

This document is made available electronically by the Minnesota Legislative Reference Library as part of an ongoing digital archiving project. <http://www.leg.state.mn.us/lrl/sonar/sonar.asp>

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments
to the Rule Governing Water Quality
Permit Fee Amounts, Minn. Rules, Part
7002.0310

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The 1985 Legislature required the Minnesota Pollution Control Agency (Agency) to begin collecting money through water quality permit fees to cover the reasonable costs of reviewing and acting upon applications for Agency permits and implementing and enforcing the conditions of the permits. Minn. Laws 1985, First Special Session, ch. 13 required the Agency to collect the amount of \$750,000 annually for the Division of Water Quality. Pursuant to this mandate, the Agency adopted Minn. Rules, Parts 7002.0210 to 7002.0310, relating to water quality permit fees. These rules became effective April 7, 1986.

The 1987 Legislature increased the amount that the Agency was required to collect. Minn. Laws 1987, ch. 404 required the Agency to collect a total amount of \$2,115,585 for the 1987-1989 biennium. In response, the Agency revised the water quality permit fee rules in January of 1988, increasing the fee amounts so as to collect the increased revenue required by the Legislature.

The 1989 Legislature has again increased the amount that the Agency is required to collect. Minn. Laws 1989, ch. 335 requires the Agency to collect a total amount of \$1,321,300 for fiscal year 1990 and \$1,346,600 for fiscal year 1991 or \$2,667,900 for the 1989-1991 biennium.

This increase is the result of two factors. The first is inflation: like everyone else's, the Agency's normal costs of operation have increased over the last two years and will undoubtedly continue to do so. The second is a decision of the Legislature to increase the level of effort, and hence the appropriation to the Agency, in the areas of toxics and ground water.

In response, the Agency is again proposing to revise the water quality permit fee rules, increasing the fee amounts so as to collect the increased revenue now required by the Legislature.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the permit fee rules is set forth in Minn. Stat. sec. 116.07, subd. 4d (1988), which provides:

The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of reviewing and acting upon applications for agency permits and implementing and enforcing the conditions of permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The agency shall adopt rules under section 16A.128 establishing the amounts and methods of collection of any permit fees collected under this subdivision. Any money collected under this subdivision shall be deposited in the special revenue fund.

As required in the above-quoted language, the permit fee rules were adopted in accordance with Minn. Stat. sec. 16A.128. Subdivision 1a of that statute requires the fees to be regularly reviewed and, if necessary, adjusted. The statute provides, in relevant part:

These fees must be reviewed each fiscal year. Unless the commissioner determines that the fee must be lower, fees must be set or fee adjustments must be made so the total fees nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs, and attorney general costs attributable to the fee function.

Under these statutes the Agency has the necessary authority to adopt the proposed rule amendments.

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 rule amendments as proposed. In general terms, this means that the Agency must set

forth the reasons for its proposal and that 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 that the solution proposed by the Agency is appropriate. The need for the rules is discussed below.

As previously shown, Minn. Stat. sec. 16A.128, subd. 1a (1988) requires Agency fees to be reviewed annually and to be adjusted if collections under the current fee schedule will not cover the applicable appropriation. The 1989 Legislature has required the Agency's Water Pollution Control Program to collect sufficient permit fees to match the Special Revenue appropriation and salary supplement as described below.

The 1989 Legislature appropriated \$1,270,000 for fiscal year 1990 and \$1,459,000 for fiscal year 1991 or \$2,729,000 for the 1989-1991 biennium to the Division of Water Quality from the Special Revenue Fund for direct salary, fringe, and supply and expense costs. Minn. Laws 1989 ch. 335, sec. 23, subd. 2. Of this amount, \$860,000 for each of fiscal years 1990 and 1991 or \$1,720,000 for the 1989-1991 biennium is a "base" appropriation to cover established, ongoing activities associated with water quality permits, and \$158,000 for fiscal year 1990 and \$150,000 for fiscal year 1991 or \$308,000 for the 1989-1991 biennium is a "change level" appropriation to cover increased efforts for toxics and ground water. Along with the "change level" appropriation, the Division's complement was increased by two staff in each of the two areas.

The 1989 Legislature also appropriated \$573,000 for each of fiscal years 1990 and 1991 or \$1,146,000 for the 1989-1991 biennium to the Agency from the Special Revenue Fund for indirect costs. Minn. Laws 1989 ch. 335, sec. 23, subd. 7. Indirect costs are those costs needed to operate the Agency in general, such as personnel and fiscal services, office space rent, etc. The Agency has

apportioned this amount among its divisions; the Division of Water Quality's share related to permit fees is \$274,900 for each of fiscal years 1990 and 1991 or \$549,800 for the 1989-1991 biennium.

The 1989 Legislature also appropriated \$40,722,000 for fiscal year 1990 and \$88,992,000 for fiscal year 1991 or \$129,714,000 for the 1989-1991 biennium as an open appropriation for salary supplement. Minn. Laws 1989 ch. 335, sec. 42, subd. 1. The Legislature followed its normal practice of appropriating funding for salary and fringe benefits based on the costs of approved staff complement at the end of the current biennium. As such, the Legislature does not attempt to anticipate the salary and fringe increases being concurrently negotiated between the state and the collective bargaining units representing state employees; instead, the Legislature establishes an open appropriation for these future increases. . Since collective bargaining agreements have not yet been fully negotiated and executed, the actual total salary increases are unknown. However, based on a review of past years of salary increases as well as current progress in the ongoing negotiations, the Agency expects an average salary and fringe increase of five percent in each of the next two years. Therefore the Agency has included a salary supplement of \$28,400 for fiscal year 1990 and \$61,700 for fiscal year 1991 or \$90,100 for the 1989-1991 biennium based on the existence of the open salary supplement appropriation which will be partially funded from the Special Revenue Fund through the collection of permit fees.

