

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the
Proposed Rule Amendments
Governing Facility Organic Air
Emission Standards and of Listed
Hazardous Wastes, Minn. Rules
pts. 7001.0560, 7001.0626,
7001.0627, 7045.0125, 7045.0135,
7045.0139, 7045.0452, 7045.0458,
7045.0478, 7045.0482, 7045.0547,
7045.0548, 7045.0556, 7045.0564,
7045.0584, 7045.0588, 7045.0647,
and 7045.0648

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of Minnesota rules which govern hazardous wastes. The Minnesota Pollution Control Agency (MPCA) proposes to adopt into the Minnesota Rules the federal hazardous waste regulations which govern organic air emissions from process vents and equipment leaks from hazardous waste treatment, storage, and disposal facilities (TSDFs); and federal regulations which list as hazardous four wastes generated during the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.

When the U.S. Congress enacted the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments of 1984 (HSWA), it empowered the U.S. Environmental Protection Agency (EPA) to promulgate hazardous waste program regulations.

In this rulemaking the MPCA is adopting two sets of regulations promulgated by EPA. The first set of regulations is the first of a three phase approach by EPA to control organic air emissions at permitted TSDFs. The second set of regulations lists four wastes generated during the production of UDMH from carboxylic acid hydrazides.

The EPA promulgated both regulations under authority of the HSWA. Under federal law, amendments promulgated under the HSWA are effective under federal authority in all of the states on their federal effective dates. At this time, both regulations are effective in Minnesota under federal authority. Incorporating these regulations into the Minnesota Rules shifts the primary enforcement authority to the state.

The MPCA has applied for and received EPA authorization to administer its equivalent hazardous waste program in lieu of the federal program. To maintain this authorization, the EPA requires the MPCA to revise its program by adopting those federal program amendments which are more stringent. In this rulemaking, the MPCA is adopting these recent federal amendments as required with only minor changes as needed for consistency with the Minnesota Rules.

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the MPCA's explanation of the need for the amendments. Part III discusses the reasonableness of the amendments. Part IV documents how the MPCA has considered the methods of reducing the impact of the amendments on small businesses as required by Minn. Stat. § 14.115 (1990). Part V discusses the economic factors the MPCA considered in adopting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1990). Part VI sets forth the MPCA's conclusion regarding the amendments. Part VII contains a list of exhibits relied on by the MPCA to support the amendments. The exhibits are available for review at the MPCA's offices at 520 Lafayette Road North, St. Paul, Minnesota 55155.

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.

II. NEED FOR THE PROPOSED AMENDMENTS

Need is a broad test that does not lend itself to evaluation of each proposed revision. The need to adopt these federal regulations into Minnesota rules is based in the RCRA as amended. The RCRA allows the EPA to authorize the states to administer equivalent (meaning at least as restrictive and broad in scope) hazardous waste programs in lieu of the federal program. Program authorization facilitates coordinated state and federal enforcement capability which results in greater program effectiveness.

The EPA has authorized the MPCA to administer its hazardous waste program as equivalent to the federal program. The MPCA is required to adopt these recent, more restrictive regulations in order to maintain its equivalency and, thereby, its program authorization.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The MPCA is required by Minn. Stat. ch. 14 (1990) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. The EPA promulgated these rules following due public participation processes. The regulations are effective in Minnesota under federal authority. Since the EPA made this presentation of facts in promulgating these rules and since the MPCA is adopting these rules without substantive change, the MPCA refers the reader to the preamble published in the applicable Federal Register articles listed below for the presentation of need, reasonableness, and economic impact for each regulation.

The Federal Register articles in which the EPA promulgated these regulations are Federal Register, Vol. 55, No. 120, pages 25454-25519, "Hazardous Waste Treatment, Storage, and Disposal Facilities--Organic Air Emission Standards for Process Vents and Equipment Leaks" published on June 21, 1990; and Federal Register, Vol. 55, No. 85, pages 18496-18513, "Hazardous Waste Management System: Identification and Listing of Hazardous Waste and CERCLA Hazardous Substance Designation and Reportable Quantity Adjustment--1,1-Dimethylhydrazine Production Wastes" published on May 2, 1990. These Federal Registers are available for review at the MPCA and can be obtained through local libraries. The MPCA discusses reasonableness in any cases where the MPCA program differs substantively from the federal program.

