subpart 4 also provides for an additional 90-day accumulation period for small quantity generators of waste that is not acute hazardous waste who must transport their hazardous waste 200 miles or more to a treatment, storage or disposal facility. This additional time period is provided in the federal regulations and is being included in the amendments in response to comments received. This additional accumulation time represents a relaxation of the existing State rules. However, members of the regulated community indicated that the additional 90 days would be a significant benefit for small quantity generators who frequently encounter delays in arranging for disposal of waste. Because Minnesota has very few facilities for hazardous waste treatment, storage and disposal, most small quantity generators will qualify for the 200 mile

transport extension. The amendments are more restrictive than the federal regulations in that they require the generator to maintain evidence on-site that arrangements have been made to transport the waste to a facility beyond the 200 mile limit. This is a reasonable requirement to allow inspectors to determine that the additional accumulation time is justified.

The amendments to subp. 4 provide a reduction in one aspect of regulation for generators of less than 100 kilograms of hazardous waste a month. Generators of less than 100 kilograms a month are not required to comply with the federal emergency requirements although they must still meet the management requirements that have always been imposed by the State rules. The federal regulations provide a total exemption from regulation for this category of generators, including a full exemption from manifest use and the requirement to dispose of waste at a hazardous waste disposal facility. The State rules have never provided these exemptions to small quantity generators and the Agency believes it is not reasonable to provide them at this time. The waste from small quantity generators makes up a significant portion of the hazardous waste generated in Minnesota and would be a serious environmental concern if it was exempted from regulation. However, the Agency agrees that certain reductions in regulation are appropriate and are providing the same exemption from the emergency requirements as is provided under the federal program.

Subpart 5 establishes the management requirements for small quantity generators. Item A, subitems 1 to 5 are essentially the same as the current State rules. Former item D has been deleted but the requirements of this item have been incorporated into the amended item A, subitem 3. These requirements were formerly presented as two separate items because the rules did not require

compliance with Minn. Rules pt. 7045.0270 regarding pretransport requirements. However, as a result of comments received supporting the application of Minn. Rules pt. 7045.0270 to small quantity generators, the amendments now require compliance with Minn. Rules pt. 7045.0270 and therefore the entire sequence of rules from Minn. Rules pts. 7045.0261 through 7045.0290 can be cited.

The application of the pretransport requirements of Minn. Rules pt. 7045.0270 has been the subject of frequent discussions and misunderstanding between the Agency and the regulated community. The requirements of Minn. Rules pt. 7045.0270 require marking, labeling, packaging and placarding of waste before transport, and also the labeling of storage tanks. Although the labeling, marking, packaging and placarding requirements of Minn. Rules pt. 7045.0270 were not previously required of small quantity generators as a condition of the small quantity generator rule (Minn. Rules pt. 7045.0219), they have always been required as conditions of the Department of Transportation requirements for the transportation of hazardous waste. Small quantity generators were required to meet the Department of Transportation requirements under the former item H of subp. 5. The Agency received input at the meetings of the Agency Rules Committee indicating that Minn. Rules pt. 7045.0270 should be required of small quantity generators. It is reasonable to remove this source of confusion by clearly placing the responsibility for the pretransport requirements on the generator and citing Minn. Rules pt. 7045.0270 in the rule.

Subpart 5, item A, subitem 3 also allows for an exception to the manifest requirements as provided in Minn. Rules pt. 7045.0075, subp. 5. The amendments require that all small quantity generators use a hazardous waste manifest for

transporting their waste. The federal regulations exempt generators of less than 100 kilograms a month from the manifest requirements and provide a conditional exemption for generators of between 100 and 1,000 a month. The amendments do not provide a manifest exemption to the same extent as the federal regulations. However, Minn. Rules pt. 7045.0075, subp. 5 provides for reduced manifest requirements under certain circumstances. It is reasonable to provide a notice of the exception to the manifest requirements at this point in the rules so that the regulated community is aware that the option exists. The exemption to the manifest requirements is more thoroughly discussed in section A of this Statement of Need and Reasonableness.

Amended subp. 5, item A, subitem 4 requires compliance with Minn. Rules pt. 7045.0292, subp. 1, items C to F. The existing rule requires compliance with items D to G of Minn. Rules pt. 7045.0292, subp. 1. Minn. Rules pt. 7045.0292 addresses the accumulation of hazardous waste by generators.

The amendments are adding a requirement to comply with item C, which requires that containers be marked with the date upon which each period of accumulation begins, or in the case of tanks, that a record be kept of the accumulation start date, and that containers and tanks be marked with the words "Hazardous Waste." It is reasonable to require the marking of the accumulation start date in order for inspectors to determine compliance with the 180-day accumulation period.

