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ADMINISTRATIVE  
HEARINGS

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the  
Proposed Rule Amendments  
Governing Hazardous  
Waste Facility Fees, Minn.  
Rules Part 7046.0020

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 payment of fees by owners and operators of hazardous waste treatment, storage, and disposal facilities.

Minn. Stat. § 116.12 (1988) requires the Agency to establish fees for hazardous waste facilities. Specifically, Minn. Stat. § 116.12, subd. 3 (1988) requires the Agency to charge an original permit fee, a permit reissuance fee, and an annual fee for any hazardous waste facility regulated by the Agency. The purpose of requiring facility owners and operators to pay fees is to recover a portion of the Agency's expenses associated with regulating these facilities.

The Agency has established rules governing the payment of fees by owners and operators of hazardous waste treatment, storage, and disposal facilities. Specifically, Minn. Rules pt. 7046.0020 sets forth the original permit application fee, the permit reissuance fee, and the annual fee for each type of hazardous waste facility regulated by the Agency.

The amendments being proposed by the Agency would only affect closed land disposal facilities. Under the existing facility fee rules, fees for closed land disposal facilities (hereinafter "closed LDF") are the same as those for active land disposal facilities (hereinafter "active LDF"). Closed LDFs are

land disposal facilities in which waste remains after closure. Active LDFs are land disposal facilities, other than a closed LDF, where hazardous waste disposal operations are being conducted. The proposed amendments provide a separate fee category for closed LDFs to reflect differences in the Agency resources necessary to regulate a closed versus an active LDF. This separate fee category sets out the original permit application fee, the permit reissuance fee, and the annual fee for closed LDFs. Based on the differences in Agency resources necessary for regulating a closed versus an active LDF, the Agency is proposing the establishment of: (1) the original permit application fee for closed LDFs at one-half that of an active LDF; (2) the permit reissuance fee for closed LDFs at one-half that of an active LDF; and (3) the annual fee for closed LDFs at two-thirds that of an active LDF. The overall effect of the proposed amendments is to lower the fees for closed LDFs.

The proposed amendments only affect the fees for closed LDFs. The proposed amendments do not affect or change the fees for other categories of hazardous waste treatment, storage, and disposal facilities. Also, the proposed amendments do not affect or change the fees assessed to generators of hazardous waste set out in Minn. Rules pts. 7046.0031 to 7046.0070.

These rule amendments are proposed pursuant to the Agency's authority under Minn. Stat. § 116.12 (1988).

Minn. Stat. § 16A.128, subd. 1a. requires this Statement of Need and Reasonableness to include the Minnesota Department of Finance commissioner's approval of the proposed fee schedule. Their approval is attached as Exhibit 1.

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 discusses 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

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 lend itself to evaluation of each proposed revision. In the broad sense, the need to amend the Agency's hazardous waste facility fee rules arises from the fact that the Agency has determined that the fee for closed LDFs needs adjusting. Under the existing rules, fees for closed LDFs are the same as those for active LDFs. The fees for active and closed LDFs were originally established the same because, at that time, the Agency believed that the resources necessary to regulate each were the same. However, the Agency amended the hazardous waste facility permitting and technical standards set out in Minn. Rules chs. 7001 and 7045 to

require post-closure permits for owners and operators of LDFs in which waste remains after closure. Based on the experience gained through issuing and enforcing post-closure permits over the past year, the Agency has now determined that there are differences in the Agency resources necessary for regulating an active LDF versus a closed LDF. Therefore, assessing the same facility fee for both active and closed LDFs, as is currently the case, does not reflect Agency experience. In order for the rules to assess fees for closed and active LDFs in an equitable manner, the rules need to be amended to reflect the differences in the resources necessary to regulate each.

### III. REASONABLENESS OF THE PROPOSED AMENDMENTS

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. All of the proposed amendments involve subparts 1, 2, 3, and 5 to Minn. Rules pt. 7046.0020, which is entitled "Hazardous Waste Facility Fees." A discussion of the reasonableness of each of the proposed amendments is provided below. The reasonableness of the proposed amendments to subparts 2, 3, and 5 have been combined since the amendments to these subparts are essentially the same.

#### A. Minn. Rules Pt. 7046.0020, Subp. 1 (Fee schedule for five-year permits).

Minn. Rules pt. 7046.0020, subp. 1 sets out the permit application fee, the annual facility fee, and the permit reissuance fee for specific categories of hazardous waste treatment, storage, and disposal facilities regulated by the Agency. Specifically, item A of subpart 1 sets out the fees for specific types of storage facilities regulated by the Agency and item B sets out the fees for specific types of disposal and treatment facilities regulated by the Agency. Also, the fee schedules set out in items A and B are

preceded by an introductory paragraph which describes the applicability and scope of the fee schedules set out in the remainder of the subpart. The Agency is proposing to amend subpart 1 in several respects as discussed below.

First, the introductory paragraph of subpart 1 is being amended to clarify that closed LDFs are subject to the annual facility fee and to delete the use of the words "in operation." The existing rule language provides that a person who owns or operates a hazardous waste facility that is in operation on July 1 in any year is subject to the annual facility fee. Some owners and operators of closed LDFs have interpreted this language to mean that they are not subject to the annual facility fee since they believe that their facilities are not "in operation" because of their "closed" status. This is not a correct interpretation. While these facilities are not "in operation" in the sense that the owners and operators have ceased to add wastes to these facilities, these facilities are still "in operation" in the sense that they continue to provide for the disposal of waste that will require post-closure care and regulation by the Agency. Having a "closed" status is merely a phase of operation. Therefore, the Agency believes this amendment is reasonable because it serves to resolve any misunderstanding associated with the language of the requirement by clarifying its original intent and deleting the words that cause confusion.