The appropriations and permit fee requirements for the Division of Water Quality are summarized below:

	FY 1990	FY 1991	biennium
direct appropriation			
base	860,000	860,000	1,720,000
toxics & ground water	158,000	150,000	308,000
indirect appropriation	274,900	274,900	549,800
salary supplement	28,400	61,700	90,100
total	<u>1,321,300</u>	<u>1,346,600</u>	<u>2,667,900</u>

This total amount is greater than the previous total amount of \$2,115,585 which was required to be collected under Minn. Laws 1987, ch. 404. Therefore, it is necessary for the Agency to increase permit fee revenues and hence amend the water quality permit fee rules to increase the fee levels.

IV. STATEMENT OF REASONABLENESS

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

The Agency is proposing to raise all of the water quality permit fees on a proportional basis and not to change the basic structure of the system. This is reasonable because the existing fee structure was carefully designed, through a process involving public meetings and a good deal of public comment, to be equitable in the original rulemaking, and the proposed fee increase maintains this equity by spreading the increase across all permittees in a proportional manner.

To do this, the Agency proposes to amend the table establishing the water quality permit fee schedule, part 7002.0310, to raise the application, processing, and annual fees for all permits by 20 percent, with some rounding of numbers. Processing and annual fees for major facilities have been rounded to the nearest \$100, and processing and annual fees for minor facilities as well as application fees for all facilities have been rounded to the nearest \$10.

The sufficiency of the 20 percent increase was determined by calculating the expected amount of revenue that would be generated, based on the current number of permits in each category. This expected revenue is \$1,299,760 for fiscal year 1990 and \$1,367,820 for fiscal year 1991 or \$2,667,580 for the

1989-1991 biennium. See Exhibit 1, Estimated Yearly Water Quality Permit Fee Revenues. The amount collected in fiscal year 1990 is less than that in fiscal year 1991 because the fee increase would only be in place for a portion of the former year but all of the latter.

This expected revenue is in contrast both to the \$2,097,334 that was actually collected in the 1987-1989 biennium and the \$2,280,180 that would be expected to be collected in the 1989-1991 biennium under the existing fee schedule. See Exhibit 2, Fiscal Note. The latter amount is larger than the former because, likewise, the previously mentioned fee increase for the 1987-1989 biennium was not in place for the entire period.

The proposed level of increase is reasonable because, as closely as practicable, it would generate revenues sufficient to meet the total amount the Agency has been required by the Legislature to collect through water quality permit fees.

A part of the administrative requirement involved in adopting these rules is the review and approval of the fee schedule by the Minnesota Commissioner of Finance. This approval is Exhibit 3 hereto.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. sec. 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 on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;

- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. sec. 14.115 (1988). As a result, the Agency has considered the above-listed methods for reducing the impact of the rule amendments on small businesses. However, the fee increase total has been mandated by the Legislature. If the Agency were to exempt small businesses from fee increases, all other permittees would have to pay even higher fees. The Agency has determined that across-the-board, proportional increases are more fair to all permittees and therefore has determined not to make a distinction between small businesses and other permittees for the purposes of these rule amendments. It should be noted, however, that part 7002.0060 of the existing rules does allow small businesses to lessen the financial impact of the processing fees by paying them in annual installments over the life of the permit, and, further, that small businesses are generally small sources of water pollution and therefore face permit fees considerably smaller than those for major facilities.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. sec. 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.

Municipalities in the state pay, collectively, approximately \$620,000 per year under the existing rules. Under the amended rules, municipalities will pay approximately \$730,000 per year, accounting for approximately 55 percent of the total. Businesses in the state pay, collectively, approximately \$520,000 per year under the existing rules. Under the amended rules, businesses will pay approximately \$600,000 per year, accounting for approximately 45 percent of the permit fees. While the Agency is certainly aware of and has considered this economic impact, it does not have the option of eliminating the impact in light of the Legislature's requirement to collect additional fees.

VII. LIST OF WITNESSES AND EXHIBITS

A. Witnesses

The following Agency staff persons participated in the preparation of this Statement of Need and Reasonableness and, in the event a rulemaking hearing is held, will be available at the hearing to answer questions concerning the proposed rule amendments:

1. David Christopherson
2. Douglas Hall

B. Exhibits

In support of the need for and reasonableness of the proposed rules, the following exhibits will be entered into the hearing record by the Agency:

1. Estimate of Revenues from Revised Permit Fee Schedule.
2. Fiscal Note
3. Approval of the fee schedule by the Department of Finance.
4. Minn. Laws 1989, ch. 335, sec. 23, subds. 2 and 7 and sec. 42, subd. 1.

VIII. CONCLUSION:

Based on the foregoing, the proposed amendments to Minn. Rules part 7002.0310 are both needed and reasonable.

Dated:

July 13, 1989

for Barbara Lindsay Sims
Gerald L. Willet
Commissioner

