



Minnesota Pollution Control Agency

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In the Matter of:  
Proposed Rules Governing  
the Acceptance of Waste  
at the Stabilization and  
Containment Facility Sited  
Under Minn. Stat. § 115A,  
Minn. Rules ch. 7047.

STATEMENT OF NEED  
AND REASONABLENESS

### I. INTRODUCTION

The subject of this proceeding is the adoption of rules of the Minnesota Pollution Control Agency (hereinafter "MPCA") to govern the acceptance of waste at a stabilization and containment facility (hereinafter "facility") to be sited in Minnesota under authority of Minn. Stat. § 115A. The rules will address the conditions under which a waste may be accepted for stabilization and containment.

This Statement of Need and Reasonableness (hereinafter "Statement") is divided into eight parts. Following this introduction, part II establishes the statutory authority for the rules. Part III contains the MPCA's explanation of the need for the proposed rules. Part IV discusses the reasonableness of the proposed rules. Part V documents how the MPCA has considered the methods of reducing the impact of the proposed rules on small businesses as required by Minn. Stat. § 14.115, subd. 2 (1988). Part VI documents the economic factors the MPCA considered in drafting the rules as required by Minn. Stat. § 116.07, subd. 6 (1988). Part VII sets forth the MPCA's conclusion regarding the rules. Part VIII contains a list of the exhibits relied on by the MPCA to support the proposed rules. The exhibits, which are incorporated by reference into this Statement, are available for review at the MPCA's offices at 520 Lafayette Road; St. Paul, Minnesota 55075.

### II. STATUTORY AUTHORITY

The rules are mandated by Minn. Stat. § 115A.175, subds. 4 and 5. The MPCA has authority under Minn. Stat. § 116.07, subd. 4 (1988) to adopt rules for generators of hazardous waste and for the management, treatment, processing and disposal of hazardous waste.

### III. NEED FOR THE PROPOSED RULES GOVERNING WASTE ACCEPTANCE

Minn. Stat. ch. 14 (1988) 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 provision of the proposed rules. Primarily, the need for rules governing the acceptance of wastes has its basis in the legislation mandating the development of a facility for the stabilization and containment of hazardous wastes in Minnesota. Before the MPCA may grant a permit to this facility, the MPCA must promulgate rules establishing procedures by which a person may demonstrate that a waste can be accepted at the facility. These are the waste acceptance rules.

#### IV. REASONABLENESS OF THE PROPOSED WASTE ACCEPTANCE RULES

The MPCA is required by Minn. Stat. ch. 14 (1988) 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 MPCA's action. The reasonableness of each element of the proposed rules is discussed below.

##### A. Overview

The complexity of the mandates of Minn. Stat. § 115A.175 has resulted in the development of waste acceptance rules that are also complex and that do not lend themselves to a point by point analysis of their reasonableness. The following discussion is provided in order to assist in understanding the reasonableness of the MPCA's approach and the actual implementation of the waste acceptance rules.

Minn. Stat. § 115A.175, subd. 4 establishes conditions for the acceptance of waste at the facility. Subdivision 5 requires that:

"the agency shall adopt rules under chapter 14 establishing procedures by which a person must demonstrate that a hazardous waste can be accepted by the facility as provided in subdivision 4. The agency shall adopt all rules necessary to implement the provisions of subdivision 4 and this subdivision before granting any permit for operation of the facility."

This need to regulatorily define the conditions established under subdivision 4 is one basis for the development of the proposed rules. The legislation establishes certain conditions for the acceptance of hazardous waste for containment at the facility. However, there is a need to define how these statutory conditions will be met in practice through a regulatory framework for the actual acceptance of waste at the facility. The rules will provide a mechanism for facility operators and the regulated community to meet those conditions and to enable the MPCA to verify compliance with the established conditions.

The legislation essentially requires that waste sent to the facility be either (1) nonhazardous industrial waste, (2) waste that was originally hazardous but that has been rendered nonhazardous, or (3) hazardous waste that could not be rendered nonhazardous but which can meet the following criteria:

- (1) There must be no feasible and prudent alternative to containment at the facility;

- (2) The waste must be treated by a feasible and prudent technology that minimizes the migration of hazardous constituents from the facility; and
- (3) The waste must meet all federal land disposal restrictions.

The legislation further requires that if the generator has been unable to render the waste nonhazardous, the generator must document in a form acceptable to the agency, the manner in which the generator has attempted to meet the standard for acceptance of the waste.

The specific means by which each of these legislative criteria is met in the waste acceptance rules is discussed in the following sections of this Statement. In general, the waste acceptance rules are structured to establish specific conditions for the acceptance of each of the three types of wastes identified in items (a), (b), and (c) of the legislation. The conditions for acceptance of each of these waste types are established in part 7047.3000. The means of meeting those waste acceptance conditions as they relate to the legislative conditions of subitems (c)(1), (c)(2), and (c)(3) are provided in subsequent parts of the rules.

In the process of sending a waste to the facility for containment, a proposer may be required to obtain a number of approvals. Depending on the specific circumstances, the proposer may have to obtain approval or certification from the U.S. Environmental Protection Agency (hereinafter "EPA"), the MPCA Board, or the operator of the facility. The waste acceptance rules are drafted to require the proposer to obtain the Commissioner's approval of a waste for acceptance. However, the Commissioner's approval is based on the proposer making an acceptable showing that all of the necessary steps have been completed, including obtaining outside approvals and certifications. Additionally, compliance with the waste acceptance rules does not ensure that upon obtaining the Commissioner's approval, the generator will necessarily be allowed to send waste for management at the facility. Compliance with these rules will only ensure compliance with the statutory conditions for waste acceptance and will enable the operator of the facility to accept a waste to the extent that acceptance of the waste will not violate any regulations or permit or contractual conditions.

#### B. Minn. Rules pt. 7047.1000 Scope and Applicability

Minn. Rules pt. 7047.1000 establishes the scope and applicability of the waste acceptance rules. Subpart 1 establishes the scope of the waste acceptance rules. It is reasonable to clearly identify the persons who are subject to regulation under the rules. In the actual operation of the facility, hazardous wastes may be managed by a number of entities who will be regulated by the rules at various points. For example, the person who proposes a waste for containment is subject to the requirement to attempt to render the waste nonhazardous. Depending on the circumstances, this proposer may be the generator, the operator of a waste treatment facility or the facility operator. In some cases a generator may send waste to one or more waste treatment facilities for preliminary treatment prior to its delivery at the facility. The operator of a treatment facility is also regulated as a hazardous waste

generator at the point that a waste is shipped to the facility. Because of the variable nature of the applicability of the rules, it is reasonable to provide a clear statement of who is regulated by these rules.

Subpart 2 clarifies the fact that compliance with these rules does not ensure that the waste can be accepted at the facility. The waste acceptance rules are only one of a number of regulatory constraints on the operation and use of the facility. The waste acceptance rules will not supersede or replace any applicable solid or hazardous waste rules, facility permit conditions or contract conditions imposed by the facility operating authority. It is reasonable to provide a statement of the limitation of these rules to inform the regulated community and the public that other conditions are also applicable.

