

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the
Proposed Rule Amendments
Governing the Management
of Hazardous Waste and
Polychlorinated Biphenyls,
Minn. Rules Pts. 7001.0700,
7045.0020, 7045.0120, 7045.0135,
7045.0139, 7045.0141, 7045.0213,
7045.0484, 7045.0488, 7045.0528,
7045.0596, 7045.0600, 7045.0628,
7045.0629, 7100.0335, 7100.0340,
7100.0350, and 7100.0360

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 management of hazardous waste and the management of polychlorinated biphenyls (hereinafter "PCB"). Specifically, the amendments the Agency is proposing pertain to the following:

A. Technical corrections to the existing hazardous waste tank standards. These amendments serve to clarify the applicability and scope of several of the existing tank standards.

B. Removal of iron dextran from the lists of hazardous wastes. This delisting serves to correct and clarify the lists of hazardous wastes by removing a compound which the U.S. Environmental Protection Agency (hereinafter EPA) has determined poses no threat to human health or the environment.

C. Removal of strontium sulfide from the lists of hazardous wastes. This delisting serves to correct and clarify the lists of hazardous wastes by removing a compound which EPA has found no substantive evidence to support listing.

D. Reinstating certain metal smelting wastes to the lists of hazardous

wastes. This relisting is a court ordered reinstatement of these wastes which were deleted in a prior amendment.

E. Clarification of statistical methods for ground water monitoring data. These amendments serve to provide and clarify statistical methods and procedures more appropriate to determining ground water quality.

F. Technical corrections to farmers' exemptions. These amendments serve to correct cites in the federal rules (already in place in existing Minnesota rules) and to extend the farmers' exemptions to include rules governing land disposal restrictions.

G. Clarification of trial burn information requirements for the modification of existing hazardous waste thermal treatment unit permits. The amendments serve to clarify the time frame for submittal of trial burn results when modifying an existing hazardous waste thermal treatment unit permit.

H. Revision of the Certificate of Exemption (hereinafter "COE") program governing PCBs. These amendments provide a process whereby persons may, under certain circumstances, qualify for a COE by rule in lieu of applying for a written COE from the Agency.

The above set of amendments generally corrects, simplifies, and/or clarifies existing state rules. All but item H above are based on federally promulgated amendments. Of these EPA amendments, only item F was promulgated under authority of the Hazardous and Solid Waste Amendments of 1984 (HSWA); the others were promulgated under the authority of the Resource Conservation and Recovery Act of 1980 (RCRA). By federal law, amendments promulgated under RCRA are not in effect in Minnesota until state rules are amended to include them. Amendments promulgated under HSWA are immediately effective in Minnesota. The Agency is proposing the rule amendments pertaining to the state COE program governing PCBs as a result of changes in the relationship between the state and

federal programs governing PCBs. Authority to adopt these amendments is provided under Minn. Stat. §§ 116.37, subp. 4 (for item H) and 116.07 (for the balance of the amendments).

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 the proposing agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments it proposes. 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 the agency is appropriate. Need is a broad test that does not lend itself to evaluation of each proposed revision. The need for the federal amendments and for the amendments governing COEs is discussed in items A and B below.

A. Need for Rule Amendments Governing Hazardous Waste Management.

In the broad sense, the need to amend the Agency's rules governing the management of hazardous waste has three bases: (1) the need for consistency with the federal hazardous waste regulations, (2) the need to provide clarity of scope and applicability in existing rule language, and (3) the need to correct existing rules.

1. Need for consistency with federal regulations. In 1976, Congress adopted RCRA (42 U.S.C. § 6901 et seq.) to regulate the management of hazardous waste. 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 this 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. The EPA also expresses its desire that authorized states provide rules consistent with federal regulations when practicable because this provides consistency with other authorized state programs. EPA has defined equivalent to mean that the state requirements are at least as stringent as the federal requirements. In terms of consistency, 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 EPA for its hazardous waste program pursuant to RCRA on February 11, 1985. See Volume 50 Federal Register page 3756 (50 FR 3756) published on 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. In order to maintain authorization, the state must enact equivalent requirements within specific time frames when

new, more stringent federal requirements are promulgated by EPA. As discussed previously, federal regulations promulgated under RCRA are not in effect in Minnesota until the state rules are amended to incorporate the federal changes.

EPA's removal of iron dextran and strontium sulfide from the lists of hazardous wastes represents a less stringent level of regulation than if these wastes had remained listed. States are not required to adopt RCRA program rules which provide a less stringent level of regulation. However, the Agency believes that it is beneficial to provide consistency between the state rules and the regulations of EPA and other authorized states when possible, and that there are substantive reasons for the delistings. Therefore, the Agency proposes adopting these delistings.