In general, minor modifications to federal language which make it appropriate in the context of the Minnesota Rules are reasonable in order to make the language clear and understandable. Where required, it is reasonable to renumber Minnesota Rule subparts, items, subitems, units, and subunits to accommodate resequencing, and the insertion of appropriate language is reasonable in order to maintain readability and clarity. The MPCA proposes to adopt by reference those portions of the federal organic air emissions standards which would have required creating new Minnesota Rule parts (Code of Federal Regulations subparts AA and BB of parts 264 and 265). The MPCA believes this is reasonable because of the relatively narrow applicability of these standards in Minnesota (less than 50 TSDFs) and in consideration of the relatively large amount of rule text that is being added. The MPCA also considers that because Minnesota's TSDFs are already required to comply with the federal regulations it will represent less hardship and confusion to this regulated community to continue under the same regulatory language.

A. Following is a discussion, by Minnesota Rule part, of rules affected by the federal regulations governing lists of hazardous wastes.

1. MINN. RULES PT. 7045.0135 LISTS OF HAZARDOUS WASTE. In subpart 3, item C, the MPCA adopts four new EPA listed hazardous wastes, codes, and numbers into the list of hazardous organic chemicals.

2. MINN. RULES PT. 7045.0139 BASIS FOR LISTING HAZARDOUS WASTES. In subpart 2, item B, subitems (83), (84), (85), and (86), the MPCA adopts four new EPA constituents to the list of constituents. These constituents are the basis for listing the new wastes in 7045.0135, subpart 3.

B. Following is a discussion, by Minnesota Rule part, of rules affected by the federal regulations governing organic air emission standards for process vents and equipment leaks. These regulations pertain to hazardous waste TSDFs--of which there are fewer than 50 in Minnesota. Due to the text size and the limited applicability in Minnesota, the MPCA adopts by reference those portions of these regulations requiring new Minnesota Rule parts. Also, where existing Minnesota Rules were amended to refer to the new air emission standards, the rules cite directly to the federal regulations.

1. MINN. RULES PT. 7001.0560 GENERAL INFORMATION REQUIREMENTS FOR PART B OF APPLICATION. Item E, the information requirements regarding inspection schedules, is revised to add these new federal information requirements. Item H, the requirement to describe procedures, structures, or equipment used at the facility, is revised to include such measures involved in preventing releases to the atmosphere.

2. MINN. RULES PT. 7001.0626 FEDERAL PART B INFORMATION REQUIREMENTS FOR PROCESS VENTS. This new rule part adopts by reference the federal permit information requirements for process vents found in Title 40, Code of Federal Regulations (CFR), part 270.24.

3. MINN. RULES PT. 7001.0627 FEDERAL PART B INFORMATION REQUIREMENTS FOR EQUIPMENT. This new rule part adopts by reference the federal permit information requirements for equipment found in Title 40, Code of Federal Regulations (CFR), part 270.25.

4. MINN. RULES PT. 7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND RECLAMATION. In subpart 9, item A is modified to include the requirements for recycling established in new item C. Item C is added to require TSDFs to comply with the process vent and equipment leak standards when recycling hazardous wastes.

5. MINN. RULES PT. 7045.0452 GENERAL FACILITY STANDARDS. In subpart 5, item C is modified to include the process vent and equipment leak standards as they apply to inspections.

6. MINN. RULES PT. 7045.0458 WASTE ANALYSIS REQUIREMENTS. In subpart 2, waste analysis plan language is changed to make it more clear. Item F, is modified to include the process vent and equipment leak requirements that establish the methods to be included in the waste analysis plan.

7. MINN. RULES PT. 7045.0478 OPERATING RECORD. In subpart 3, the language is changed to make it more clear. Item E is modified to clarify language and to include the process vent and equipment leak test methods and procedures regarding the results of waste analyses. Item H is modified to include the process vent and equipment leak recordkeeping requirements regarding monitoring, testing, or analytical data and corrective action.

8. MINN. RULES PT. 7045.0482 REQUIRED REPORTS. Subpart 4 is clarified by adding a comma. Item C is modified to include the process vent and equipment leak requirements as they apply to additional reports.

9. MINN. RULES PT. 7045.0547 FEDERAL AIR EMISSION STANDARDS FOR PROCESS VENTS. This new rule part adopts by reference subpart AA of the federal regulations found in Title 40, CFR, parts 264.1030 to 264.1049.