It is also important that the rules clearly specify the extent of the authority of the rules so that there is no misunderstanding that the rules will ensure acceptance of waste at the facility. The facility will be independently operated and the facility operator's decision to deny acceptance of a waste will not be altered by the Commissioner's approval of the waste under the conditions of these rules. Compliance with these rules will only allow acceptance of a waste if the facility operator has agreed to accept the waste and if acceptance of the waste does not result in violation of any applicable rules or regulations.

#### C. Minn. Rules pt. 7047.2000 Definitions

Minn. Rules pt. 7047.2000 establishes the definitions applicable to terms used in the rules. A number of these definitions are the same as existing statutory or regulatory definitions and the reasonableness of such definitions is evident from reliance on existing definitions.

Subpart 2. Agency. Agency is defined in Minn. Stat. § 115A.03, subd. 2 and is not changed for purposes of these rules.

Subpart 3. Characteristic Hazardous Waste. A number of the requirements of the rules are based on a determination of whether a waste is a characteristic hazardous waste or whether it is a listed hazardous waste. Characteristic hazardous waste is defined by reference to the applicable provisions of the state hazardous waste rules, Minn. Rules pt. 7045.0131. Under the hazardous waste rules, a waste is a characteristic hazardous waste if, when it is evaluated, it exhibits one or more of the characteristics specified in the rules. The hazardous characteristics identified in Minn. Rules ch. 7045 are ignitability, corrosivity, reactivity, oxidativity, Extraction Procedure (EP) toxicity, and toxicity. The hazardous waste rules provide the regulatory basis for any determinations of what is regulated as a hazardous waste in Minnesota and therefore provide a reasonable mechanism for defining characteristic hazardous waste.

The definition of characteristic hazardous waste also refers to the federal regulations that define characteristic hazardous wastes under the federal hazardous waste program. With the exception of toxicity, the federal categories of waste characteristics and the means of evaluating those characteristics are the same as the state characteristics. It is

reasonable to provide a reference to the federal regulations to accommodate changes that may occur to the federal regulations that would supplement the existing state rules. By referring to the federal regulations, the definition of what is considered to be a characteristic hazardous waste will remain consistent with the state and federal hazardous waste programs for purposes of the waste acceptance rules.

Subpart 4. Commissioner. Commissioner is defined as the Commissioner of the MPCA. This definition is reasonable to distinguish between the MPCA Commissioner and the Commissioners of other state agencies.

Subpart 5. Containment. Containment is defined in Minn. Stat. § 115A.03, subd. 7a. For purposes of these rules, the definition in Minn. Stat. § 115A.03 is expanded by the addition of an additional sentence that narrows the definition to only apply to the containment that will occur at the permitted facility that is sited under authority of Minn. Stat. § 115A. This is a reasonable restriction on the definition because, as specified in the scope and applicability of the rules, only containment at the Minn. Stat. § 115A facility is subject to regulation under these rules. It is anticipated that other facilities for hazardous waste containment will eventually be developed in Minnesota. Because other containment facilities will not be regulated by these rules, it is reasonable to clarify that when containment is addressed in these rules, it refers only to containment at the Minn. Stat. § 115A facility.

Subpart 6. Facility. Facility is defined as the stabilization and containment facility sited pursuant to Minn. Stat. § 115A. It is reasonable to provide this definition to limit the applicability of these rules to only activities associated with the facility sited under authority of Minn. Stat. § 115A and to avoid the application of these rules to any other hazardous waste treatment facilities that may eventually be operated in Minnesota.

Subpart 7. Generator. The definition of generator is based on the definition in the hazardous waste rules, Minn. Rules pt. 7045.0020, subp. 31. However, the definition has been expanded to provide additional clarification of who is considered to be a generator for purposes of these rules. This is a reasonable clarification because there are a number of entities that will be managing the hazardous waste that will eventually be stabilized and contained at the facility. It is important that the rules clearly identify that each of these entities may at some point be subject to regulation as a generator.

Subpart 8. Hazardous Waste. Hazardous waste is defined in Minn. Stat. § 115A.03, subd. 13 and is not changed for these rules.

Subpart 9. Industrial Waste. Industrial waste is defined in Minn. Stat. § 115A.03, subd. 13a and is not changed for these rules.

Subpart 10. Industrial Waste Management Plan. Industrial waste management plan is defined by reference to the solid waste rule that describes what constitutes an industrial waste management plan. Because the management of

industrial waste will be regulated under the solid waste rules, Minn. Rules ch. 7035, it is reasonable to provide a consistent definition of the plan required.

Subpart 11. Listed Hazardous Waste. Listed hazardous waste is defined by reference to the applicable rules in the hazardous waste rules, Minn. Rules ch. 7045. As discussed under the definition of characteristic waste above, the referenced rules in Minn. Rules ch. 7045 provide the basis for identifying listed hazardous wastes under the state and federal hazardous waste programs and are therefore a reasonable definition of listed hazardous waste for purposes of these rules.

Subpart 12. Minimization. Minimization is defined to directly refer to minimization activities that will reduce the amount or hazardous properties of waste to be managed at the facility. Although a waste generator may be involved in a number of activities directed at minimizing the amount of waste generated, not all of these activities relate to hazardous waste minimization nor are they necessarily relevant to the specific hazardous wastes that are to be managed at the facility. While minimization activities that are directed at reducing the amount or toxicity of all wastes are worthwhile, they are not subject to regulation under these rules. The waste minimization provisions of the waste acceptance rules are only applicable to the hazardous wastes that are to be sent to the facility for stabilization and containment. Due to the limited scope and applicability of these rules, it is reasonable to similarly restrict the definition of minimization.

Minimization is defined as activities reducing the amount or hazardous properties of hazardous waste. Minimization of hazardous waste may involve either reductions in the volume of waste generated or reductions in the hazardous nature of the waste. Reduction of the hazardous properties of the waste, even if it does not totally eliminate its toxic properties, will provide an environmental benefit and is encouraged through definition of this activity as a minimization activity.

Subpart 13. Person. Person is defined in Minn. Stat. § 115A.03, subd. 23 and is not changed for these rules.

Subpart 14. Proposer. Proposer is defined as the person who proposes a waste for containment at the facility. It is reasonable to include a definition of proposer in the rules to address the way the legislation is phrased and to address all the different entities that may be regulated under this concept. Minn. Stat. § 115A.175 specifies that the person proposing the waste for containment has the burden of demonstrating that an acceptable attempt has been made to render the waste nonhazardous. There is a need to regulatorily identify who it is that is subject to those regulatory conditions. In some cases it could be the waste generator or the operator of a preliminary waste treatment facility. However, it is anticipated that in the actual operation of the facility, the facility operator and not the initial generator of the waste will most frequently be the entity proposing the waste for containment. It is reasonable to provide a term other than "generator" or "facility operator" to allow the rules to apply to the person in control of the waste at the time the demonstration of the attempt to render the waste nonhazardous is made. For

purposes of rule clarity, it is reasonable to provide a neutral term that can be appropriately applied to any entity that is subject to the rules as the person making the required demonstration.