Much of the hazardous waste generated in Minnesota must be sent to other states for treatment or disposal because Minnesota has no commercial disposal facilities and only very limited commercial treatment facilities. This means that many generators must be knowledgeable about the requirements of the federal hazardous waste program as well as programs in authorized states. The need to comply with multiple sets of rules makes compliance difficult. Therefore, to the extent it can be accomplished without posing a threat to human health or the environment, the amendment of Minnesota's hazardous waste rules to incorporate EPA's amendments is often desirable even where adoption is optional.

2. Need to provide clarity to the scope and applicability of existing rule language. Rules are established with the intent of specifying, to the extent possible, the complete scope and applicability of the rules established. Sometimes rule provisions are established to apply to such a broad range of persons, items, or management practices that it is virtually impossible to state specifically each person, item, or management practice included in the

scope and applicability of rule provisions. In this event, the scope and applicability are established in a broad general sense to cover classes or categories of persons, items, or management practices affected.

Under the circumstances provided above, questions are often generated by persons interpreting the rules regarding applicability of the rules. Therefore, to the extent it can be accomplished, it is desirable to amend the hazardous waste rules to clarify the scope and applicability of specific requirements whenever possible. Certain of the proposed amendments are needed to clarify the scope and applicability of specific requirements in the rules.

3. The need to improve existing rules through corrective amendments. New information or technology may become available that is not specifically provided for in a particular rule. There may be inadvertent errors in rule provisions. It is necessary to correct these deficiencies and errors in order to clarify or more appropriately address issues governed by the rules.

B. Need for Rule Amendments Governing the COE Program for PCBs.

The need to amend the Agency's rules governing COEs is based on the need to provide simpler procedures for regulating PCBs and to correct problems associated with the regulated community's need to comply with two separate but duplicative regulatory programs governing PCBs.

The regulation of PCBs began on the federal level in 1976 when Congress passed the Toxic Substances Control Act (TSCA). In 1977, under the authority of TSCA, EPA promulgated its first set of PCB regulations governing the marking and disposal of PCBs. Since that time, EPA has amended the federal PCB regulations several times. The federal regulations now provide for a comprehensive program governing the requirements for, and the prohibitions, manufacture, processing, distribution in commerce, use, disposal, storage, and

marking of PCBs and PCB items (40 CFR, Part 761).

When the federal program was first established in 1977, there was uncertainty surrounding the eventual scope of the federal PCB program and the extent to which EPA would enforce the federal PCB regulations in the states. Because of this uncertainty, Minnesota established laws in 1977 to regulate PCBs at the state level. These laws banned in-use PCB equipment unless exempted from that ban by a COE issued by the Agency (Minn. Stat. §§ 116.36 and 116.37).

The Agency promulgated rules to administer the COE program for PCBs in 1977 (See Minn. Rules pts. 7100.0300 to 7100.0600). Under the existing state rules, no person may use, possess, sell, purchase, or manufacture PCB, a product containing PCB, or a class of products containing PCB without obtaining a COE from the Agency. The rules provide the procedures for applying for and obtaining a COE from the Agency and the terms and conditions to be included in a COE. In a general sense, the COE program approves the continued use of PCB under certain conditions. These conditions include secondary containment around PCB transformers, removal of units posing a significant risk, and repair of leakages in a timely manner. Also, spills are to be reported to the Agency and spill cleanup is to be conducted under Agency guidance. Annual reports summarizing PCB activities are also submitted to the Agency. At this time, about 600 COEs have been issued by the Agency. Of these 600, about 225 remain in effect. The remaining COE holders have disposed of all PCBs and have had their COEs terminated.

The state hazardous waste rules also regulate "waste" PCBs (Minn. Rules pt. 7045.0135, subp. 5). These rules regulate as hazardous waste the storage and disposal of discarded PCB materials and items if the concentration of PCBs in the waste is greater than 50 parts per million.

After 1984, EPA enforcement actions under TSCA began with the assessment of fines and corrective action activities for the mismanagement of PCBs. Minnesota's regulated community has been affected by these federal enforcement actions in every year since 1984. Also, EPA enforcement efforts under TSCA have received consistent support in Congress, including increased funding for EPA to contract with states for compliance monitoring activities. These contracts provide for compliance monitoring inspections by state personnel but retain enforcement action authority at the federal level. The Agency has received funds from EPA for PCB compliance monitoring activities since October 1988. These funds have allowed the Agency to significantly increase the number of inspections for problem industries and remote areas of the state. The ultimate result of this increase in federal enforcement action and federal funds for state compliance monitoring is a significant increase in compliance with PCB regulations by the regulated community.

