

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing  
The Delay of Closure Period at Hazardous Waste  
Treatment, Storage, and Disposal Facilities,  
Minn. Rules Pts. 7045.0458, 7045.0486, 7045.0488,  
7045.0502, 7045.0564, 7045.0594, 7045.0596, and  
7045.0610

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. Specifically, the amendments the Agency is proposing pertain to the delay of the closure period allowed for hazardous waste treatment, storage, and disposal facilities. The proposed amendments set forth the conditions under which the owners or operators of hazardous waste facilities may delay closure of their facilities in order to receive nonhazardous wastes. The proposed amendments incorporate into state rules federal regulations promulgated August 14, 1989 (see Exhibit 2).

The federal amendments were promulgated by the U.S. Environmental Protection Agency (EPA) under the authority of the Resource Conservation and Recovery Act (RCRA). Amendments promulgated under the authority of RCRA, such as these, are not effective in Minnesota until they are incorporated into state rules. The Agency is required to adopt federal regulations in order to maintain EPA authorization to administer its hazardous waste program when the new regulations are more stringent than current state rules. In contrast, the Agency is not required to adopt federal regulations which are less stringent than current state rules. The proposed amendments incorporate federal regulations which are less stringent than existing rules. Although not required to adopt these amendments, the Agency believes that doing so will improve the

hazardous waste rules by allowing for flexibility in the rules and addressing a situation heretofore not addressed by the rules. The authority to adopt these amendments is provided under Minn. Stat. § 116.07, subd. 4 (1990).

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 (1990). Part V documents the economic factors the Agency considered in drafting the proposed amendments as required by Minn. Stat. § 116.07, subd. 6 (1990). Part VI sets forth the Agency's conclusion regarding the proposed 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 (1990) 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 which does not easily lend itself to evaluation of each proposed revision. In the case of this proceeding, the need for amendments to the Agency's rules governing the management of hazardous waste has two bases: (A) the need for consistency with federal hazardous waste

regulations; and (B) the need to provide for flexibility within the hazardous waste rules while still providing adequate protection of human health and the environment.

A. 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 a 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. EPA has defined "equivalent" to mean that the state requirements are at least as stringent as 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. The proposed amendments contained in this rulemaking are at least as stringent as the federal amendments which they adopt. The proposed amendments are more stringent than the federal amendments in one area. The federal amendments allow for delay of closure at surface impoundments which are not in compliance with the minimum technology requirements for liners and leachate collection systems. The proposed amendments do not allow the delay of closure in these situations. The rest of the proposed amendments are as stringent as the federal amendments which they adopt.

The Agency has decided to incorporate these less stringent amendments into state rules in order to provide for consistency between state rules and federal regulations. Consistency between federal regulations and state rules is

desireable in order simplify the regulation of hazardous waste for both the regulated community and the regulators. The Agency desires to maintain consistency between federal regulations and state rules when the federal regulations are determined to be environmentally protective and beneficial to the hazardous waste program. This is the case in these proposed amendments. These regulations, being promulgated under the authority of RCRA, will not be effective in Minnesota until they are adopted by the Agency.

**B. Need to Provide for Flexibility Within the Hazardous Waste Rules While Still Providing Adequate Protection of Human Health and the Environment.**

The proposed amendments provide flexibility in the hazardous waste rules and address a situation previously not addressed in the rules. They do so by allowing the delay of closure of hazardous waste facility units in order to allow the owners or operators of facilities to accept nonhazardous waste. Through these proposed amendments, the Agency intends to afford facility owners or operators the opportunity to engage in the environmentally beneficial activity of managing nonhazardous waste in a secure facility. At the same time, the proposed amendments specify the conditions under which facility owners or operators may delay closure. The proposed amendments require facility owners or operators to submit permit modifications, or amended Part B applications in the case of interim status facilities, which address the conditions under which closure may be delayed and nonhazardous wastes may be accepted. These requirements will help insure protection of human health and the environment, while making the hazardous waste rules more flexible. It is necessary to adopt the proposed amendments for these reasons.

