

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Rules
Governing Solid Waste Management
Facility Permit Fees, Minn. Rules
Pt. 7002.0410 to 7002.0490

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This Statement of Need and Reasonableness discusses proposed new rules governing the establishment and collection of solid waste management facility permit fees. Proceeds from the fees will be used to cover the costs of reviewing and acting upon permit applications and for implementing and enforcing the conditions of a permit. Minn. Stat. § 116.07, subd. 4(d) (1991).

These rules are prepared in response to the 1992-1993 appropriation bill which requires the Minnesota Pollution Control Agency (Agency) to convert \$720,000 in general fund appropriations into fee-based appropriations over the biennium. Additional, indirect program costs of \$164,884 increase this biennial target to \$884,886, or \$442,443 per year.

The proposed rules establish application, reissuance, modification, and annual fees for solid waste management facility permits. The proposed rules establish the amount of the fees and their manner of payment. Penalty provisions are included for late payments.

Administrative requirements involved in adopting these rules require the review and approval of the fee schedule by the Minnesota Commissioner of Finance. This approval is attached as Exhibit 1.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency is authorized by Minn. Stat. § 116.07, subd. 4(d) (1991), to adopt rules for the collection of permit fees. The statute 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 the 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. The fee schedule must reflect reasonable and routine permitting, implementation, and enforcement costs. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Any money collected under this subdivision shall be deposited in the special revenue account.

Under this statutory authority, the Agency proposed to adopt permit fee rules to provide for the loss in general fund appropriations. The biennial target for proposed fee revenues (\$720,000 plus indirect costs of \$164,886) is commensurate with the reduction of general fund appropriations.

The Agency's authority to assess fees is limited by Minn. Stat. § 16A.128, subd. 1(a) (1986), which provides:

Fees for accounts for which appropriations are made may not be established or adjusted without the approval of the commissioner. If the fee or fee adjustment is required by law to be fixed by rule, the commissioner's approval must be in the statement of need and reasonableness. 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.

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 proposed rules. 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 means that the solution proposed by the Agency is appropriate.

The 1991 Minnesota Legislature transferred a portion of general fund appropriations to fee-based appropriations for the Agency's solid waste permit program. This appropriation change requires that the Agency adopt permit fee rules for establishing a mechanism to collect fees under this program. If the Agency does not adopt permit fee rules the solid waste permit program will suffer a loss in program staff and supplies. The proposed permit fees schedule is set so that fee revenues will nearly equal the reduction in general fund appropriations. Permit fee revenues will allow the Agency to maintain existing solid waste program activities. Specific program activities include: a) review and approval of facility design and operational specifications, b) review of monitoring data, c) facility inspections, d) review and approval of facility reports, and e) enforcement of applicable rules and laws.

IV. STATEMENT OF REASONABLENESS

Minn. Stat. ch. 14 (1988) requires the Agency to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is a rational basis for the Agency's action.

A. Reasonableness of the Rules as a Whole

Minn. Rules ch. 116.07, subd. 2 requires that the Agency adopt standards for the collection, transportation, storage, processing, and disposal of solid waste. Subdivision 4(a) of this chapter gives the Agency the authority to issue, continue in effect, or deny permits. The Agency has met these responsibilities through issuing permits that specify environmental standards for solid waste management facilities. Administration of the solid waste permit program requires employing staff trained in engineering, hydrogeology, and other environmental science fields. Supplies and equipment are also needed.

The legislature's enactment of Minn. Stat. § 116.07, subd. 4(d) shows the state believes that it is appropriate for the regulated community to bear a portion of permit administration costs. These rules are proposed as part of the intent to have administrative services and regulatory activities paid for by those who benefit directly from program administration. With the exception of the Ground Water and Solid Waste Division, the Agency's Air Quality, Hazardous Waste, and Water Quality Division's already have permit fee rules in place. For consistency purposes, the proposed rules are structured after existing permit fee rules.

There are a number of options that the Agency may pursue in establishing a method for assessing and collecting permit fees. For example, fees could be assessed based on dividing the annual target of \$442,443 by the number of permitted solid waste management facilities subject to these rules. This simple approach fails to correlate the assessed fee to the amount of administrative activities performed at a facility. A more reasonable and equitable approach would correlate fees to administrative activities performed at a facility.

The proposed rules establish three fee categories that relate to identifiable administrative program activities. The fee categories are:

application fees, reissuance or modification fees, and annual fees. The fee schedule applies these categories to each solid waste management facility (i.e., mixed municipal solid waste land disposal facility, industrial solid waste land disposal facility, compost facility, etc.). The proposed fees relate the amount of administrative cost required to perform a program activity based upon the facility type.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

Minn. Rules pt. 7002.0410. SCOPE

The proposed rules apply to all persons required to obtain a permit, as specified in Minn. Rules pt. 7001.3050 subps. 1 and 3B.¹ The scope is limited to the types of facilities where an accountable amount of staff resources are spent. Some permit-by-rule facilities (e.g., yard waste compostors and recyclers) are excluded because they do not require a significant amount of administrative costs. Minn. Rules pt. 7001.3060 establishes who the agency recognizes as a facility permittee.

