

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed
Amendments of Rules Governing
the Permitting, Management, Storage,
Treatment, and Disposal of Hazardous Waste,
Minn. Rules Pts. 7001.0650, 7045.0065,
7045.0125, and 7045.0371.

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the permitting, management, treatment, storage, and disposal of hazardous waste. These amendments to the state hazardous waste rules will incorporate two amendments to the federal hazardous waste regulations promulgated by the U.S. Environmental Protection Agency (hereinafter "EPA") and one amendment to reflect changes in the regulations of the Minnesota Department of Transportation (hereinafter "MnDOT"). The proposed amendments pertain to the following:

A. Termination of eligibility for interim status. The amendments establish specific deadlines by which the owners or operators of interim status facilities must initiate permit activities.

B. Correction of the source of a reference manual cited in the rules. The rules provide information regarding specific documents and manuals referenced within the chapter. The source identified for obtaining one of the manuals has changed and the amendment reflects the new source.

C. Addition of references to MnDOT requirements. The rules currently reference the Minnesota Statutes that establish MnDOT requirements applicable to hazardous waste transportation. A reference to two additional transportation related statutes will be added by the amendment.

The amendment that addresses the termination of interim status is based on revisions to the federal permit program published in the July 15, 1985, Federal Register (see Exhibit 1). This amendment was promulgated by EPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) of 1984. The amendment that addresses the revision to the reference manual is based on a federal amendment published in the March 16, 1985, Federal Register (see Exhibit 2).

These state rule amendments are proposed pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (1988).

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the Agency's explanation of the need for the proposed amendments. Part III discusses the reasonableness of the proposed amendments. Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1988). Part V documents the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1988). Part VI sets forth the Agency's conclusion regarding the amendments. Part VII contains a list of exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's offices at 520 Lafayette Road North, St. Paul, Minnesota 55155.

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

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 proposed revision. In the broad sense, the need for amendments to the Agency's rules has two bases: (1) the need for consistency with the federal hazardous waste regulations; and (2) the need for the state rules to accurately reflect the requirements imposed on hazardous waste transporters.

A. Need For Consistency with Federal Regulations.

In 1976, Congress adopted the Resource Conservation and Recovery Act (RCRA) to regulate the management of hazardous waste. 42 U.S.C. § 6901 et seq. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and set up the mechanism for the EPA to grant authority to states to operate the program. In states that receive authorization, the state environmental agency administers the state program in lieu of the federal program. To receive and maintain authorization, the state program must be "equivalent" to the federal program and consistent with federal or state programs applicable to other states. The EPA has defined equivalent to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, the EPA's goal is to achieve an integrated national program which requires that final state programs do not conflict with each other or with the federal program.

Minnesota received final authorization from the EPA for its hazardous waste program pursuant to RCRA effective February 11, 1985. See 50 FR 3756 (January 28, 1985). A state with final authorization administers its hazardous waste program in lieu of the EPA program for those regulations which were promulgated pursuant to RCRA as adopted in 1976 and as amended in 1980.

Federal regulations promulgated under RCRA are not in effect in Minnesota until the state rules are amended to incorporate the federal changes.

The authorization Minnesota received on February 11, 1985, did not extend to those federal requirements promulgated by EPA pursuant to HSWA. Federal amendments promulgated under HSWA are in effect in Minnesota and are enforced by EPA until Minnesota modifies their program to adopt the HSWA amendments. Once a state modifies its program to adopt HSWA amendments, the state must apply for and receive authorization specifically under HSWA in order to enforce the HSWA provisions in lieu of EPA as part of the authorized state program. The federal hazardous waste program establishes specific time frames for the adoption of state rules intended to maintain equivalency to the federal rules.

B. Need for the State Rules to Accurately Reflect the Requirements Imposed on Hazardous Waste Transporters.

The Minnesota Department of Transportation has the authority to regulate the transportation of hazardous waste in Minnesota. In recognition of this authority, the state hazardous waste rules reference the statutes that establish the MnDOT requirements. However, the reference in the state rules does not include an existing statute that required that spills of hazardous waste be reported to the Department of Public Safety nor does it include a new statute that establishes requirements for hazardous waste transporter licensing and insurance. In order to provide a complete reference to the statutes applicable to hazardous waste transporters, it is necessary to add these two references.

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

The Agency is required by Minn. Stat. ch. 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The agency proposes to incorporate specific federal amendments

into the state rules. A complete discussion of the reasonableness of the federal amendments is presented in exhibits 1 and 2 listed in part VII of this document, which are hereby incorporated by reference. The reasonableness of each of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules Pt. 7001.0650 (Interim Status).

