

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendment to Minn. Rules
Pt. 7042.0030, Low-Level
Radioactive Waste Generator
Fee Rules

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of the proceeding is the proposed amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "MPCA" or "Agency") governing the low-level radioactive waste generator fees. Under Minn. Rules pts. 7042.0010 to 7042.0060, Low-Level Radioactive Waste Generator Fee Rules, all generators of low-level radioactive waste shipping 100 cubic feet or more per calendar year of low-level radioactive waste for disposal are subject to fees. These fees cover the costs incurred by the MPCA in carrying out its responsibilities under the Midwest Interstate Low-Level Radioactive Waste Compact (hereinafter "Compact"). The Compact was established pursuant to Minn. Stat. § 116C.831 and its companion legislation Minn. Stat. §§ 116C.833 - 116C.843 (1986). The proposed amendment to the rules governs the amount of the fee.

A Notice of Intent to Solicit Outside Opinion regarding the proposed rule amendment was published in the State Register on April 4, 1988. The notice provided a nineteen-day comment period. The three major generators affected by the proposed rule amendment were contacted by telephone concerning the MPCA's intent to amend the rules.

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 of the Minnesota Commissioner of Finance is attached and incorporated by reference. OK

II. STATEMENT OF THE AGENCY'S STATUTORY AUTHORITY

These rules are proposed for amendment pursuant to the Agency's authority under Minn. Stat. § 116C.834 (1986).

The portion of the appropriation which the fees under the rule amendment are intended to cover is in the amount of \$130,000. The appropriation of which this sum is a part is set forth in Minn. Laws 1985, ch. 13, § 26, subd. 4. It was intended to cover:

1. Minnesota's contribution to the Midwest Interstate Low-Level Radioactive Waste Commission.
2. Costs incurred by the MPCA Commissioner and his staff to attend Compact Commission meetings and participate in Compact activities. Pursuant to Minn. Stat. §116C.833 (1986), the Commissioner of the MPCA is Minnesota's voting member on the Commission.

Based on the provision of Minn. Stat. § 116C.834 and the 1987 Legislature's appropriation, the Agency has the statutory authority to adopt fees which would result in the collection of \$130,000.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the 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. The need for the rules is discussed below.

In 1983, the Minnesota Legislature enacted Minn. Stat. § 116.831 (1986) by which Minnesota joined the Compact. The terms of the Compact require each party state to contribute a sum of money in order to fund the Commission's activities. The Commission's assessment has increased from \$67,600 for Fiscal Year 1987 to \$91,500 for Fiscal Year 1988. In addition, funding is required for costs incurred by the State to carry out its activities under the Compact. The Legislature in 1987 appropriated \$179,600 to cover Minnesota's costs of membership in the Compact as well as the other expenses of the Agency Commissioner and his staff incurred by participating in the Commission's activities. By the end of the third quarter of Fiscal Year 1988, \$115,210.20 of the \$179,600 appropriation had been disbursed. This disbursement includes the \$91,500 assessed by the Commission for Fiscal Year 1988 and \$13,500 that was outstanding from the Fiscal Year 1987 Commission assessment. Based on the disbursement and projected expenses for the remainder of Fiscal Year 1988, total expenditures from the appropriation for Fiscal Year 1988 are projected at \$130,000. The Agency must collect this amount in order to reimburse the special revenue fund for this portion of the appropriation. In the event that expenses resulting from Minnesota's membership in the Compact exceed \$130,000, a special assessment would be levied by further amending the rule to collect the additional amount. The existing fees in Minn. Rules pt. 7042.0030 would collect only \$51,991.34 of the required \$130,000. Therefore, the fees established in Part 7042.0030 are insufficient to collect the required amount. In order to comply with the Legislature's direction in Minn. Stat. § 116C.834 (1986) to collect these expenses from generators, there is a need to amend Minn. Rules pt. 7042.0030 to increase the generator fees.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 (1986) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rule is discussed below.

Having determined the need for an increase in the low-level radioactive waste generator fees to collect \$130,000 by September 30, 1987, the Agency then had to decide on an approach to achieve the necessary increase. The existing rules are based on volume of low-level radioactive waste shipped and establish two categories: 1) generators who ship 1,000 cubic feet or more of low-level radioactive waste per year to a facility for disposal; and 2) generators who ship at least 100 cubic feet but less than 1,000 cubic feet of low-level radioactive waste per year to a facility for disposal. The former category of generators are charged a fee \$2.65 per cubic foot of low-level radioactive waste shipped per year. The latter category of generators are charged a fee of \$100 per year.

There are only three generators in Minnesota who ship 1,000 cubic feet or more of low-level radioactive waste per year: Honeywell, Northern States Power Company (NSP), and the University of Minnesota. The Agency proposes to amend Minn. Rules pt. 7042.0030, subp. 2, item A to increase the fees for this category of generators from \$2.65 to \$6.65 per cubic foot of low-level radioactive waste shipped per year. This means that all of the increase in fees will be borne by the three major generators. This is reasonable because those who generate and ship the large volumes of low-level radioactive waste are contributing the most to the need to manage, dispose of, and regulate these

wastes. The three generators were contacted regarding the proposed rule amendment and they do not oppose the fee increase.

The level of the fee increase is reasonable because it will generate enough additional revenue so that the needed \$130,000 will be collected by September 30, 1988. The breakdown of the revenue estimated to be collected from the three major generators is as follows:

Table 1: Revenues From Major LLRW Generators

<u>Major Generators/ Shippers</u>	<u>Reported Volume Shipped (in ft³)*</u>	<u>Fee</u>
Northern State Power Company	12,748.4	\$84,776.86
Honeywell	5,348	\$35,564.20
University of Minnesota	<u>1,447.5</u>	<u>\$ 9,625.88</u>
TOTAL	19,543.9	\$129,966.94

* Volume of waste shipped in calendar year 1987 as reported in a telephone survey conducted by Agency staff.

The additional amount needed to make up the full \$130,000 is expected to be collected from the second category of generators who pay the \$100 per year flat fee. The number of generators in this category has averaged two generators per year.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) 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.

The proposed amendment to Minn. Rules pt. 7042.0030, subp. 2, item A, affects only the three major generators; namely, Honeywell, Northern States Power Company, and the University of Minnesota. None of these entities is a small business, and therefore the rule amendment has no impact on small business.

VI. CONCLUSION

Based on the foregoing, the proposed amendment to Minn. Rules pt. 7042.0030 is both needed and reasonable.

Dated: April 15, 1988

for Barbara Lindsey Sims
GERALD L. WILLET
Commissioner