¹The rules apply to persons required to obtain a permit under Minn. Rules pt. 7001.3050, subps. 1 and 3B. A solid waste management facility permit or permit modification is required in order to:

- a. treat, store, process, or dispose of solid waste;
- b. establish, construct, or operate a solid waste management facility; or
- c. change, add, or expand a permitted solid waste management facility.

Also, persons who meet permit-by-rule criteria for demolition debris land disposal facilities are subject to these rules. That person would be someone who has a:

"Subpart 3B. Demolition debris land disposal facilities designed for less than 15,000 cubic yards total capacity and operating less than a total of 12 consecutive months, not located adjacent to another demolition debris permit by rule facility, and in compliance with Minn. Rules pts. 7035.2525 to 7035.2655, 7035.2825, and 7035.2855."

It is reasonable to impose these rules on persons whose solid waste management facility is regulated by the Agency and whose facility regulation involves administrative costs to be expended by the Agency. The application of the rules has been narrowed to include only those facilities where significant administration costs are incurred. If no accountable administrative costs are spent on a facility, it is reasonable to exclude them from compliance with these rules. For purposes of clarity, it is also reasonable to define in the scope to whom these rules apply.

Part 7002.0420. DEFINITIONS

Subpart 1, "scope", limits the application of specialized terms used in these rules to the proposed rules. Most specialized terms are previously defined under Minn. Rules pt. 7035.0300. The reasonableness of the specific definitions is discussed below. For the purposes of clarity, consistency, and ease of enforcement, it is reasonable to provide specific definitions.

Subpart 2 defines "fiscal year" so that the term applied to fee assessments is the accounting year used by the state's government; July 1 through June 30. This is reasonable because use of the state's fiscal year makes it easier to implement future fee changes, predict fee revenues, and follow up on collections.

Subpart 3 defines "permit modification" to mean a change in permit conditions that requires public comment and that is subject to the procedures set forth in parts 7001.0100 to 7001.0130. Permit modification is a commonly used term. However, it is not specifically defined in law or rule. It is reasonable to define the term to avoid confusion. This definition is consistent with common usage.

Subpart 4 defines "permit reissuance" to mean a process by which an existing solid waste management facility permit is extended for an additional period. Permit reissuance is a commonly used term. However, it is not specifically defined in law or rule. It is reasonable to define the term to avoid confusion. This definition is consistent with common usage.

Subpart 5 defines "permittee" to mean the person or persons to whom the agency has issued a solid waste management facility permit. The definition is reasonable because it conforms to the common understanding of the persons involved in solid waste management. This specification excludes from fee assessments those who are not directly responsible for facility management. This definition is reasonable because it will help the Agency and permittees to avoid confusion about who is responsible for paying fees.

Part 7002.0430. PERMIT FEES SCHEDULE

This part identifies who must pay fees and the activities for which fees will be assessed.

There are three fee categories related to program activities: the application fee, reissuance fee or modification fee, and annual fee. The "application fee" applies to the review of a new facility application. The "reissuance fee" or "modification fee" applies to permittees requesting either permit reissuance or permit modification. For example, a permittee wishing to extend their permit activity beyond the expiration date of their permit must submit a written request for permit reissuance. This request must include the appropriate reissuance fee as identified by the fee schedule. The "annual fee" covers implementation and enforcement of permit requirements. This fee would include routine activities such as facility inspections, tracking of facility submittals, review of non-permit related reports, such as the annual report, and administration action needed to assure compliance.

Payment of fees apply to permittees of facilities that are in operation during any part of the fiscal year.

Specific fees for different activities are reasonable because they limit fee assessments to work that is directly related to permit administration. Some staff activities (e.g., training, internal duties, etc.) are not related to permit administration and cannot be associated with a fee. This limit on the scope of the fees is consistent with the goal that those who benefit from program administration should pay for program administration. Limiting the payment of fees to persons whose facilities have accepted solid waste over the fiscal year is reasonable because most staff time is spent on active facilities.

The proposed fee levels are reasonable because they are commensurate with the amount of staff time used for different program activities. Fees are set so that, in total, fee revenues will nearly equal the appropriation reduction made during the 1991 legislative session. The fee assessments are based on the estimated number of solid waste management facilities that will pay application, reissuance and annual fees over the next biennium. Exhibit 2 shows the proposed fees, the expected revenues, and the required revenues for the next biennium. The Agency believes these estimates are reasonably accurate, given the limits of current information. The Agency must review and, if necessary, adjust fees on an annual basis to determine whether fee proceeds will equal the appropriations target (Minn. Stat. § 16A.128, subd. 1 (1986)).