Minn. Rules pt. 7001.0650 is entitled "Interim Status" and establishes conditions for the owners or operators of unpermitted hazardous waste facilities. Although the hazardous waste rules require a permit for facilities that treat, store or dispose of hazardous waste, the rules allow a facility to continue to operate without a permit if specific conditions are met. Until the required permit is issued, a facility is considered to be operating under interim status.

In amendments to the federal regulations, 40 CFR § 270.73, the EPA established specific deadlines for terminating the eligibility to operate under interim status. It is the EPA's intention that facilities be permitted as expeditiously as possible and that the ability of facilities to operate under interim status should be limited. To achieve this, EPA has set specific dates after which a facility must either enter into the process of obtaining a hazardous waste permit or must stop operating. The deadlines established by EPA were promulgated under HSWA and as such have been in effect in Minnesota since the federal effective dates.

Minn. Rules pt. 7001.0650, subp. 7 currently states that interim status terminates automatically when the agency has taken final administrative action on the permit application or when terminated by 40 CFR § 270.73 (c). This is an incomplete citation to the federal regulations. 40 CFR § 270.73 (c) addresses the automatic termination of interim status for land disposal

facilities. However, 40 CFR § 270.73 (d), (e), and (f) provide additional deadlines that must be addressed in the state rules to maintain consistency with the federal program.

The requirements of 40 CFR § 270.73 (d) apply to land disposal facilities that become subject to regulation at a future date. If a currently unregulated facility becomes subject to the requirement to obtain a permit through some change in the scope of the hazardous waste rules, the owners and operators of that facility must initiate the permit process within 12 months of the date they became subject to regulation. Although the state rules require that such a facility begin the permit process, they do not provide for the automatic termination of interim status within 12 months.

The requirements of 40 CFR § 270.73 (e) address the termination of interim status at incinerator facilities. Minnesota has only one hazardous waste incinerator facility at this time but it is reasonable to provide the specific deadline applicable to incinerators to maintain consistency with the federal regulations.

The requirements of 40 CFR § 270.73 (f) address the termination of interim status at all other hazardous waste facilities. The state permit rules do not include a specific date for terminating interim status for such hazardous waste facilities so it is therefore reasonable to include a reference to the applicable federal provision.

It is reasonable to incorporate the same deadlines into the state permit rules to provide consistency with the federal regulations and to eliminate any confusion regarding eligibility for interim status. Because the proposed amendments do not alter any provision of the corresponding federal requirements, it is also reasonable to incorporate the applicable federal

regulations by a direct reference and to not incorporate the full text of those same requirements again in the state rules.

B. Minn. Rules Pt. 7045.0065 (Availability of References).

Minn. Rules pt. 7045.0065 provides information on all reference documents identified throughout Minn. Rules ch. 7045. This information is provided so that the regulated community can have ready access to any information needed to comply with the requirements of the hazardous waste rules. Item G of this part identifies the source for obtaining the Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, publication number SW-846. However, in the March 16, 1987, Federal Register, the EPA published a notice of availability of a document which changed the source for obtaining this manual. It is reasonable to amend the rules to provide accurate information to the regulated community regarding the documents addressed in the hazardous waste rules.

C. Minn. Rules Pts. 7045.0125 (Management of Waste by Use, Reuse, Recycling and Reclamation) and 7045.0371 (Transportation of Hazardous Waste).

Minn. Rules pt. 7045.0371 currently requires that transporters of hazardous waste comply with the requirements of Minn. Stat. § 221.033. This statute provides the basis of MnDOT regulations by incorporating the federal transportation code into the MnDOT requirements for transportation of hazardous waste. Minnesota statutes provide two additional conditions for the transportation of hazardous waste that are appropriately referenced in the hazardous waste rules.

Minn. Stat. § 221.034 requires the transporters of hazardous materials, including hazardous waste, to provide notification of spills to the Department of Public Safety. This notification is in addition to the notification requirements in the federal transportation codes and the notification required under Minn. Rules pt. 7045.0395 which requires that spills that will cause

pollution be reported to the MPCA. It is reasonable to include a reference to this statutory requirement to avoid confusion by clearly identifying the MnDOT requirements that are applicable.

Minn. Stat. § 221.035 was added to Minnesota statutes during the 1987 legislative session. This statute establishes a licensing program, to be conducted by MnDOT, for all hazardous waste transporters. As part of the license conditions, hazardous waste transporters must obtain adequate liability insurance. This requirement for licensing and insurance is a significant new requirement for hazardous waste transporters and is appropriately addressed in the hazardous waste rules. It is reasonable to provide a reference to this new statute to clarify the applicable requirements and alert the regulated community to the presence of this new condition for the transport of hazardous waste.