The Agency believes it was appropriate to establish a state COE program for PCBs in 1977 because of the uncertainty associated with the federal PCB program at that time. However, since that time, the federal government has significantly expanded both its PCB regulations and the enforcement of those regulations. This expansion has essentially resolved any uncertainty associated with the federal program. The federal government now provides a comprehensive program governing PCBs and PCB items.

The federal and state PCB programs now provide essentially duplicative rule requirements. Having two separate PCB programs has created problems for the regulated community. First, the COE program has confused the regulated community, which errantly perceives the state COE program to be an authorized TSCA compliance program. Second, while the state and federal programs are essentially duplicative, there are some subtle differences in the requirements,

such as the particular wording to be used for marking and labeling PCBs and PCB items. While the agency does not believe these subtle differences reflect any difference in the level of protection of human health and the environment, the regulated community has been burdened by the need to comply with both sets of requirements.

In the interest of simplifying procedures (while retaining equal protection of human health and the environment) the Agency believes there is a need to amend the state rules governing COEs for PCBs.

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.

Items A to G in the introduction are federal amendments to existing rules. These EPA promulgated corrections, improvements, and clarifications to the hazardous waste rules are being adopted into existing Minnesota rule counterparts. A complete discussion of the reasonableness of the federal amendments is presented in Exhibits 1 to 7 (corresponding to items A to G, respectively) in Part VII of this document, which are hereby incorporated by reference. Each of these seven federal amendments and the affected rules is discussed below. Discussion of the reasonableness of state initiated amendments governing COEs is provided in item H.

A. Clarification of Tank Standards.

The proposed tank standard amendments involve Minn. Rules pts. 7045.0020, 7045.0488, 7045.0528, 7045.0596, 7045.0600, 7045.0628, and 7045.0629. On July 14, 1986, EPA issued regulations governing the treatment or storage of hazardous waste in tanks. The state hazardous waste rules were amended in August 1988 to incorporate these federal tank standards. On

September 2, 1988, EPA issued several minor clarifications to the language of the tank standards. The Agency is proposing to adopt these federal clarifications without substantive change based on EPA's data and discussion supporting reasonableness as provided in Exhibit 1. These amendments are detailed below:

1. Minn. Rules pt. 7045.0020 provides definitions for certain words used in the hazardous waste rules. Subparts 21 and 103 provide definitions for the terms "elementary neutralization unit" and "wastewater treatment unit," respectively. The existing definitions for these two terms provide that these two types of units include devices which meet the definition of a tank. The Agency is proposing to amend the definitions for these two terms to clarify that "elementary neutralization units" and "wastewater treatment units" include devices which meet the definition of a "tank system" as well. The effect of the proposed amendment is to clarify that the terms "elementary neutralization units" and "wastewater treatment units" include an entire tank system (i.e., the tank and its connected piping) and not just a tank itself. This proposed amendment reasonably clarifies the original intent of the definitions for these terms. The proposed amendment is equivalent to 40 Code of Federal Regulations (CFR) Part 260.10.

2. Minn. Rules pts. 7045.0488 and 7045.0596 set out activities to be conducted by an owner or operator during closure of a hazardous waste management unit or facility. Minn. Rules pt. 7045.0488 applies to facilities for which a final permit has been issued and Minn. Rules pt. 7045.0596 applies to facilities with interim status. Specifically, subpart 3 of these parts requires that at closing all contaminated facility equipment, structures, and soils at facilities must be decontaminated or properly disposed of unless otherwise specified in the technical standards specific to the type of

management unit being closed.

The Agency proposes to amend Subpart 3 of these parts to provide a reference to the technical standards specific to tanks. The effect of the proposed amendment is to require tank owners or operators who close their tanks to decontaminate or properly dispose of all contaminated facility equipment, structures, and soils unless otherwise specified in the technical tank standards. In this manner, the closure of hazardous waste tanks will be regulated in the same manner as the closure of other hazardous waste management units.

The proposed amendment is reasonable because it provides that the closure of hazardous waste tanks will be regulated in the same manner as the closure of all other hazardous waste management units, which was the original intent of the requirement. The proposed amendment is equivalent to 40 CFR Parts 264.114 and 265.114.

3. Minn. Rules pts. 7045.0528 and 7045.0628 set out the technical standards for hazardous waste tanks. Minn. Rules pt. 7045.0528 applies to tanks for which a final permit has been issued and Minn. Rules pt. 7045.0628 applies to facilities with interim status.