Subpart 15. Recycling. Recycling is defined differently than it is defined in Minn. Stat. § 115A.03, subd. 25b. The definition is altered for these rules to more specifically relate to the recycling of hazardous waste and not to refer to solid waste recycling activities. The term "recycling" is only used in the rules in regard to hazardous waste activities so it is reasonable that the definition should provide information as to what constitutes hazardous waste recycling. The definition of recycling is taken from draft guidance materials provided by EPA's Office of Pollution Prevention (Exhibit 9). To the extent that federal guidance is available, it is reasonable to use the same terms and definitions to avoid future conflicts and inconsistencies within corresponding state and federal programs.

Subpart 16. Solid Waste. Solid waste is defined in Minn. Stat. § 116.06, subd. 10 and is not changed for these rules.

Subpart 17. Source Reduction. Source reduction is a term used in reference to the required waste minimization activities. The definition is taken from an EPA guidance document (Exhibit 9). Although this definition is not a federal regulation, it is still reasonable to use the same definitions as EPA whenever possible to avoid future conflicts and inconsistencies between the state and federal programs.

Subpart 18. Stabilization. Stabilization is defined the same as the definition in Minn. Stat. § 115A.03, subd. 32a and is not changed for these rules.

D. Minn. Rules pt. 7047.3000, Wastes that may be Accepted for Containment

The rules identify three categories of wastes that can be accepted for containment and establish the criteria that must be met in order for these wastes to be approved for acceptance. The rules provide that the Commissioner shall approve acceptance of each category of wastes for containment if each of the specified conditions are met. As stated in section A of this Statement, the Commissioner's approval does not ensure acceptance of the waste at the facility, it only ensures that the conditions of these rules have been met. Under these rules, the Commissioner's approval is required in order for the waste to be accepted at the facility. The specific conditions required to obtain the Commissioner's approval address a number of activities, some of which are not activities subject to the Commissioner's authority. In some cases, in order to obtain the Commissioner's approval, the proposer of waste for containment must obtain approval of the MPCA Board or obtain a certification from the facility operator. The rules do not place the decision on whether or not a waste can be accepted solely on the Commissioner. For purposes of these rules, the Commissioner's approval is simply a statement that all the established conditions for the acceptance of a waste have been met.

7047.3000, subpart 1

Subpart 1 addresses the acceptance of industrial waste. For purposes of these rules, industrial waste is waste that has never been a hazardous waste. Even if a hazardous waste is rendered nonhazardous before it is delivered to the facility for treatment and containment, under these rules it is not regulated as an industrial waste and it is subject to additional regulation under subpart 2. The requirements of subpart 1 referencing the solid waste rules and the industrial waste management plan are only applicable to industrial waste that has never been hazardous. It is reasonable to provide a reference to the state solid waste requirements that govern the management of industrial wastes.

The legislation allows the acceptance at the facility of industrial waste and waste that has been rendered nonhazardous without further conditions. The MPCA believes that it is not reasonable to impose additional conditions for the acceptance of industrial waste because it is adequately regulated by the application of the solid waste rules. In addition, the containment area of the facility will be sited, designed and operated to meet the worst-case situations relative to hazardous waste management. Industrial solid wastes managed in this containment area will be managed at a higher level of environmental protection than the type of containment required for solid wastes.

7047.3000, subpart 2

Subpart 2 addresses the category of hazardous wastes that are rendered nonhazardous. The conditions applicable to the acceptance of a hazardous waste rendered nonhazardous are directed at the "proposer" of the waste for containment. This is an important term because it may be the initial generator of the waste or it may be the operator of the facility who is actually proposing the waste for containment. It is anticipated that many working arrangements will be developed between waste generators and the operators of preliminary treatment facilities or between waste generators and the facility operator, and that in most cases, the proposer will not be the generator. The rules reasonably assign the responsibility for compliance to the entity that will have the control over the waste immediately prior to containment.

The MPCA does not believe that the legislation intends that waste that has been rendered nonhazardous before it is delivered to the facility should be accepted under the same standard as industrial waste that was never hazardous. The fact that the waste was originally regulated as hazardous makes it appropriate to impose an additional level of scrutiny before the waste is accepted at the facility. The rules impose a reasonable additional requirement that wastes rendered nonhazardous be verified as actually being nonhazardous.

It is anticipated that in most cases generators of hazardous waste will not render the waste nonhazardous before it is delivered to the facility and their waste will be considered to be hazardous wastes until after the stabilization process is completed. In these cases, the facility will be at least initially managing a hazardous waste and additional conditions are applicable and reasonable.

Subpart 2 provides two routes for acceptance of a waste that has been rendered nonhazardous. These two routes are based on the reason why the waste was originally regulated as hazardous. A waste may be hazardous because it is a

"characteristic" hazardous waste or it may be hazardous because it is a "listed" hazardous waste. A characteristic hazardous waste is a waste that, when evaluated, exhibits one or more of the hazardous characteristics specified in the hazardous waste rules. Listed wastes are specific wastes or categories of wastes that have been identified as consistently displaying hazardous characteristics or which have hazardous properties that are not readily assessed. Carcinogenicity is an example of a reason why a waste may be listed as a hazardous waste.

A characteristic waste can be treated so that it no longer exhibits the characteristic that caused it to be hazardous. For example, an acid that is regulated as hazardous because it exceeds the established standards for corrosivity, may be treated by neutralization so that the resulting material no longer exceeds those corrosivity standards. Such a waste has been rendered nonhazardous.

The same requirement for treatment must be met and an additional level of evidence must be provided to render a listed waste nonhazardous. If the acid waste discussed above was a listed waste, it would have to be neutralized so that it no longer exhibited the characteristic of corrosivity. However, in order for the waste to be rendered nonhazardous, the proposer would also have to prepare and submit a petition to the MPCA Board demonstrating that there was no other reason why the neutralized waste cannot be excluded from regulation as a hazardous waste. Only when the petition has been approved has the waste been rendered nonhazardous. This petition process is referred to as delisting.

Item A of subpart 2 addresses the requirements for a proposer to demonstrate that a characteristic hazardous waste has been rendered nonhazardous. The rules require the submittal of evidence to prove that the waste has been rendered nonhazardous. The proposer must provide an evaluation report to the Commissioner describing the treated waste and how the waste has been evaluated to determine that it is no longer hazardous. It is reasonable to require the submittal of data in order to verify that the waste has been actually rendered nonhazardous. The evaluation report that is required is a component of the existing hazardous waste program under chapter 7045. A requirement to prepare an evaluation report is a reasonable verification of the effectiveness of waste treatment and provides a bridge between the hazardous waste program and these rules.

Item B of subpart 2 establishes the requirements for the proposer of a listed hazardous waste. As discussed above, a listed waste must be delisted before it is considered to be rendered nonhazardous. This provision of the rules simply states the fact that in order to be accepted at the facility as a waste rendered nonhazardous, the proposer of a listed waste must have obtained approval of a delisting petition. This is the only way a listed waste can be rendered nonhazardous and is a reasonable recognition of the way the hazardous waste program functions. The MPCA recognizes that it may not always be possible to obtain approval of a delisting petition and provides conditions in subpart 3 for acceptance of wastes that must remain regulated as hazardous.