The requirement to mark containers with the words "Hazardous Waste" was previously stated under the former item J of Minn. Rules pt. 7045.0219, subp. 5, which is now deleted. It is reasonable to extend this marking requirement to

include tanks containing hazardous waste because the same concerns exist for tanks as for containers. It is reasonable to identify tanks and containers so that they can be readily inspected and handled in accordance with the hazardous waste requirements.

The requirement to comply with item G of Minn. Rules pt. 7045.0292, subp. 1 has been deleted because it is made unnecessary by the addition of the new item A, subitem 7 to subp. 5 of Minn. Rules pt. 7045.0219. The deleted provision required shading of ignitable wastes. However, this requirement is addressed under Minn. Rules pt. 7045.0626, Use and Management of Containers and is further discussed below. It is reasonable to delete it to avoid duplication of requirements.

Items A, subitems 6 and 7 add requirements for compliance with Minn. Rules pts. 7045.0566, Preparedness and Prevention, 7045.0568, Arrangements with Local Authorities for Emergencies, 7045.0626 Interim Status Use and Management of Containers, and 7045.0628, Interim Status Tanks. These rules correspond to the more stringent requirements now included in the federal regulations and are reasonable in order to maintain equivalency with the federal program.

Two minor requirements of Minn. Rules pt. 7045.0626 are more stringent than the requirements of the federal regulations. Subpart 4 requires shading of containers if direct sunlight could create a storage problem. This requirement has always been applied to outdoor container storage through operation of Minn. Rules pt. 7045.0292, subp. 1, item G, and does not represent a change in regulation.

Minn. Rules pt. 7045.0626, subp. 8 addresses the closure of container

storage facilities and the cleanup and removal of contaminated containers, liners, bases and soils in the storage area at the time of closure. Although it is not anticipated that containers will present a contamination threat during the 180-day accumulation period, it is reasonable to retain this provision for proper cleanup in the event that problems develop.

Subpart 5, item B, subitem 1 requires that containers and tanks be labeled in a manner to generally identify the contents to employees, inspectors and emergency personnel. This requirement is imposed in response to comments received stating that the current level of hazardous waste identification is inadequate. Commenters cited the need for emergency personnel and employees to be able to identify the contents of containers and tanks. Although containers and tanks are required to be marked with the words "Hazardous Waste," this requirement does not fully address the needs of the individuals who must deal with the waste. Emergency personnel will benefit from the knowledge that the container holds hazardous waste but will be additionally benefitted by the knowledge that the container holds spent solvents, solder scrap or waste acid. The need to provide a general characterization will not present a burden to the generator and will provide an additional measure of safety for the management of hazardous waste, especially because wastes may be accumulated for three times as long as was previously allowed.

Subpart 5, item B, subitems 2 through 5 are based on the federal regulations and address the designation of an emergency coordinator and appropriate responses to emergency situations. The State rules do not currently contain any provisions that parallel these federal requirements so it was not

possible to reference existing rule language. It is reasonable to incorporate the federal language entirely into the amendments in order to keep the State rules equivalent to the federal regulations. Compliance with these requirements is not required under the federal regulations or the amendments for small quantity generators of acute hazardous waste or generators of less than 100 kilograms a month of waste that is not acutely hazardous. These exemptions are provided in subp. 4, item A, subitem 2 and item B.

The federal emergency response requirements have been incorporated verbatim except for one additional requirement in subp. 5, item B, subitem 5. This provision requires that the generator comply with the requirements of Minn. Rules pt. 7045.0275 subp. 2 and 3 regarding duty to report and recover spills. Although the duty to report and recover spills is also required in the management requirements specified in the amendments to Minn. Rules pt. 7045.0219, subp. 5, item A, subitem 3, it is reasonable to repeat the requirement at this point to avoid any confusion regarding the need to contact the National Response Center and the Agency in the event of a spill.

Subpart 5, item B, subitem 6 requires that the generator must maintain a copy of the reclamation and transport agreement if an alternate manifest is used to transport waste. The federal regulations require that this information be maintained in the generator's files for at least three years after termination of expiration of the agreement. It is reasonable to include this requirement in order to maintain consistency with the federal regulations. The amendments additionally require that the agreement also be kept on file during the term of the agreement. Although this is not stated in the federal regulations, it is a

reasonable extension of the federal requirement and will ensure that the contract information is available for review by inspectors at any time during the term of the agreement.

Subpart 5, item B, subitem 7 specifies that the generator must submit a copy of the alternate manifest to the director within five working days of waste shipment. The use of the alternate manifest system is discussed in Section A of this Statement of Need and Reasonableness. The requirement to submit the generator's notification within five days is reasonable because this is the time currently allowed for submittal of the manifest. The Agency's interest in obtaining this information in a timely manner is the same for the full manifest or an alternate manifest so it is reasonable that it be submitted within the same time frames.