Subpart 1 of each of these parts describes who must comply with the tank standards and also the specific tanks that are exempt from meeting the tank requirements. The Agency is proposing to amend the exemption portion of subpart 1 to change the term "tank" to "tank system." It is reasonable to clarify that the exemptions apply to the entire tank system and not just to the tank itself. These proposed amendments are reasonable because they clarify the intent regarding the applicability of the exemption.

Subpart 4 of each of these parts sets out the requirements for the detection and containment of releases from tanks. The detection and

containment requirements are set out in items A to H of this subpart. Item H requires tanks that have ancillary equipment to have secondary containment for that ancillary equipment. The rule provides several exclusions from this requirement. One of the exclusions is sealless or magnetic coupling pumps that are visually inspected for leaks on a daily basis. The Agency is proposing to amend this exclusion to include "sealless valves" if they are visually inspected for leaks on a daily basis. The Agency believes it is reasonable to include sealless valves in the exclusion because the threat to human and health and the environment posed by sealless valves is no different from that posed by sealless coupling pumps which are currently excluded. The proposed amendments to Minn. Rules pts. 7045.0528 and 7045.0628 are equivalent to 40 CFR Parts 264.190 and 265.190.

4. Minn. Rules pt. 7045.0600 sets out requirements for the submittal of post closure plans and the modification of the post-closure period for a facility. Subpart 1 describes who shall comply with these post closure requirements. The scope provides that the post-closure requirements apply to owners or operators of all hazardous waste disposal facilities including tank systems that are required to meet the landfill requirements. The Agency is proposing to amend subpart 1 to clarify that the scope of the requirement includes surface impoundments and waste piles from which the owner or operator intends to remove the wastes at closure, to the extent post-closure care is required in the technical standards for surface impoundments and waste piles. The technical standards for surface impoundments and waste piles requires post-closure care only if all waste is not removed or decontaminated from a surface impoundment or waste pile. While the owner or operator may intend to remove or decontaminate all of the waste from the unit at closure, there is still the chance that the owner or operator may not remove or decontaminate all

the waste. Therefore, it is reasonable to require a post-closure plan from owners or operators of these units so that they may appropriately plan in the event waste is left or not decontaminated at closure. The proposed amendment is equivalent to 40 CFR Part 265.110.

B. Removal of Iron Dextran from the Lists of Hazardous Wastes.

This delisting affects Minn. Rules pt. 7045.0135, subp. 4, item F, subitem (9), unit (c) and part 7045.0141, subp. 10, item B. The EPA first considered delisting iron dextran in response to an August 9, 1983, petition. The delisting was proposed on November 8, 1985. The rule was published as final in 53 FR 43878 (October 31, 1988). The EPA originally listed iron dextran as a potential carcinogenic agent based on subcutaneous or intramuscular injections of laboratory animals. Further research proved to EPA's satisfaction that, due to iron dextran's large molecular weight, it will not absorb across membrane barriers. Therefore, EPA considers iron dextran impossible to absorb through oral, dermal, or inhalation routes. As a result, EPA concludes that iron dextran, when discarded, does not pose a significant threat to human health or the environment. The Agency is proposing to adopt this federal delisting without substantive change based on EPA's data and discussion supporting the reasonableness as provided in Exhibit 2. These amendments are detailed below:

1. Minn. Rules pt. 7045.0135 provides lists of hazardous wastes. Subpart 4, item F, subitem (9) lists hazardous wastes derived from commercial chemical products which begin with the letter I. Iron dextran is listed as unit (c). In this rulemaking, unit (c) is stricken from the rule and the three subsequent units in the subitem are relabeled.

2. Minn. Rules pt. 7045.0141 lists hazardous constituents. Subpart 10 lists hazardous constituents which begin with the letter I. Iron

dextran, listed as item B, is stricken and the three subsequent items are relabeled.

C. Removal of Strontium Sulfide from the Lists of Hazardous Wastes.

This delisting affects Minn. Rules pt. 7045.0135, subp. 4, item E, subitem (13), units (h) and (i), and part 7045.0141, subp. 18, item 0. The EPA first considered delisting strontium sulfide in response to a February 5, 1981, petition. EPA proposed the delisting on August 26, 1983. The rule was published as final in 53 FR 43882 (October 31, 1988). The EPA originally listed strontium sulfide based on the listing criteria in 40 CFR Part 261.11(a)(2) and its reported oral (human) lowest lethal dose (LDL-0) of 50 mg/kg. The original report from which this was derived gave a range of 50-500 mg/kg for a "Probable Oral Lethal Dose (Human)." EPA used the lowest value of this range (50 mg/kg) in spite of a footnote in the report which stated that the toxicity value was based on "obviously inadequate data" and that it could "represent no more than guesses."