Item C of subpart 2 reflects the fact that either listed or characteristic hazardous wastes that have been rendered nonhazardous are considered to be a solid waste and are regulated under the solid waste rules, Minn. Rules. ch. 7035. The proposer of any hazardous waste rendered nonhazardous waste must

provide a certification to the Commissioner certifying that the waste will be managed in accordance with the applicable solid waste rules. This is a reasonable requirement to assure the Commissioner that the waste will be properly managed.

The rules do not specify the form of this certification because the circumstances associated with this regulatory step will vary. It is reasonable to provide a level of flexibility regarding the form and process of obtaining the required certification. In some cases, where the primary generator treats the waste to render it nonhazardous before it is delivered to the facility for containment, the primary generator is the proposer, and has the responsibility to obtain a statement of the facility operator's ability to meet the conditions of the solid waste rules. However, in many cases the proposer of the waste for containment will be the operator of the facility. Generators will bring hazardous waste to the facility where it will be treated by the stabilization process and rendered nonhazardous. In this case, the primary generator is only proposing the waste for stabilization and is not the entity that is proposing the waste for containment. By accepting a hazardous waste for treatment, the facility operator becomes the proposer of the waste for containment. In this situation, the proposer who must obtain a certification of compliance with the solid waste rules and the facility operator that must provide that certification will be the same entity.

Item D of subpart 2 requires the submittal of an approved waste minimization plan that meets the requirements of part 7047.6000. The reasonableness of the requirement for a waste minimization plan will be discussed in more detail in section G of this Statement. Item D specifies that the waste minimization plan is only required if it is required under part 7047.6000. Under part 7047.6000, subpart 1, a waste minimization plan is required if the waste that is sent to the facility for stabilization and subsequent containment is a hazardous waste. The requirement for a waste minimization plan is intended to ensure that the generator has examined all alternatives for management of hazardous waste that is being sent for stabilization and containment at the facility. A plan to minimize hazardous waste will provide an environmental benefit by limiting the use of the facility to only hazardous waste that cannot be managed elsewhere. A minimization plan is therefore only relevant to address hazardous waste coming to the facility. In some cases, a generator of a hazardous waste may treat the waste so that it is rendered nonhazardous before it is even sent to the facility. Although such a waste is still subject to the acceptance criteria of subpart 2, the generator of such a waste is not subject to the waste minimization requirement. It is not reasonable to require waste minimization under these rules for the generator of a waste rendered nonhazardous before it is accepted at the facility because such a generator has already complied with the intent of the requirement to minimize the hazardous waste going to the facility. Therefore, it is reasonable to qualify the acceptance condition of subpart 2, item D that requires a waste minimization plan, so that it only applies if the plan is required under the conditions established in part 7047.6000.

7047.3000, subpart 3

The intent of locating and constructing a stabilization and containment facility is to have a facility in Minnesota where hazardous wastes may be contained. The legislature was explicit, however, in defining the conditions

under which a hazardous waste may be contained in the facility. This subpart is merely a recognition of the conditions established by the legislature and other conditions required by these rules to further guarantee the environment will be protected.

The rules allow the acceptance of listed hazardous wastes that remain hazardous after treatment if specific conditions are met. The legislature has stated that before a hazardous waste may be contained at the facility the person proposing to contain the waste must first attempt to render the waste nonhazardous. Item A simply recognizes the statutory requirement. Item A references the conditions established under part 7047.4000 for making a demonstration to render a waste nonhazardous. The process for rendering a listed waste nonhazardous is established in the hazardous waste rules. Minn. Rules pt. 7045.0075, subp. 2 establishes an extensive process for delisting a listed waste. Under this process, petition must be submitted to the MPCA Board to demonstrate that a waste should no longer be regulated as a hazardous waste and should be delisted. Delisting may be achieved by demonstrating that either the initial listing of the waste was incorrect and that the waste in question has never actually been hazardous, or by demonstrating that a hazardous waste has been treated to the extent that it no longer represents a hazard. The proposes of wastes to be managed at the facility will be attempting to demonstrate the latter, that the waste has been sufficiently treated to make hazardous waste regulation unnecessary.

In order to delist a treated waste, the petitioner must demonstrate that the reason why the waste was originally listed is no longer a consideration, and also that no other factors exist that could cause the waste to be regulated as hazardous. In the original development of the lists of wastes, lists which were later incorporated into the state rules, EPA listed specific wastes or categories of wastes and identified the reasons why these wastes were hazardous. However, in some cases, a full analysis of all of the properties of the waste was not conducted and only the most apparent hazardous properties were identified. For example, reactivity may be identified as the reason why a waste was listed as hazardous. A petitioner seeking to delist that waste must demonstrate that the waste has been treated so that it is no longer reactive. In addition, the petitioner must demonstrate that there are no other reasons why the waste should be regulated as hazardous. Even though reactivity was the only hazardous characteristic identified, the petitioner must investigate the possibility that the waste could be ignitable, carcinogenic, toxic, or have any other hazardous properties. A waste may be delisted only after all possibilities for finding the waste hazardous have been examined and determined to be inapplicable.

The conditions established under Minn. Stat. § 115A.175 place a high priority on the importance of rendering hazardous wastes nonhazardous. For this reason, the rules require that every proposer of a hazardous waste for containment must prepare and submit a delisting petition to the MPCA Board. It is not an option for a proposer to preliminarily determine that a delisting petition will be unsuccessful and therefore not seek to have the waste rendered nonhazardous. The MPCA recognizes that making the required delisting demonstration may be very difficult, especially for treatment residuals of multiple waste streams. Although the rules provide for the possibility that some delisting petitions will be unsuccessful, they do not provide for acceptance of a hazardous waste

without the proposer first attempting to obtain delisting approval. Item A reasonably requires compliance with part 7047.4000 so that both successful and unsuccessful petitions are addressed as a condition of waste acceptance.

Item B of subpart 3 requires that the proposer of a hazardous waste for containment at the facility must demonstrate that there is no feasible and prudent alternative to containment of the waste that would minimize the adverse impact of the waste on human health and the environment. In order to make this demonstration, the proposer must meet the requirements of part 7047.5000, subpart 3, which requires that the waste be treated to meet the Land Disposal Restrictions and also that the waste be treated by the stabilization process permitted for use at the facility. These requirements are reasonably imposed because they are specific mandates of Minn. Stat. § 115A.175.

Minn. Stat. § 115A.175, subd. 4, section (c) (1) specifies that no hazardous waste may be accepted for containment at the facility unless there is no feasible and prudent alternative to containment of the waste at the facility. This requirement to ensure that there are no alternatives to containment is met through two mechanisms; compliance with the Land Disposal Restrictions, and compliance with the requirement that all waste be stabilized by the process permitted for use at the facility. Compliance with the Land Disposal Restrictions forms a basis for compliance with all of the legislative mandates for waste management and will be discussed at this point.