**III. REASONABLENESS OF THE PROPOSED AMENDMENTS**

The Agency is required by Minn. Stat. ch. 14 (1990) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or

amendments. The Agency proposes to incorporate federal requirements promulgated by EPA into the state hazardous waste rules. A complete discussion of the reasonableness of these federal amendments is presented in Exhibits 1 and 2 listed in Part VII of this document, which are hereby incorporated by reference. The proposed amendments to the state rules incorporating these federal amendments are found in Minn. Rules pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.0594, 7045.0596, and 7045.0610. The reasonableness of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules pts. 7045.0488 and 7045.0596.

The existing Minn. Rules pts. 7045.0488 and 7045.0596 contain the requirements for closure activities at hazardous waste facilities. Minn. Rules pt. 7045.0488 addresses fully permitted facilities and part 7045.0596 addresses facilities operating under interim status requirements, but both parts contain parallel requirements. The proposed amendments create a new subpart 2a in both of these parts by adopting federal regulations which set out the conditions under which a hazardous waste facility owner or operator may accept nonhazardous wastes at his or her facility. It is reasonable to adopt these provisions in order to enable facility owners and operators to provide the environmentally beneficial function of managing nonhazardous waste at a secure facility. The proposed amendments require facility owners or operators wishing to accept nonhazardous wastes at their facilities to submit a request for permit modifications or an amended Part B application, as applicable. These petitions must address specific aspects of facility operations, structure, and contents. It is reasonable to adopt these provisions in order to ensure that human health and the environment will continue to be protected as operations at the facility change with the onset of the management of nonhazardous wastes.

The federal amendments include provisions for allowing surface impoundments which do not meet the double-liner and leachate collection system minimum technology requirements to receive nonhazardous wastes. The proposed amendments do not allow the acceptance of nonhazardous wastes at surface impoundments of this type. It would not be reasonable to allow owners and operators of facilities that do not meet the full requirements of the hazardous waste rules to delay closure of their facilities because these facilities are not constructed in a manner promoting a high level of protection of human health and the environment. It is reasonable to not include these provisions in the proposed amendments to ensure protection of human health and the environment.

B. Minn. Rules pts. 7045.0458, 7045.0486, 7045.0488, 7045.0502, 7045.0564, 7045.594, 7045.0596, 7045.0610.

The proposed amendments to these rules are necessitated by the proposed amendments to Minn. Rules pt. 7045.0488, subp. 2a and Minn. Rules pt. 7045.0596, subp. 2a discussed above. The current rules do not address the possibility of a facility operator delaying closure of a facility in order to accept nonhazardous wastes. Since these parts and subparts do not currently address this situation, and in light of the amendments to the rules discussed above, which provide for the delay of closure, it is reasonable to amend these supporting rules in order to address this situation.

#### IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

To comply with Minn. Stat. § 14.115 (1990), the Agency has considered the statutory methods for reducing the impact of the proposed rules on small businesses. The statute requires that each of the following methods be considered:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards for small businesses to replace design or operational standards in the rule; and,
5. The exemption of small businesses from any or all requirements of the rule.

None of the proposed amendments will have a negative impact on small businesses. The proposed amendments are designed to allow for flexibility in the rules and are less stringent than current rules, thus having a beneficial effect on all businesses to which they apply.

#### V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1990) 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, and practical under the circumstances.

The proposed amendments reduce the burden of the hazardous waste rules.

The proposed amendments are designed to allow for flexibility in the rules and are less stringent than current rules, thus having a beneficial economic effect on all businesses to which they apply. The proposed amendments will not result in any adverse economic impacts on any business.

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. The Agency has also stated in this document that the proposed amendments will not adversely affect small businesses and will not incur greater economic costs for businesses. 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 MPCA is relying on the following documents to support these amendments:

<u>Agency Ex. No.</u>	<u>Title</u>
1	Federal Register, Vol. 53, No. 108, pages 20738-20761, June 6, 1988.
2	Federal Register, Vol. 54, No. 155, pages 33376-33398, August 14, 1989.

June 13, 1991  
Date

for Ann Humac  
Charles W. Williams