A more recent supplement to the report no longer lists the LDL-0 value for strontium sulfide because of the lack of reliable data on its toxicity. EPA has searched and has been unable to find current reliable data on acute or chronic toxicity of strontium sulfide. Therefore, EPA has concluded that there is insufficient evidence to support the continued listing of this compound as either an acute hazardous waste or as a toxic waste. The Agency is hereby proposing to adopt this federal delisting without substantive change based on EPA's data and discussion supporting reasonableness as provided in Exhibit 3. These amendments are detailed below:

1. Minn. Rules pt. 7045.0135 provides lists of hazardous wastes. Subpart 4, item E, subitem (13) lists hazardous wastes derived from commercial chemical products which begin with the letter S. Listings for "strontium

sulfide" and "strontium sulfide SrS" are units (h) and (i), respectively. In this rulemaking, units (h) and (i) are stricken from the rule and the four subsequent units in the subitem are relabeled.

2. Minn. Rules pt. 7045.0141 lists hazardous constituents.

Subpart 18 lists those constituents beginning with the letter S. Strontium sulfide, listed as item 0, is stricken and the two subsequent items are relabeled.

D. Relisting of Certain Metal Smelting Wastes.

This relisting affects Minn. Rules pts. 7045.0135, subp. 3, items I to M; 7045.0139, subp. 2, item B, subitems (55), (56), (57), (66), (67), and (68); and 7045.0120, item I, subitems (1) to (6). EPA listed as hazardous certain wastes associated with primary metal smelting on May 19, 1980 and July 16, 1980. These wastes were then delisted following enactment of provisions of the amendments governing "high volume, low hazard" wastes from the "extraction, beneficiation, and processing of ores and minerals" (Bevill amendments) on November 19, 1980, January 16, 1981, and May 20, 1981. In the most recent amendment, issued as a final rule September 13, 1988 (53 FR 35412), EPA relists six of these metal smelting wastes as hazardous wastes. The relisting relies on the original reasons set forth in the May 19, and July 16, 1980 listings. The relisting is the result of a court challenge to the delistings associated with the Bevill amendments from which the U.S. Court of Appeals for the District of Columbia Circuit directed EPA to relist these wastes. The Agency is hereby proposing to adopt this federal relisting without substantive change based on EPA's data and discussion supporting reasonableness as provided in Exhibit 4. These are discussed below:

1. Minn. Rules pt. 7045.0135 provides lists of hazardous wastes.

Subpart 3 lists hazardous wastes from specific sources. This rulemaking

relists these wastes as items I to M (namely: primary copper, primary lead, primary zinc, primary aluminum, and two primary ferroalloys, respectively). The four subsequent items are also relabeled.

2. Minn. Rules pt. 7045.0139 provides the basis for listing hazardous wastes. Subpart 2, item B, lists constituents of wastes identified in part 7045.0135, subp. 3. This rulemaking relists these six smelting wastes in order of their EPA hazardous waste numbers in subitems (55), (56), (57), (66), (67), and (68). The subsequent items are also relabeled to end with item (95).

3. Minn. Rules pt. 7045.0120 lists exempt wastes. Item I governs mining wastes. The rulemaking adds a new list of subitems (1) to (6). These subitems clarify that, for purposes of exemption, mining waste does not include these six relisted wastes.

E. Clarification of Statistical Methods for Ground Water Monitoring Data.

These amendments affect the following Minn. Rules: pt. 7045.0020, subparts 15a and 22a; pt. 7045.0484, subp. 3; subp. 11, items A, G, H, I, and J; subp. 12, items C, D, F, G, H, I, J, and K; and subp. 13, items C, D, F, G, H, I, J, K, and L. EPA rules require ground water monitoring at hazardous waste land disposal facilities. These rules specify the use of Cochran's Approximation to the Behrens-Fisher Student's t-test (CABF) or other approved statistical method. Due to problems associated with the CABF method for ground water analyses, the EPA proposed amendments to these rules on August 24, 1987 (52 FR 31948), which were issued as final on October 11, 1988 (53 FR 39720). This set of amendments provides five different statistical methods that are more appropriate to analyses of ground water. It also outlines sampling procedures and performance standards designed to reduce the possibility that a statistical method will indicate contamination when it is not present, or fail to detect contamination when it is present. The Agency proposes adopting this

set of federal amendments without substantive change based on EPA's data and discussion supporting reasonableness as provided in Exhibit 5. This set of amendments is discussed below:

1. Part 7045.0020 provides definitions. The definitions for the terms "detected" and "exceeded" are inserted as new subparts 15a and 22a, respectively, in this rulemaking.