Second, the introductory paragraph in subpart 1 is also being amended to clarify when an owner or operator of a closed LDF is no longer subject to the annual facility fee. Specifically, the amendment provides that a person who owns or operates a closed LDF is obligated to pay an annual facility fee until certification of completion of post-closure care is submitted to the Agency commissioner and the commissioner releases the facility owner or operator from the financial assurance requirements for post-closure care. The

purpose of the fee rules is for the Agency to recover a portion of the cost of regulating hazardous waste facilities. Once the certification of completion of post-closure care is submitted to the Agency commissioner and the commissioner releases the facility owner or operator from the financial assurance requirements, the facility is no longer regulated by the Agency. Therefore, the amendment reasonably states the point in time when an owner or operator of a closed LDF will no longer be subject to the annual facility fee. By amending the rule in this manner, the Agency is not adding any additional requirements to the rules. Owners and operators of facilities have always been subject to the annual facility fee until the facility is no longer regulated by the Agency. However, the Agency believes it is reasonable to add this provision to the rule so that owners and operators of closed LDFs may clearly understand their obligations regarding the annual facility fees.

Third, one of the headings for the facility fee schedules set out in items A and B of subpart 1 is being amended. The facility fee schedules set out in items A and B have headings for each of the three types of fees assessed to hazardous waste facility, those being the permit application fee, the annual facility operator's fee, and the permit reissuance fee. The heading set out as the "annual facility operator's fee" is being amended to delete the word "operator's" so that the heading will read "annual facility fee." As was the case for the first amendment to subpart 1 as discussed above, some owners and operators of closed LDFs have interpreted the use of the word "operator's" to mean that they are not subject to the annual facility fee since they believe that their facilities are not "in operation" because of their "closed" status. This is not a correct interpretation as discussed previously. While the use of the word "operator's" is not incorrect, the Agency believes it is reasonable to

delete the use of the word to clear up the confusion that has been generated by its use.

Fourth, item B of subpart 1 is amended to provide a separate fee category for closed LDFs. This separate fee category sets out the permit application fee, the annual facility fee, and the permit reissuance fee for closed LDFs. The Agency is proposing to establish: (1) the permit application fee for closed LDFs at one-half the current application fee for an active LDF; (2) the annual facility fee for closed LDFs at two-thirds that of an active LDF; and (3) the permit reissuance fee for closed LDFs at one-half that of an active LDF. The effect of the amendment would be to lower the fees for closed LDFs.

Amending item B as described above is reasonable because it provides for the assessment of fees for closed and active LDFs in a more equitable manner. Under the existing rules, fees for closed LDFs are the same as those for active LDFs. The fees for active and closed LDFs were originally established the same because, at that time, the Agency believed that the resources necessary to regulate each were the same. However, since that time, the Agency has amended the hazardous waste facility permitting and technical standards set out in Minn. Rules chs. 7001 and 7045 to require post-closure permits for closed LDFs. Based on the experience gained through issuing and enforcing post-closure permits over the past year, the Agency has now determined that there are differences in the resources necessary for regulating an active LDF versus a closed LDF. Therefore, assessing the same facility fee for both active and closed LDFs, as is currently the case, is inequitable. The fee amounts that the Agency is proposing for closed LDFs provide for the assessment of fees for closed and active LDFs in an equitable manner. These proposed fee amounts are the result of the Agency's analysis of the differences

in the resources necessary to regulate a closed versus an active LDF. The Agency's analysis of the work effort associated with regulating an active versus a closed LDF is provided in the tables marked as Exhibits 2 and 3 to this document.

B. Minn. Rules Pt. 7046.0020, Subp. 2 (Fee schedule for permits less than five-years), Subp. 3 (Combination facilities), and Subp. 5 (Payment schedule).

The Agency is proposing to amend subparts 2, 3, and 5 of Minn. Rules pt. 7046.0020 in relatively the same manner. In each of these subparts, the language is being amended to provide for the use of the term "annual facility fee" instead of "annual facility operator's fee." As discussed in section A above, some owners and operators of closed LDFs have interpreted the use of the word "operator's" to mean that they are not subject to the annual facility fee since they believe that their facilities are not "in operation" because of their "closed" status. This is not a correct interpretation as discussed in section A. While the use of the word "operator's" is not incorrect, the Agency believes it is reasonable to delete the use of the word to clear up the confusion that has been generated by its use.

#### 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 rule amendments on small business.

The proposed amendments only affect hazardous waste land disposal facilities at which waste remains after closure. The Agency does not believe that any small businesses own closed land disposal facilities. Therefore, the Agency believes that the proposed amendments will not affect any small businesses. In any case, since the effect of the amendments is to lower the

fee burden for closed land disposal facilities, the Agency believes that any impacts the amendments may have on small business will be ones that save these businesses money.

#### 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 practicability 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, practical under the circumstances.

The only effect of the amendments would be to lower the fees for any person who owns or operates a closed LDF. Therefore, since the economic impacts of the proposed amendments are only positive in nature for owners and operators of closed LDFs, the Agency believes that due consideration has been given to the economic factors affecting businesses and such in Minnesota.

#### 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 facility fee rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to Minnesota's hazardous waste facility fee rules.