The Land Disposal Restrictions are an element of the federal hazardous waste program mandated by Congress in the 1984 Hazardous and Solid Waste Amendments (hereinafter "HSWA"). Under HSWA, the disposal of untreated hazardous waste on land was prohibited beyond specified dates. EPA was directed to establish a framework to implement the prohibitions and to establish treatment standards for all hazardous wastes being land disposed. HSWA established specific categories of wastes that had to be addressed by specific dates and prohibited the land disposal of those waste beyond those dates if no treatment standards had been developed by EPA.

At the time Minn. Stat. § 115A.175 was written, EPA had proposed a set of regulations to address the HSWA mandate to restrict the disposal of hazardous waste on land. These original federal land disposal restrictions only provided risk based standards for hazardous waste land disposal and did not include any assessment of the various technologies available for waste treatment or any assessment of the prudence and feasibility of waste treatment technologies. The state legislation requiring the development of the waste acceptance rules was drafted so that these rules would incorporate elements of the federal risk analysis system and also provide for state-level evaluation of the prudence and feasibility of treatment technologies.

However, EPA's original risk analysis proposal was withdrawn and a much more comprehensive federal system was eventually adopted. Under the current Land Disposal Restrictions, EPA conducts an extensive, national level review of the waste treatment technologies available for treating a specific waste and establishes a treatment standard for that waste based on the best treatment that is available. EPA's current Land Disposal Restrictions address the treatment technology issues that were intended to be addressed by the waste

acceptance rules. In order to meet the intent of the legislation it is reasonable to incorporate the Land Disposal Restrictions, as they were eventually adopted, into the waste acceptance rules.

Although compliance with the Land Disposal Restrictions is specifically required in subdivision 4, (c) (3) of Minn. Stat. § 115A.175 and, as the program has been finalized, indirectly required as the means of ensuring that no prudent and feasible alternatives exist for the containment of hazardous waste at the facility, it is also reasonably required because compliance with these restrictions is already required by federal law. When Congress adopted HSWA, it established a system which makes federal regulations effective in all states on the date they become effective at the national level. Therefore, even if the Land Disposal Restrictions had not been referenced in the legislation that established the conditions for waste acceptance, they would still be in effect for anyone proposing to dispose of hazardous waste at the facility.

The Land Disposal Restrictions are referenced in the rules under both the state and federal citations. The congressionally mandated Land Disposal Restrictions are being issued by EPA on a phased schedule and it will be several years before all hazardous wastes are addressed. Chapter 7045 of the state hazardous waste rules has been amended to incorporate some, but not all, of the federal Land Disposal Restrictions that have been adopted to date. Because the state rules are expected to be based on the federal regulations, they will be promulgated after the federal regulations are in effect. However, because the federal regulations are in effect in Minnesota on the federal effective dates, for purposes of compliance with the legislative mandate it is not necessary that the state rules be amended to include every element of the federal Land Disposal Restrictions. However, the state rules will be periodically amended to incorporate additions to the federal regulations and may at some time include provisions that are more stringent than the federal regulations. The waste acceptance rules do not contain a reference to the parts of the state rules that specifically address the Land Disposal Restrictions. It is reasonable to only reference the hazardous waste rules in general to ensure that all the hazardous waste rules which are in effect at any future date, including the Land Disposal Restrictions, are the rules with which compliance is required.

Item C of subpart 3 addresses the legislative mandate that hazardous wastes must be treated by a prudent and feasible technology that minimizes the possibility of migration of hazardous constituents of the waste. In order to meet this standard, the proposer must meet three conditions established in part 7047.5000, subpart 2. These conditions are: compliance with the Land Disposal Restrictions, additional treatment of residual wastes, and certification that the waste was treated by the process permitted for use at the facility.

The requirement to comply with the Land Disposal Restrictions was previously discussed. While compliance with the Land Disposal Restrictions repeats a requirement that already exists on the federal level, part 7047.5000, subpart 2, item B, imposes an additional requirement for generators of hazardous waste who seek to dispose of hazardous treatment residues at the facility. The waste acceptance rules exceed the minimum requirement of the federal Land Disposal Restrictions for residual wastes and require that

treatment residues also be evaluated to determine if any Land Disposal Restriction standards are applicable to those residual wastes. Under this provision a generator of a hazardous waste who has met the treatment standard for that waste must determine whether the treatment residuals would also be subject to the Land Disposal Restrictions if it was a previously untreated waste. For example, the federal Land Disposal Restrictions may set the treatment standard for a particular waste at the level that can only be achieved by incineration. The generator of that waste must incinerate the waste and, under this requirement, must further determine if there are other hazardous constituents in the waste that are subject to the Land Disposal Restriction standards. In the example of the incinerator ash, the ash which is the treatment residual, may contain high levels of lead that must be further treated to meet the treatment standards for lead containing wastes. This will involve an additional level of treatment. This additional treatment may be stabilization at the facility or it may be some other treatment technology.

It is anticipated that for most of the wastes that will be accepted for stabilization at the facility, the Land Disposal Restriction treatment standard will be based on use of a stabilization process. For most of these wastes, only the stabilization provided at the facility will be required to comply with the Land Disposal Restriction treatment standard. However, as described in the example above, it is possible that in the future some wastes may be proposed for containment at the facility for which additional treatment is appropriate. For example, a generator of an ash resulting from the incineration of hazardous waste may find that the ash is very high in lead. The Land Disposal Restrictions may have identified recovery in an industrial furnace as the means of achieving the treatment standard for wastes containing lead. If the incinerator ash is high enough in lead that it can be sent through an additional recovery process before it is sent to the facility for stabilization and containment, the requirement to do that type of recovery is an appropriate condition for the eventual use of the facility. In order to address the mandate to ensure that waste is treated by a feasible and prudent technology before containment, it is reasonable to incorporate this additional level of regulation in the rules.

The third condition for demonstrating compliance with the mandate to treat all hazardous waste by feasible and prudent technology that will minimize the migration of hazardous constituents is the requirement of item C of part 7047.5000, subpart 2. This provision requires the proposer to submit certification to the Commissioner that the waste was stabilized by the process permitted for use at the facility. The rules do not allow the acceptance of hazardous waste for containment at the facility that has been stabilized off-site. It is possible that waste generators will seek use of the facility for containment of their waste but will want to stabilize the waste by some process other than the process provided at the facility. A wide range of wastes are expected to be proposed for management at the facility. Several types of treatment technologies may currently exist for each of these wastes and additional treatment technologies may be developed in the future. It is not reasonable to expect the waste acceptance rules to provide a regulatory system for evaluating each possible treatment technology to ensure that it provides an acceptable level of stabilization to minimize the migration of hazardous constituents. However, it is reasonable to require that all wastes be stabilized by the process that will be permitted for use at the facility. This process will be subject to extensive regulatory scrutiny and the MPCA will

be able to ensure that it provides a consistent level of treatment. In addition, the operator of the facility will be responsible for the containment facility as well as the operator of the stabilization process. This combined responsibility will ensure that it is in the operator's best interest to provide the highest level of waste treatment before it is contained at the facility. It is therefore reasonable to restrict the type of stabilization that can be used to that process that provides the highest level of assurance of environmental protection.