2. Part 7045.0484 contains ground water protection provisions. Subpart 3, governing ground water protection standards, is modified by replacing the term "entering" with the phrase "detected in" in existing text.

3. Part 7045.0484, subp. 11 provides general ground water monitoring requirements. Item A of subpart 11 is modified by inserting federal amendment language which provides alternatives to the use of upgradient wells for establishing background ground water quality. Subsequent subitems are relabeled. Item G, subitem (4), which had contained this provision, is also removed in conjunction with this amendment.

4. Part 7045.0484, subp. 11 also contains the following topics which are affected by the amendments: item G governs ground water monitoring procedures, item H provides statistical methods for ground water evaluation, item I provides performance standards for the above statistical methods, and item J governs recording and submittal of data. These items are interrelated and this rulemaking replaces the text in each of these items with the language provided in the federal amendment. The federal language provides five new statistical methods deemed more appropriate for ground water analyses. It also provides updated and appropriate statistical terminology.

5. Part 7045.0484, subp. 12 governs detection monitoring programs. In amendments affecting this subpart, existing items F, I, J, and K are removed. Other existing items are revised as follows: item C is revised to govern the

development of background data for hazardous constituents, item D is revised to govern the frequency of collecting samples and conducting analyses, item G is redesignated as item F and revised to govern the determination of whether there is statistically significant evidence of contamination, and item H is redesignated as item G and is revised to provide procedures in the event there is evidence of contamination. These items are interrelated and this rulemaking replaces the text in each of these existing items with the corresponding language provided in the federal amendment.

6. Part 7045.0484, subp. 13 provides for a compliance monitoring program. In amendments affecting this subpart, first, existing items G and K are removed. Next, existing items are revised as follows: item C is revised to govern the sampling procedures and statistical methods appropriate for the constituents and the facility, item D is revised to govern the determination of whether there is statistically significant evidence of contamination from any constituents in the permit, item E is redesignated as item F and revised to govern the frequency of collecting samples and conducting analyses, item F (existing) is redesignated as item G and revised to govern monitoring protocol for detecting and reporting additional constituents not identified in the permit, item H is revised to include amended federal language, and item I is revised to include amended federal language. These items are interrelated and this rulemaking replaces existing text in each of these items with the corresponding language provided in the federal amendment. Finally, the language found in 40 CFR Part 264.99 (e) is inserted as item E of this subpart.

F. Technical Corrections to Farmers' Exemptions.

This provision affects Minn. Rules pt. 7045.0213 which governs farmers' management of waste pesticides. EPA published these technical corrections on July 19, 1988 (53 FR 27164) to remedy errors in a rule published on August 8,

1986, and in an amendment published on July 8, 1987. The state had already corrected these errors during its original process of adopting these rules. The only remaining change required by this amendment is to extend the farmers' exemption to the rule parts governing land disposal restrictions. The Agency is proposing to adopt this federal provision without substantive change based on EPA's data and discussion supporting reasonableness as provided in Exhibit 6. The rulemaking adds Minn. Rules pts. 7045.1300 to 7045.1380, which govern land disposal restrictions, to those rule parts from which farmers are already exempted. This corresponds with 40 CFR Part 262.70.

G. Clarification of Trial Burn Information Requirements for the Modification of Existing Thermal Treatment Unit Permits.

This provision affects Minn. Rules pt. 7001.0700. The state hazardous waste rules currently provide permitting standards for hazardous waste thermal treatment facilities. Specifically, subpart 11 of Minn. Rules pt. 7001.0700 sets out the permitting requirements for existing facilities, including the procedures for modifying permits for these facilities. These state rules were originally the same as the corresponding federal permitting standards for these facilities.

On January 30, 1989, EPA issued a rule clarifying the language regarding the submittal of trial burn information for the modification of existing hazardous waste incinerator permits. Specifically, the federal amendment clarifies that owners or operators of existing incinerator facilities must either conduct a trial burn and submit the results prior to permit issuance or submit other approved information allowed for under the rules in lieu of conducting a trial burn. The permit conditions are then established using either the trial burn results or the approved alternate information. EPA believed that the existing language could be misinterpreted to mean that

permits may be written based on the submission of a "trial burn plan" instead of the actual results of a trial burn or approved alternate information. This is contrary to the intended meaning. The Agency concurs with EPA's assessment that the existing language governing the submittal of trial burn results could be confusing and is, therefore, proposing to incorporate the federal clarification without substantive change based on EPA's data and discussion supporting reasonableness as provided in Exhibit 7. The amendment is reasonable because it clarifies the original rule intent. The amendment is equivalent to 40 CFR Part 270.62(d).