Subpart 5, item B, subitem 8 establishes the requirements for the treatment, storage or disposal of waste from small quantity generators. The disposal options are the same as the existing rules except that small quantity generators are no longer allowed the option of consolidating wastes at a central site prior to shipment. This option was previously allowed under the State rules because the previous federal regulations exempted hazardous waste from small quantity generators from the management requirements for hazardous waste, and there was no concern that the State rules would be less stringent. However, the more stringent federal regulations do not allow the consolidation of shipments and therefore, the State rules must be amended to delete this option.

Subpart 5, item C allows for the preparation of a facility contingency plan in lieu of the requirements in item B, subitems 2 through 5. The requirements

for a facility contingency plan are much more extensive than the emergency response requirements for small quantity generators. However, Agency staff received comments indicating that in some cases a small quantity generator may also be a permitted facility and will already have prepared a full contingency plan. Compliance with the emergency response requirements of item B, subitems 2 through 5 would be duplicative in such cases so it is therefore reasonable to waive them when the more extensive information is available.

C. Minn. Rules Pts. 7045.0261 (Manifest Document; General Requirements) and 7045.0292 (Accumulation of Hazardous Waste).

The amendments to Minn. Rules pts. 7045.0261 and 7045.0292 are necessary in order to delete obsolete cross-references to a management option for wastes from small quantity generators. The State rules formerly allowed small quantity generators to consolidate shipments from several points at one location owned by the same generator. This option has been eliminated from the rules as discussed in Section B of this Statement. It is therefore reasonable to delete references to this option where they occur within the rules.

D. Minn. Rules Pt. 7045.0381 (Use of Manifest).

Minn. Rules pt. 7045.0381 is amended to incorporate provisions relating to the waste transporters' responsibilities when an alternate manifest is used in lieu of the full hazardous waste manifest. The use of the alternate manifest is discussed in section A of this Statement of Need and Reasonableness. The requirements for transporters are the same as are required by the federal regulations to qualify for the full federal exemption from manifest use. It is reasonable to require the same transporter requirements to maintain consistency with the federal regulations and to avoid confusion for the regulated community.

IV. CONSIDERATION OF SMALL BUSINESS

Minn. Stat. § 14.115 (supp. 1985) requires Minnesota agencies when proposing amendments to existing rules which may affect small business, to consider the impact of the rule on small business. The objective of Minn. Stat. ch. 116 (supp. 1985) is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Application of less stringent standards to the hazardous wastes generated or managed by small businesses would be contrary to the Agency's mandate since small businesses' hazardous wastes can cause the same environmental harm as that of larger businesses.

The volume of hazardous waste generated by a business is not directly proportional to the size of the business. Many large businesses generate very small quantities of hazardous waste and conversely, many small businesses will generate a very large volume of hazardous waste. Therefore, it is not fair or reasonable to impose regulations on the basis of the size of the business as this may have little relation to the potential for mismanagement and the extent of the adverse effects on human health and the environment if the waste is mismanaged.

The amendments will impose the same requirements on large businesses as small businesses. However, in many cases, small businesses will also be small quantity generators and will receive the benefits of the reduced requirements. The amendments provide a mixture of additional management requirements for hazardous waste and a reduction in certain aspects of the existing regulations. The major additional requirements being imposed as a result of the amendments

are already in effect in Minnesota as HSWA provisions. Incorporation of these federal provisions into the State rules will not impose any additional requirements on small businesses that are not currently being imposed. The additional requirements imposed by the State in the amendments are relatively minor and will not result in a burden to small quantity generators.

In general, the amendments represent a relaxation of the requirements currently in effect in Minnesota and will reduce the burden on small businesses. The amendments provide for a longer accumulation period, extensions to the accumulation period, reclassification opportunities and a significant reduction in some aspects of the manifest requirements.

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. LISTS OF EXHIBITS

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

Agency Ex. No.	Title
1	Resource Conservation and Recovery Act of 1976, as amended, Hazardous and Solid Waste Amendments of 1984. 42 U.S.C. 2002 (a) et. seq.
2	Federal Register, Vol. 50, No. 148, pages 31277-31306, August 1, 1985

3 Federal Register, Vol 51, No. 56, pages 10146-10176, March 24, 1986.

4 Letter from Sue Ryan representing Safety-Kleen Inc. to Richard Svanda, dated May 13, 1986.

5 Letter from Burton Ericson representing Safety-Kleen Inc. to members of the Agency Rules Committee, dated August 20, 1986.

6 Letter from Burton Ericson representing Safety-Kleen Inc. to Carol Nankivel, dated August 28, 1986.

7 Letter from Burton Ericson representing Safety-Kleen Inc. to Gordon Meyer, dated October 13, 1986.

Date: November 14, 1986

for Barbara Lyday Sims
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