Although the rules require that all hazardous waste contained at the facility must be stabilized by the process permitted for use at the facility, it is important to note that this restriction does not prevent generators from using other treatment processes. However, the standard for the acceptance of a waste treated by an off-site process is the same as the standard for delisting. A generator may have hazardous waste treated by any off-site stabilization process, but that process must ensure that the waste is rendered nonhazardous before it is brought to the facility. The requirement to have the waste treated by the process permitted for use at the facility only applies to the acceptance of hazardous waste, it does not apply to waste that has been successfully rendered nonhazardous before delivery to the facility. Such wastes are only subject to the requirements of part 7047.3000, subpart 2.

The condition of item D that requires that the proposer comply with the Land Disposal Restrictions is a statutory requirement. The reasonableness of the Land Disposal Restrictions has been previously discussed under item C.

The final condition for the acceptance of hazardous waste at the facility is the requirement of item E that the generator obtain approval of a waste minimization plan. This waste acceptance condition refers to the waste minimization plan requirements under part 7047.6000. A waste minimization plan is required from all generators who send hazardous waste to the facility for containment. Generators of industrial waste and generators whose waste is rendered nonhazardous before delivery at the facility are not subject to the requirement to prepare and obtain approval of a waste minimization plan. However, all generators who generate a hazardous waste that will be stabilized and contained at the facility must prepare a minimization plan. The requirement to prepare a plan is consistent with the intent of Minn. Stat. § 115A.193 and the MPCA's commitment to reduce the disposal of waste on land. By requiring generators to examine their waste production method and seek alternatives to reduce the amount or hazardous properties of the waste generated, the rules will serve to guide generators toward alternatives to the use of the facility. The requirements for a waste minimization plan are further discussed in section G of this Statement.

The requirement for a waste minimization plan only requires the generator to address those wastes that (1) are hazardous and (2) are being sent to the facility. Although the MPCA has an ongoing program of seeking to reduce the generation of all solid and hazardous waste, it would not be reasonable to address those concerns under the authority of the waste acceptance rules. The scope of the waste acceptance rules limit the appropriateness of any required planning activities to only those wastes actually subject to the hazardous waste conditions of the rules.

7047.3000, subpart 4

Subpart 4 establishes a prohibition on the containment of any listed hazardous waste for which a Land Disposal Restrictions treatment standard has not been adopted. This is a reasonable restriction because it repeats the same prohibition established in Minn. Stat. § 115A.175, subd. 4, item (c)(3). By establishing this prohibition the waste acceptance more stringent than the federal Land Disposal Restrictions. Under the Land Disposal Restrictions, a waste cannot be land disposed if the designated deadline for the development of its treatment standard is passed and no treatment standard has been adopted by EPA. However, until that deadline is reached, no standards apply and the waste may be land disposed at any permitted hazardous waste facility without prior treatment. Under the waste acceptance rules, a particular waste may not be disposed at the facility until a treatment standard is adopted for that waste, regardless of the deadline for the promulgation of that standard. Although this restriction is more stringent, the actual effect of this restriction will be minimal. Treatment standards have already been adopted for most of the wastes that are expected to be managed at the facility.

The waste acceptance rules state that the prohibition applies if no standard has been adopted under either the state or the federal rules. At this time the federal regulations provide a much more complete set of treatment standards than the state rules and the existence of a standard at only the federal level is sufficient to enable a generator to comply with this requirement. It is necessary to also reference the state Land Disposal Restrictions in this requirement. Although at this time the state Land Disposal Restrictions address the same wastes as the federal regulations, it is possible that at some future time the state rules will address treatment standards for wastes that are not yet regulated under the federal program. It is necessary to refer to both the state and federal Land Disposal Restrictions so that a waste may be accepted even if one or the other programs do not include a particular standard.

7047.3000, subpart 5

Subpart 5 prohibits the acceptance of a characteristic hazardous waste for containment at the facility. If a waste is hazardous because it is a characteristic waste, it must be rendered nonhazardous as provided under subpart 2, before it can be accepted for containment. This is a reasonable restriction on the use of the facility for waste containment. It is the intent of the legislation and the MPCA that all hazardous wastes be treated to the extent possible before containment at the facility. Due to the complex nature of listed wastes, the standard to render a listed hazardous waste nonhazardous is much more stringent than the standard for simply treating a characteristic waste to eliminate hazardous characteristics. In comparison with the process for rendering a listed waste nonhazardous, the process for rendering characteristic wastes nonhazardous is relatively simple. It is therefore a reasonable extension of the intent of the rules to hold the proposers of characteristic hazardous wastes to a higher standard and require that the wastes be successfully rendered nonhazardous.

E. Minn. Rules pt. 7047.4000, Demonstration of Attempt to Render a Listed Waste Nonhazardous

Part 7047.4000 establishes the conditions for a proposer to attempt to render a listed hazardous waste nonhazardous. As previously discussed, a person proposing a hazardous waste for containment must attempt to render the waste nonhazardous. For listed hazardous wastes, this attempt must include the preparation and submittal of a delisting petition. The requirements for a delisting petition are established in Minn. Rules pt. 7045.0075, subpart 2 and it is reasonable for these waste acceptance rules to incorporate those existing requirements.

In some cases it may be necessary to also obtain EPA approval of a delisting petition. The MPCA is authorized by EPA to regulate hazardous waste in Minnesota in lieu of EPA. However, when the federal program is amended to include requirements that are more stringent than the existing state rules, the state program must also be amended to be consistent with the federal requirements. Until EPA grants authorization for those additional program elements, both the state and federal conditions apply. In the case of delisting petitions, the MPCA has not yet received authorization to approve delisting petitions in lieu of EPA. Until that authorization is granted, the federal delisting requirements will also be applicable to any petitioner seeking delisting approval. Because of the fluctuating nature of state authorization, it is reasonable to specify that both state and federal approval may be necessary to render a listed hazardous waste nonhazardous.

7047.4000, subpart 2

Subpart 2 of part 7047.4000 establishes the requirements relevant to the MPCA's review of an unsuccessful delisting petition. The waste acceptance rules do not require that all listed hazardous wastes be successfully delisted. However, the rules do require that the MPCA Board make a determination that an acceptable attempt has been made to obtain delisting approval. If a petition is denied, the MPCA Board will evaluate the proposer's attempt to obtain approval and will approve or deny the acceptability of that effort. The conditions on which the MPCA Board will base this decision will be very case specific. Items A to C of subpart 2 establish reasonable general conditions that the MPCA Board may consider in their evaluation of the acceptability of the proposer's attempt to obtain delisting approval. These factors reflect the MPCA's experience with delisting petitions and the MPCA's expectations of the types of wastes that will be addressed in delisting petitions received from the facility.

Delisting petitions may be denied because the MPCA Board will not have sufficient information on which to base a decision that the waste has actually been rendered nonhazardous. One of the most significant factors that will determine the level of information that will be needed to make that decision is the number of constituents in the waste and the degree of testing and analysis that will be required to accurately characterize the waste. The proposer's ability to demonstrate that a waste is not hazardous will depend on the complexity and variability of the waste itself. The MPCA expects that in some cases the waste will be so complex that a sufficient level of evidence cannot be provided and the delisting petition cannot be granted. The level of information that will be required to even attempt to delist such a waste will

be greater than the level of information that may be required to successfully delist a less complex waste. Therefore, item A of the factors the MPCA Board must consider in determining whether an acceptable attempt has been made, relates to the complexity of the waste under consideration.