Part 7002.0440. PAYMENT OF FEES

This part requires that fee payments be made payable to the "Minnesota Pollution Control Agency." Payments must be submitted to the commissioner. Fees are non-refundable and must be paid in full.

It is reasonable to require that fees be made payable and submitted to the commissioner so that they may be directed and recorded properly within the Agency.

It is reasonable to not refund fee payments because administrative costs are incurred regardless of whether an application or request is granted. From time to time applications or requests are withdrawn, denied, or are not issued for some other reason. The Agency cannot forecast what specific applications or requests will be or will not be granted (issued). At the point that an application or request has been withdrawn or denied, the Agency staff have already invested time and expense in processing the application or request.

It is reasonable to require full payment of fees because full payment simplifies tracking and accounting procedures. Full payment of fees also allows staff adequate time to collect outstanding fee payments. Fees not collected within the biennium are lost for that period. In particular, the Agency believes that if application fees and reissuance fees were not paid in full and up-front, that it would be very difficult to collect the remaining balances owed by persons whose application or request was not approved.

Part 7002.0450. APPLICATION FEE

This part requires that application fees be submitted along with submission of the new permit application. Failure to submit the fee makes the application incomplete and processing is suspended until the fee is received.

It is reasonable to require payment with an application because the Agency incurs administrative costs as soon as an application is received. It is reasonable to suspend processing of the application when fees are not paid because suspension is a prudent incentive. It is the preferred incentive in this case because suspension does not add to administrative costs.

Part 7002.0460. REISSUANCE OR MODIFICATION FEE

This part requires that reissuance or modification fees be submitted when a permit reissuance or permit modification is requested. Failure to submit the fee makes the request incomplete and processing is suspended until the fee is received. Failure to submit the reissuance fee with the permit reissuance request will also result in the imposition of late charges.

Minn. Rules pt. 7001.0040, subp. 3, requires that if a person holding a permit issued by the Agency desires to continue the permitted activity beyond the expiration date of the permit, the person shall submit a written request for permit reissuance at least 180 days before the expiration date of the existing permit. Therefore, the payment date for a permit reissuance would be the same as the date required for submitting a permit reissuance request.

It is reasonable to require payment with a permit reissuance or permit modification request because the Agency incurs administrative costs as soon as a request is received. It is reasonable to suspend processing of the request when fees are not paid because suspension is a prudent incentive. It is the preferred incentive in this case because suspension does not add to administrative costs.

This part informs a permittee that failure to submit the appropriate reissuance fee will result in the imposition of a late charge. It is reasonable to inform a permittee of the consequences of not timely submitting their reissuance fee with their permit reissuance request.

Part 7002.0470. ANNUAL FEE

This part sets the payment schedule for annual fees and sets the conditions under which late charges will be assessed. Annual fees are due within 60 days of the effective date of the rules. In succeeding fiscal years, annual fees must be paid by August 1 of each fiscal year. This part establishes payment provisions for facilities that become permitted during the fiscal year.

Annual fees cover the costs incurred for administration of permit requirements. The Agency incurs administrative costs as soon as a permit is issued. It is reasonable to require that annual fees be due 60 days from the effective date of the rules because the Agency believes 60 days, when added to the time spent in formal rulemaking, is enough time to allow permittees to save the cash needed to make the first fee payment.

It is reasonable to require that annual fees be submitted by August 1 because the Agency incurs administrative costs at the beginning of the fiscal year. Also, this payment date allows the Agency from September through June to collect outstanding payments from permittees.

It is reasonable to require that a permittee of a new facility pay an annual fee within 30 days after receiving a permit because the Agency incurs administrative costs as soon as a new permit is issued.

In general, the terms of payment are reasonable. The payment dates are correlated to when administrative costs are incurred. They allow the Agency staff time to collect fees and late charges from delinquent permittees. As previously mentioned, fees not collected within the biennium may not be used for administrative costs incurred over the biennium. Fee terms are clear and easily understandable by permittees. Last, the annual fee payment terms allow permittees to make advance financial plans to meet their fee obligations.

This part informs a permittee that failure to submit the appropriate annual fee will result in the imposition of a late charge. It is reasonable to inform a permittee of the consequences of not meeting the annual fee payment terms.

Part 7002.0480. LATE CHARGE

This part provides that a payment of 20 percent of the reissuance fee or annual fee will be charged for failure to submit the appropriate fee within 30 days of the required payment date. An additional charge of ten percent of the balance owed will be required for each 30 day period or fraction thereof that the fee and late charge remain unpaid. The commissioner may commence proceedings to revoke a permit if a permittee fails to make enforcement fee or annual fee payments by the required date.

