

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.843 (1988). The proposed amendment to the rules governs the amount of the fee.

A part of the statutory requirement for the rulemaking process is review and approval of the fee schedules of the rules by the Minnesota Commissioner of Finance. The approval of the Minnesota Commissioner of Finance is attached and incorporated by reference.

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 (1988).

Minn. Stat. § 116C.834 (1988) directs the MPCA to assess fees to be paid by generators of low-level radioactive waste in the manner provided in Minn. Stat. § 16A.128 to cover the costs of:

1. Minnesota's contribution to the Midwest Interstate Low-Level Radioactive Waste Commission.
2. Costs incurred by the MPCA to attend Compact Commission meetings and participate in Compact activities. Pursuant to Minn. Stat. § 116C.833 (1988), the Commissioner of the MPCA is Minnesota's voting member on the Commission. The Commissioner's authority has been delegated to the Agency's Assistant Commissioner.

Based on the provision of Minn. Stat. § 116C.834, the Agency has the statutory authority to adopt fees which would result in the collection of \$42,000.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1988) 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 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. However, since surcharge rebates to the Commission are sufficient to cover the Commission's operating expenses, the Commission in June 1988 determined that state assessments are no longer required. Funding is, however, still required for costs incurred by the State to carry out its activities under the Compact. The Agency's costs of Compact membership will be approximately \$42,000 for each fiscal year through Fiscal Year 1991. Attachment 1 contains a breakdown of these costs. This is a decrease from the previous expenditures. The Agency must collect \$42,000 in order to reimburse the special revenue fund for the appropriation. Because the existing fee would collect more money than is needed to cover the Agency's costs, there is a need to amend Minn. Rules pt. 7042.0030 to decrease the generator fees.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 (1988) 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 proposed rule is reasonable. Since the State assessment by the Compact Commission has been discontinued, the Agency's expenses associated with its participation in Compact activities will

decrease. Therefore, it is reasonable that the amount of the generator fee established to cover these expenses will decrease correspondingly.

It is also reasonable to set the fee at a level that will generate sufficient revenue for Fiscal Years 1989-1991 to require a rule amendment only once during the biennium. Amending the rule is a costly and time consuming process that should preferably be done only when significant changes in expenditures or generator volumes warrant it.

The four major generators were contacted regarding the proposed rule amendment and they support the fee decrease.

The level of the fee is reasonable because it is set to generate enough revenue so that the needed \$42,000 per year will be collected.

The breakdown of the revenue estimated to be collected from the four major generators is as follows:

Table 1: Revenues From Major LLRW Generators
Based on Actual Volumes of Waste Shipped for Disposal
During Calendar Year 1988

| <u>Major Generators</u> | <u>Reported Volume Shipped (in ft³)*</u> | <u>Fee</u> |
|-------------------------------|---|--------------------|
| Northern States Power Company | 7,228 | \$19,877.00 |
| Honeywell | 4,361.7 | \$11,995.00 |
| University of Minnesota | 2,197.5 | \$ 6,043.00 |
| 3M | <u>1,389</u> | <u>\$ 3,820.00</u> |
| TOTAL | 15,176.2 | \$41,735.00 |

* Volume of waste shipped in calendar year 1988 as reported in a telephone survey conducted by Agency staff.

An additional amount 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 (1988) requires the Agency, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact of 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 four major generators; namely, Honeywell, Northern States Power Company, 3M 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. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency 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.

In proposing the rule amendment governing low-level radioactive waste generator fees, the Agency has given due consideration to available information as to any economic impacts the proposed rules would have. Because the proposed rule amendment lowers the generator fees, it will have a positive impact on the generators who pay the fee.

VII. CONCLUSION

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

Dated: 4/20/89

Gerald L. Willet
GERALD L. WILLET
Commissioner

Proposed Rule Amendment Relating to Low-Level Radioactive Waste
Generator Fees

7042.0030 LOW-LEVEL RADIOACTIVE WASTE GENERATOR FEES.

Subpart 1. [Unchanged.]

Subp. 2. Amount of fees. A generator of low-level
radioactive waste is subject to the following fees:

A. A generator who ships 1,000 cubic feet or more of
low-level radioactive waste per year to a facility for disposal
is subject to a fee of ~~\$6.65~~ \$2.75 per cubic foot of low-level
radioactive waste shipped per year.

B. A generator who ships at least 100 cubic feet but
less than 1,000 cubic feet of low-level radioactive waste per
year to a facility for disposal is subject to a fee of \$100 per
year.