Item B states that one of the factors to be considered by the MPCA Board in evaluating the proposer's attempt to render a waste nonhazardous is the availability of treatment technologies that could be applied to render the waste nonhazardous. This provision is directed at the MPCA's concern that wastes be treated to the extent possible prior to seeking delisting approval. One reason for the MPCA's denial of a delisting petition would be that the waste is not actually nonhazardous. This type of denial does not relate to the level of information provided for making a decision as discussed in item A. It is possible that a waste may be inadequately treated to render it nonhazardous but the proposer will still seek the MPCA's approval to have it accepted at the facility as a hazardous waste. In this case, the proposer's delisting petition would be denied. If the MPCA Board found that a technology was available to treat the waste to the point that it could be found to be nonhazardous, the MPCA Board would be likely to also find that the proposer's efforts to have the waste delisted were unacceptable. The factor identified in item B addresses the MPCA's concern that waste must be treated to the extent possible in order for the proposer to make a successful demonstration and obtain approval to contain the waste at the facility as a hazardous waste.

The factor identified in item C addresses the MPCA concern regarding the residuals of treated wastes. The analysis of such treatment residuals will be very complex and the composition of the waste may also vary in the future depending on the waste stream and the specific treatment technology used. This is a valid factor to consider in evaluating the proposer's efforts to obtain delisting approval. While the proposer may be able to provide sufficient information to demonstrate that the waste is nonhazardous at the point the delisting approval is submitted, it may not be possible to demonstrate that that information will be valid for future analysis of the waste stream.

F. Minn. Rules pt. 7047.5000 Demonstration of Compliance with Land Disposal Restrictions, Feasible and Prudent Treatment, and no Feasible and Prudent Alternative to Containment

The requirements of this part are relevant to a proposer's demonstration of compliance with three conditions of Minn. Stat. § 115A.175, subd. 4, for the acceptance of hazardous waste. The legislation specifies that hazardous waste can be accepted for containment at the facility if:

(1) There is no feasible and prudent alternative to containment of the waste that would minimize adverse impact upon human health and the environment;

(2) The waste has been treated using feasible and prudent technology that minimizes the possibility of migration of any hazardous constituents of the waste; and

- (3) The waste meets the standards adopted to protect human health and the environment under the authority of United States Code, title 42, section 6924(m), and any additional protective standards adopted by the agency under section 116.07, subd. 4.

Subparts 3, 2, and 1 address each of those legislative conditions respectively. The reasonableness of the MPCA's approach to addressing each of these conditions is discussed in more detail in the discussion of the waste acceptance criteria of part 7047.3000 in section D of this Statement.

G. Minn. Rules pt. 7047.6000 Waste Minimization Plan

Part 7047.6000 establishes the requirements for the preparation of a waste minimization plan. As discussed in section C of this Statement, a waste minimization plan is required from all generators who are sending a hazardous waste to the facility for stabilization and containment. In addition to the previously discussed requirement for compliance with the Land Disposal Restrictions, the requirement to prepare a waste minimization plan is intended to address the requirement to provide an examination of alternatives to containment of hazardous waste at the facility. By examining the waste being generated, and investigating alternative management of the waste, the generator will have effectively demonstrated an effort to reduce the amount of waste that will be sent to the facility. It is important to note that although the rules require that a generator prepare a minimization plan and obtain the Commissioner's approval of the plan, it is not a requirement of the rules that the Commissioner approve the actual minimization activities identified in the plan or even that the generator implement the specified minimization activities. The required approval only addresses whether or not the generator has prepared and submitted a plan addressing each of the components identified in part 7047.6000, subpart 2.

Even though it is not a specific mandate to the MPCA, the legislature intended that the minimization of waste received at the facility should be addressed and directed that this issue be addressed in the report to the legislature concerning the development of the facility. Minn. Stat. § 115A.193, item (b) requires that this report include: "procedures and standards for the operation of the facility that require the use of reduction, recycling, and recovery of any hazardous waste before the waste is accepted for stabilization when the alternative or additional management method is feasible and prudent and would materially reduce adverse impact on human health and the environment;"

Although a requirement for the development of a waste minimization plan is not a specific component of the legislative mandate regarding the agency's waste acceptance rules, it is needed in order to address the expressed concern of the legislature and to address the MPCA's objective of ensuring the protection of human health and the environment by minimizing the disposal of hazardous waste on land.

The concept of regulating waste minimization for hazardous waste generators is relatively new. Traditionally, the expense of managing hazardous waste has been the primary incentive for reducing the amount generated. However, for several years the state and federal hazardous waste programs have required generators to certify on manifests and in annual reports that they have a waste

minimization plan in effect. No actual review of these plans has been conducted and at this time, there are no standards by which to evaluate a generator's minimization activities.

When the facility is in operation, the facility will be used by a wide range of industries. Each type of industry will have a number of waste specific and cost specific options for planning its future minimization activities. In addition, there are many possible scenarios that could affect the eventual implementation of a generator's planned minimization activities. Because of the number of variables that exist, it is not reasonable to try to establish standards for minimization activities in the waste acceptance rules. However, it is reasonable to direct hazardous waste generators through a process of examination to determine the most feasible course of minimization actions. Compliance with the waste minimization requirement will be achieved by completing a planning process rather than by achieving a regulatory limit for waste minimization.

7047.6000, subpart 2

Subpart 2 of part 7047.6000 establishes the various components that must be addressed in the preparation of a waste minimization plan. These components are specified in items A to H.

Item A requires that the plan include a description of the processes that generate hazardous waste. This is an important first step in the evaluation of the possibilities for waste minimization. Source reduction of the wastes may be the most cost effective and efficient means of minimizing waste generation. Any evaluation of minimization activities must be based on a clear initial understanding of the source of the wastes.

Item B requires that the plan include an inventory of the hazardous wastes. It is important that the plan provide an accurate characterization of the wastes that will be the subject of the plan. Hazardous wastes are identified by specific identification codes that must be known to identify the specific waste characteristics. An inventory of the volume currently generated and the volume that is expected to be generated is important in order to determine the direction of planned minimization activities and to assess the effectiveness of implemented minimization activities.

Item C requires an evaluation of the present methods of managing hazardous wastes. Knowledge of the current practices is necessary in order to plan for future activities and to evaluate the effectiveness of those activities.

Item D requires an evaluation of the the management activities and costs associated with the currently selected option of management of the waste at the facility. One of the reasons for the requirement to prepare a waste minimization plan is to determine if wastes could be managed in some way other than by containment at the facility. An evaluation of how the wastes are currently being managed at the facility, and the expense of such management will give the generator a perspective on which to base decisions on the reasonableness of alternative management options.