Late charges are reasonable because they will encourage prompt payment of reissuance and annual fees. Late charges will thereby encourage development of an efficient fee collection program.

Part 7002.0490. NOTIFICATION OF ERROR

This part allows a person who believes that the Agency has made an error to challenge a fee assessment. A challenger must provide written evidence of the alleged error to the commissioner along with the assessed fee and any late charges incurred. Overpayments will be refunded if the commissioner finds, upon reviewing the data, that the assessed fee and late charge are in error.

It is reasonable to allow permittees an opportunity to challenge fee assessments because mistakes and misunderstandings will occur. This provision advises permittees of the steps they must take if they think there has been a mistake in a fee assessment. It is reasonable to refund overpayments because the state should not keep fees that are overpaid in error.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The Agency is required to consider the impacts of the proposed rules on small businesses :

Subdivision 1. Definition. For purposes of this section, "small business" means a business entity, including its affiliates, that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross sales or less than \$4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses.

Subdivision 2. Impact on small business. When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses as defined by this section, the agency shall consider each of the following methods for reducing the impact of the rule 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.

In its statement of need and reasonableness, the Agency shall document how it has considered these methods and results.

Subdivision 3. Feasibility. The agency shall incorporate into the proposed rule or amendment any of the methods specified under subdivision 2 that it finds to be feasible, unless doing so would be contrary to the statutory objective that are the basis of the proposed rulemaking.

The goal of the rules is to provide for the loss in general fund appropriations through the assessment of permit fees. The goal of the fee schedule is to equitably distribute administrative costs among permittees. The Agency has chosen to set fees based on the administrative costs of performing program activities at a type of facility. In considering methods to minimize small business impacts these goals take priority.

Nearly all privately-owned solid waste management facilities in Minnesota qualify as small businesses under the definition in subdivision 1. In regards to item (a) of subd. 2, it is impossible to adopt less stringent compliance standards because the Agency needs to provide for appropriation losses and if exceptions were made for small businesses, of which almost all facilities are, we would have no revenues. There are no reporting requirements associated with the permit fee rules. Under item (b), adopting less stringent schedules for fee payments would jeopardize the relationship of cost incidence, which does not vary with facility size. Also, varying payment schedules could impact the ability to meet the Agency's biennial target. Responding to item (c), the fees schedule has been simplified to the greatest extent that is consistent with reasonable equity and again, there are no reporting requirements under the proposed rules. In response to item (d), there are no design or operational standards required in the rules. Last, in regards to item (e), some permit-by-rule facilities have been exempt from meeting rule requirements. These facilities are exempt because they require negligible administrative time to permit and enforce permit requirements. Other small businesses/facilities require significant amounts of staff time. Exemptions from rule requirements for these facilities would conflict with the goal of the rules and of the schedule.

The Agency has considered the methods proposed in Minn. Stat. § 14.115 for minimizing small business impacts, and to the extent possible has accommodated small business concerns.

VI. ECONOMIC CONSIDERATIONS

The Agency is required to take economic factors into account in its rulemaking:

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.

Minn. Stat. § 116.07, subd. 6

The proposed rules would transfer a portion of program costs previously funded under general fund appropriations to fee appropriations. The net effect is no increase in program costs, but a conversion from costs previously funded by taxes to costs funded by permittees. Initially, the permittees will bear a heavier financial burden for compliance with the permit fees rules. However, after a short period of adjustment, the cost of permit fee requirements will be incorporated into a permittees administration costs and passed on to consumers. Overall, the level of fees are negligible and will not significantly impact solid waste management facilities.

The Agency believes that the proposed rules meet the requirements of Minn. Stat. § 116.07, subd. 6. The rules take into consideration the economic impact on businesses and municipalities while meeting the statutory directives under which the rules are proposed.

VII. IMPACT ON AGRICULTURAL LANDS

The Agency is required by Minn. Stat. § 14.11, subd. 2 (1988) to consider the impacts of the proposed rules on agricultural lands. The statute provides:

If the Agency proposing the adoption of the rule determines that the rules may have a direct and substantial adverse impact in agricultural land in the state, the Agency shall comply with the requirements of sections 17.80 to 17.84.

The Agency believes that the proposed rules will not have any impact on agricultural lands because the rules do not effect agricultural enterprises. These rules apply to solid waste management facilities.

VIII. CONCLUSION

The Agency staff has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed rules governing solid waste management facility permit fee rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed rules.

IX. LIST OF EXHIBITS

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

<u>Agency Exhibit #</u>	<u>Title</u>
1	Approval of the proposed fee schedule by the Commissioner of the Minnesota Department of Finance
2	Solid Waste Management Facility Permit Fee Schedule

Based on the foregoing, the proposed Minn. Rules Part 7002.0410 to 7002.0490 are both needed and reasonable.

Dated: Aug 22, 1991


Charles W. Williams
Commissioner