Minn. Rules pt. 7045.0125 governs the management of waste by use, reuse, recycling and reclamation. It contains the same references to the MnDOT statutes as Minn. Rules pt. 7045.0371 and the same additions are proposed to these references.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rules amendments on small business. However, the goal of Minn. Stat. ch. 116 (1988) is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Application of less stringent standards to the hazardous wastes generated or managed by small business would be contrary to the Agency's mandate since small business' hazardous waste can cause the same environmental harm as that of larger businesses.

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

The amendments pertaining to the termination of interim status are based on federal regulations promulgated under HSWA. As HSWA provisions these amendments are currently in effect in Minnesota, even though the amendments must still be incorporated into the state rules and must be equivalent to the federal level of regulation. The amendments to incorporate the transportation statutes are already in effect in Minnesota and their adoption into the state rules does not affect the obligation of small businesses to comply with those statutes. The amendments to correct the source of the reference manual are necessary to provide accurate information to the regulated community and do not represent a regulatory burden. The incorporation of these requirements into the state rules will not impose any additional requirements on small business that would not be otherwise imposed by existing state or federal requirements.

Therefore, the Agency believes that these additional regulations are justifiable and do not present a burden to small business that may be subject to these requirements.

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

In proposing the requirements of these amendments, the Agency has given due consideration to available information as to any economic impacts the proposed amendments would have. Those amendments that impose a requirement on the regulated community have already been in effect through federal regulation and statutory authority and their inclusion in the state hazardous waste rules will not impose a further economic burden.

VI. CONCLUSION

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

VII. LIST OF EXHIBITS

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

<u>Agency Ex. No.</u>	<u>Title</u>
1	<u>Federal Register</u> , Vol. 50, No. 135, Pages 28702-28755, July 15, 1985.
2	<u>Federal Register</u> , Vol. 52, No. 50, Pages 8072-8073, March 16, 1987.

Date: May 12, 1989

for Barbara Lindsey Sims
Gerald L. Willét
Commissioner

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1 Pollution Control Agency

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3 Proposed Permanent Rules Relating to Hazardous Waste

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5 Rules as Proposed

6 7001.0650 INTERIM STATUS.

7 Subpart 1. to 6. [Unchanged.]

8 Subp. 7. Termination of interim status. Interim status
9 terminates automatically when the agency has taken final
10 administrative action on the permit application or when
11 terminated by Code of Federal Regulations, title 40, section
12 270.73(c) to (f). The following constitute justification for
13 the commissioner to commence proceedings to terminate interim
14 status:

15 A. and B. [Unchanged.]

16 7045.0065 AVAILABILITY OF REFERENCES.

17 The documents referred to in this chapter may be obtained
18 by contacting the appropriate offices as listed in this part.

19 A. to F. [Unchanged.]

20 G. Test Methods for Evaluating Solid Waste,

21 Physical/Chemical Methods, publication number SW 846, (Second
22 Edition, 1982, as amended, by Update I, April 1984, and Update
23 II, April 1985) of the Office of Solid Waste, United States
24 Environmental Protection Agency, 401 M Street S.W., Washington,
25 D.C. 20460. The Second Edition of SW-846 and Updates I and II
26 available at the state-of Minnesota Law Library and by
27 subscription from the Superintendent-of-Documents, United States
28 Government-Printing-Office, Washington, D.C. 20402-(202)
29 703-3238 National Technical Information Service, 5285 Port Royal
30 Road, Springfield, Va. 22161, (703) 487-4600 as Document number
31 PB 87-120-291; and

32 H. [Unchanged.]

33 7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND
34 RECLAMATION.

1 Subpart 1. to 4. [Unchanged.]
2 Subp. 5. Requirements for use of hazardous wastes as
3 feedstock.
4 A. and B. [Unchanged.]
5 C. Transporters of hazardous wastes for use as
6 feedstock must comply with all applicable requirements of
7 Minnesota Statutes, section sections 221.033 to 221.035, and
8 Code of Federal Regulations, title 49, parts 171 to 179.
9 D. [Unchanged.]
10 Subp. 6. Requirements for reclamation of specific
11 hazardous wastes.
12 A. A by-product or a sludge that is hazardous only
13 because it exhibits a characteristic of hazardous waste and is
14 reclaimed is subject to the following requirements:
15 (1) [Unchanged.]
16 (2) Transporters of such a hazardous waste must
17 comply with all applicable requirements of Minnesota Statutes,
18 section sections 221.033 to 221.035, and Code of Federal
19 Regulations, title 49, parts 171 to 179.
20 (3) [Unchanged.]
21 B. [Unchanged.]
22 Subp. 7. to 12. [Unchanged.]
23 7045.0371 TRANSPORTATION OF HAZARDOUS WASTE.
24 Hazardous waste shall be transported in accordance with all
25 applicable requirements of Minnesota Statutes, section sections
26 221.033 to 221.035 and Code of Federal Regulations, title 49,
27 parts 171 to 179 (1983).