Items E and F require that the generator actually use the information obtained in items A to D and prepare an assessment of the possibility for reducing the amount and hazardous properties of the wastes to be managed at the facility or for recycling those wastes. To obtain the Commissioner's approval of a minimization plan the generator must examine all known options for reducing the amount of waste that will be taken to the facility. The MPCA intends that this step of the planning process serve to educate the generator of the options to containment at the facility. A generator cannot simply state that no further reduction or recycling can be achieved without demonstrating to the MPCA that all options were considered. This educational process is one of the main intentions of the requirement to prepare a waste minimization plan.

Item G requires a discussion of efforts that have already been implemented to minimize waste being sent to the facility. One of the MPCA's concerns in developing the waste minimization requirements was that generators who have already been conducting waste minimization activities not be penalized for having implemented the concept of waste minimization in advance of these rules. By requiring a discussion of current minimization activities, the MPCA can obtain a perspective on the generator's actual performance.

Item H requires that the generator set out a definite plan for minimizing the amount of waste that will be sent to the facility during the term of the plan. Long term planning for reducing the amount of waste generated and the amount being sent to the facility is the primary goal of the requirement to prepare a minimization plan and the reason why the information and assessment activities specified in items A to G are required.

7047.6000, subpart 3

The waste acceptance rules provide for two types of minimization plans. If the waste is going directly from the primary generator to the facility, the primary generator will be required to prepare and submit the minimization plan. However, in many cases, primary generators will send their waste to a preliminary treatment facility and treated waste is then sent on to the facility for further treatment and stabilization. In these cases it is not reasonable or feasible to have each primary generator prepare a minimization plan and the operator of the treatment facility is therefore subject to the requirement to prepare a plan and obtain the Commissioner's approval.

The rules require a minimization plan to ensure that there are no alternatives to containment at the facility. A generator sending waste to be treated prior to delivery at the facility is using an acceptable alternative to containment and a minimization plan is not required. It is the treatment facility operator who is the actual generator who must prove that no alternative exists to containment at the facility. It is reasonable to require the preparation of a minimization plan by the generator who is actually the person proposing to use the facility for containment.

The waste minimization activities that can reasonably be expected from the operator of a treatment facility are different than the activities that can reasonably be expected of a primary waste generator. Subpart 3 establishes requirements specifically applicable to operators of treatment facilities. Because these operators are not able to implement on-line waste reduction activities, the rules require an evaluation of the means by which the amount of waste sent to the facility could be reduced through changes in the treatment process.

7047.6000, subpart 4

Subpart 4 requires the revision of a minimization plan whenever the generator makes changes that affect the minimization activities addressed in the plan or at least every five years. It is reasonable to require that minimization plans reflect current waste generation conditions and available minimization technologies. The rules do not require revision of the plan each time minor changes occur, only when changes occur that materially affect the activities included in the plan. It is reasonable to revise the plan when it is no longer relevant to existing conditions. Because the decision of what constitutes a material change is left to the generator's discretion, the rules also stipulate a maximum time period for the term of the plan. Even if no major changes have occurred, the plan must be revised at least every five years. This is a reasonable requirement to ensure that minimization plans reflect current waste minimization activities and also to provide generators with the opportunity to update their plans for waste minimization. Five years is a reasonable time span and corresponds to the term of other MPCA activities such as the renewal of permits.

7047.6000, subpart 5

Subpart 5 establishes the term of the waste minimization plan. It is reasonable to establish a definite term for the plan so that generators will know the time period that must be addressed in the preparation of their planned activities. Again, five years was chosen because it is consistent with the life of MPCA permits.

7047.6000, subpart 6

Subpart 6 specifies that the Commissioner will review minimization plans and that a written approval will be issued if the plan meets the requirements of this part. This provision is reasonable to fulfill administrative requirements for obtaining the Commissioner's approval to accept hazardous waste as specified under part 7047.3000.

E. Minn. Rules pt. 7047.7000. Prohibitions

Subpart 1 prohibits the acceptance of any waste for containment unless the waste has been approved for containment under the conditions established in part 7047.3000. This repeats the statutory prohibition on the acceptance of waste at the facility and incorporates applicable elements of the waste acceptance rules.

Subpart 2 prohibits the knowing submittal false information. This is a reasonable administrative condition to enable the MPCA to prosecute individuals that knowingly falsify information to obtain approval to manage waste at the facility.

#### V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the MPCA, when proposing a new rule which may affect small businesses, to consider each of the following methods for reducing the impact of the rule on small business:

- (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 rules; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The objective of Minn. Stat. § 116 (1988), which authorizes the MPCA to adopt standards, is the protection of human 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 waste generated or managed by small businesses would be contrary to the MPCA's mandate since small businesses' hazardous wastes can cause the same environmental harm as that of larger businesses. The use of the facility for the management of wastes is discretionary and no state rule requires that waste be managed at the facility. Because small businesses are not required to meet any of the conditions of these rules unless they seek the optional use of the facility, no less stringent conditions or exemptions are provided for the use of the facility by waste generators who are small businesses.

These rules will also provide a benefit to small businesses who desire to contain their wastes at the facility. No wastes may be contained until the facility is permitted, and Minn. Stat. § 115A.175, subd. 5 requires the adoption of waste acceptance rules before the facility permit may be issued. In order for a small business to use the facility, these rules must be adopted.

#### VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by Minn. Stat. § 116.07, subd. 6 (1988) to give due consideration to economic factors. The Statute provides:

In exercising all its powers the Pollution Control Agency shall give due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters

affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

The MPCA has given due consideration to available information on the economic impacts of the proposed rules. The rules will have some economic impact on generators of hazardous waste seeking use of the facility for waste containment. The requirement that a proposer of a hazardous waste for containment must prepare a delisting petition will involve a significant investment by proposers. Because of the number of factors that could affect the complexity and expense of the delisting petition, it is not possible to quantify the extent of this additional investment.

#### VII. CONCLUSION

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

#### VIII. LIST OF EXHIBITS

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

Agency Ex. No.	Title
1	Minnesota Statutes § 115A
2	Stabilization and Containment Report on Facility Development, Minnesota Waste Management Board, Revised Draft, June 30, 1988.
3	<u>Federal Register</u> , Vol. 51, No. 9, pages 1602-1766, January 14, 1986.
4	<u>Federal Register</u> , Vol. 51, No. 238, pages 44714-44740, December 11, 1986.
5	<u>Federal Register</u> , Vol. 51, No. 216, pages 40572-40654, November 7, 1986.
6	<u>Federal Register</u> , Vol. 52, No. 130, pages 25760-25792, July 8, 1987.
7	<u>Federal Register</u> , Vol. 52, No. 155, pages 29992-30038, August 12, 1987.
8	<u>Federal Register</u> , Vol. 53, No. 159, pages 31138-31222, August 17, 1988.
9.	Draft Waste Minimization Policy Statement. U.S. Environmental Protection Agency. Revised Draft, March 7, 1988.

10. Waste Minimization, Environmental Quality with Economic Benefits, U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response, October 1987, EPA/530-SW-87-026.

Date *January 13, 1989*

*for Barbara Lindsey Smith*  
Gerald L. Willet  
Commissioner