H. Amendments Governing the Certification of Exemption Program for PCBs.

The proposed amendments involve changes to Minn. Rules pts. 7100.0340 and 7100.0350, the establishment of a new part, Minn. Rules pt. 7100.0335, and the repeal of Minn. Rules pt. 7100.0360. The regulated community has been burdened by the need to comply with two sets of equivalent regulations. In the interest of simpler procedures, without sacrificing protection of human health and the environment, the Agency believes it is reasonable to amend the state rules as discussed below.

1. The Agency is proposing to add Minn. Rules pt. 7100.0335 entitled "certificate of exemption required" to the state rules governing COEs and the management of PCBs. The proposed amendments provide for the same COE application and issuance process as the existing rules. However, the new part also adds provisions allowing persons to obtain a COE by rule under certain conditions. Persons will qualify for a COE by rule if they comply with the federal PCB regulations. This new part also states the justifications for terminating a person's eligibility for a COE by rule, which are: (1) the person does not comply with the federal PCB regulations; (2) the person is conducting other activities that are not regulated under the federal PCB

program but should be covered by the state PCB program; and (3) the Commissioner determines that there is an additional need to protect human health or the environment. Anyone not eligible for a COE by rule must go through the original COE application process.

Also, The Agency is proposing to reorganize a portion of the existing PCB rules. Minn. Rules pt. 7100.0360 sets out the PCB uses and PCB products that are exempt from the COE and labeling requirements. The Agency is proposing to move these listed exemptions to subpart 2 of proposed Minn. Rules pt. 7100.0335. The Agency believes moving the exemptions as proposed is reasonable because it is more logical to list the exemptions at the beginning of the PCB requirements so that persons may readily determine whether the rules apply, rather than at the end of the requirements where they currently exist.

The proposed COE by rule process is a reasonable approach to correcting problems with the existing COE program for several reasons. First, the process of allowing COEs by rule and terminating eligibility for COEs by rule corresponds to the "permit by rule" process for hazardous waste facilities (see Minn. Rules pt. 7001.0520). Second, the amended state rules would continue to satisfy the intent of the statute governing the state PCB program. The amended State rules will still provide the opportunity for the Agency to require, under certain circumstances, applications for individual COEs, public hearings on these individual COEs, and the issuance of written COEs. Third, nearly all persons required to have a written COE from the Agency would be able to qualify for the COE by rule because they are currently complying with the federal PCB regulations. This essentially provides for the removal of duplicative regulation without sacrificing the protection of human health and the environment. Fourth, the rules would still provide the Agency with the opportunity to terminate the COE by rule process and require an

individual COE for some persons (e.g., persons that consistently mismanage PCBs, or who conduct PCB management practices that are not regulated under the federal program but which the Agency believes should be regulated under the state program) through the "termination of eligibility for COE by rule" language.

The existing state rules governing the management of "waste" PCBs are not affected by the proposed amendments. Persons generating waste PCBs still need to meet the generator, treatment, storage, disposal, and transportation requirements existing in the state rules for waste PCBs (Minn. Rules pt. 7045.0135, subp. 5). This will allow the Agency to continue to monitor the movement and management of waste PCBs in the state. Also, spills still need to be reported to the Agency and spill cleanup is still conducted under Agency guidance.

2. Minn. Rules pt. 7100.0340 provides the procedures for applying for and obtaining a COE from the Agency and the terms and conditions to be included in a COE. The Agency is proposing to add subpart 21 to this part to specify two circumstances when a written COE is terminated. These are that the person issued a COE either meets the proposed COE by rule requirements or no longer conducts PCB activities requiring the COE. This proposed amendment reasonably states the circumstances when a written COE is no longer necessary and, therefore, persons maintaining written COEs under these circumstances should have their COEs terminated.

3. Minn. Rules pt. 7100.0350 sets out the labeling requirements for any person required to obtain a COE from the Agency. The Agency is proposing to amend Minn. Rules pt. 7100.0350 to delete the existing labeling requirements and require persons to comply with the labeling requirements of the federal PCB regulations. The Agency does not believe the minor differences between the

state and federal labeling requirements reflect any difference in the level of protection of human health and the environment. The regulated community has been burdened by the need to comply with both sets of requirements. The proposed amendments are reasonable because they will relieve this burden by requiring persons to comply with one set of appropriate labeling requirements.

4. Minn. Rules pt. 7100.0360 sets out the PCB uses and PCB products that are exempt from the COE and labeling requirements. The Agency is proposing to repeal this part in conjunction with moving the listed exemptions to proposed Minn. Rules pt. 7100.0335, subp. 2. It is unnecessary to also list them in a separate part of the rules. The Agency believes it is more logical to list the exemptions at the beginning of the PCB requirements so persons may determine whether the rules apply, rather than at the end of the requirements where they currently exist. Therefore, the Agency is proposing to repeal this part. Repealing Minn. Rules pt. 7100.0360 is reasonable because it will eliminate duplicative rule language in the rules. The reasonableness of moving the exemptions to Minn. Rules pt. 7100.0335, subp. 2 is explained in number 1 above.

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. Since the primary effect of the federal amendments governing the management of hazardous waste is to clarify and correct the scope and applicability of existing regulatory language, effects are anticipated to be minimal.

None of these are new rules and most pose no additional requirements. The only amendment with the effect of a new listing and potential resultant

burdens is the relisting of certain smelting wastes. However, these wastes had been included in the original lists of hazardous wastes, were removed by amendment, and are being reinstated as the result of a federal court order.

All except the delistings of iron dextran and strontium sulfide, and the farmers' exemptions are federal rules which Minnesota is required to adopt in order to maintain RCRA program authorization. If Minnesota did not adopt these, it would lose RCRA authorization and the federal program would be effective in the state. The farmers' exemption is promulgated by EPA under HSWA, which Minnesota has not received authorization to administer, and is immediately effective in this state whether or not the Agency adopts it. The above delistings are optional; however, they provide a potentially less restrictive level of regulation. Therefore, the Agency believes that there is little effect on any business subject to the federal requirements being amended, including small businesses, which would not otherwise be required under federal law.

Additionally, the amendments governing COEs for PCBs provides a process whereby persons need only comply with one set of regulations rather than the two sets currently required. Therefore, the Agency believes that any impacts the COE amendments may have on small business will be ones that save these businesses time and 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 primary effect of the federal amendments governing the management of hazardous waste is to clarify and correct the scope and applicability of existing regulatory language. No new regulations are being added to state rules. Treating certain smelting wastes as hazardous may appear to be a new requirement; however, this is a relisting of a waste which had originally been listed and was inappropriately delisted. Also, the impact resulting from this relisting would have been effective a year earlier in Minnesota under federal regulations in lieu of the authorized state program. Therefore, the Agency believes the overall impact of these amendments will be minor and in keeping with the original intent of the regulations. Where there are economic impacts on those subject to the federal amendments, they are no different from what would be required under federal law.

Also, the effect of the amendments governing COEs for PCBs is to save time and money for those managing PCBs. This amendment provides a process whereby persons need only comply with one set of regulations rather than the two sets currently required. Therefore, the Agency believes the economic impacts of the proposed COE amendments are economically positive in nature, and that due consideration has been given to the economic impacts of these amendments in Minnesota.

VI. CONCLUSION

The Agency believes that these rules adopting the federal amendments governing various aspects of managing hazardous waste, and the state initiated amendment of the rules governing COEs for PCBs are both needed and reasonable. Adopting the federal amendments assures that Minnesota's hazardous waste program complies with federal requirements for equivalency or, where optional, it provides consistency between state and federal rule language. The changes

governing COEs for PCBs provide simplification of what were duplicative requirements.

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

VII. LIST OF EXHIBITS

The Agency has referenced the following documents in support of these proposed amendments. These Federal Registers correspond with items A to G (1 to 7, respectively) listed in the Introduction section of this document.

1. Volume 53, Federal Register, page 34079, (53 FR 34079) September 2, 1988 regarding Storage and Treatment Tank Systems (Tank Systems)✓
2. 53 FR 43878, October 31, 1988 (Iron Dextran)✓
3. 53 FR 43881, October 31, 1988 (Strontium Sulfide)✓
4. 53 FR 35412, September 13, 1988 (Identification and Listing)✓
5. 53 FR 39720, October 11, 1988 (Statistical Methods)✓
6. 53 FR 27164, July 19, 1988 (Farmers' Exemptions)✓
7. 54 FR 4286, January 30, 1989 (Incinerator Permits)✓

Date: April 13, 1990

Barbara Lindsay Sims
for
Gerald L. Willet
Commissioner