10. MINN. RULES PT. 7045.0548 FEDERAL AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS. This new rule part adopts by reference subpart BB of the federal regulations found in Title 40, CFR, parts 264.1050 to 264.1079.

11. MINN. RULES PT. 7045.0556 GENERAL FACILITY STANDARDS. In subpart 5, the general inspection requirement language is modified for clarity. Item C is modified to include by reference the federal process vent and equipment leak requirements regarding frequency of inspection.

12. MINN. RULES PT. 7045.0564 WASTE ANALYSIS REQUIREMENTS. Subpart 2, item F is modified to include by reference the federal process vent and equipment leak test methods and procedures that apply to waste analysis plans.

13. MINN. RULES PT. 7045.0584 OPERATING RECORD. In subpart 3, item E is modified to clarify language and to include the process vent and equipment leak test methods and procedures applicable to the results of waste analyses. Item H is modified to include by reference the federal process vent and equipment leak record keeping requirements regarding monitoring, testing, or analytical data and corrective action.

14. MINN. RULES PT. 7045.0588 REQUIRED REPORTS. Subpart 4 is clarified by adding a comma. Items B and C are modified to accommodate the addition of a new item D. Item D is added to include the process vent and equipment leak requirements as they apply to additional reports.

15. MINN. RULES PT. 7045.0647 FEDERAL AIR EMISSION STANDARDS FOR PROCESS VENTS AT INTERIM STATUS FACILITIES. This new rule part adopts by reference the federal regulations found in Title 40, CFR, parts 265.1030 to 265.1049.

16. MINN. RULES PT. 7045.0648 FEDERAL AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS AT INTERIM STATUS FACILITIES. This new rule part adopts by reference the federal regulations found in Title 40, CFR, parts 265.1050 to 265.1079.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990) requires the MPCA, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rule amendments on small business.

Generally, these federally promulgated regulations increase the cost of responsibly managing hazardous wastes by requiring proper management of process vents and equipment leaks. The EPA determined this was necessary to the extent that it promulgated these regulations. The EPA went through extensive rulemaking procedures and public scrutiny, which included consideration of economic factors, to promulgate these regulations.

These federal amendments were promulgated under authority of HSWA. Regulations so promulgated are immediately effective in the states. These regulations are effective in Minnesota under federal authority on their federal effective dates. The state's assumption of primary enforcement authority will not change the regulations' applicability to the regulated community.

Neither the proposed state rules nor the federal regulations make special provision for reduced regulation for the management of wastes generated from small businesses. The size of a business has no relation to the degree of

environmental risk presented by the wastes generated if those wastes are mismanaged. The MPCA cannot provide less stringent regulation than is provided under the federal program and therefore is not able to provide special consideration for small businesses. Further, the MPCA believes that the regulations are reasonable conditions on the management of waste and that the application of less stringent regulations to small businesses that generate hazardous waste would be environmentally irresponsible. Finally, the MPCA believes that most of the permitted facilities affected by these regulations are not small businesses.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA 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, practical under the circumstances.

The EPA considers economic impact during the federal process for promulgating regulations. The EPA successfully promulgated these regulations under the authority of the HSWA with due public participation and consideration of the economic impact. The EPA determined this impact to be necessary and reasonable in order to have a program that was protective of human health and the environment. The rules promulgated under HSWA are immediately in effect in Minnesota. Therefore, there will be no increase in numbers of regulated community or level of regulation as a result of the MPCA adopting equivalent rule language.

VI. CONCLUSION

The MPCA has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the amendments to Minnesota's hazardous waste rules. This document constitutes the MPCA's Statement of Need and Reasonableness for the amendments to Minnesota's hazardous waste rules.

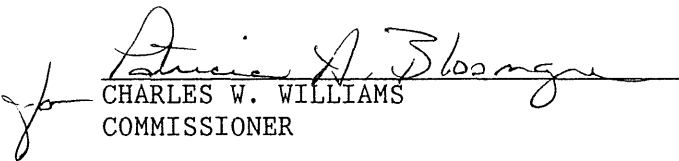
VII. LIST OF EXHIBITS

The MPCA is relying on the following documents to support these amendments:

MPCA Ex. No.	Title
1	Federal Register, Vol. 55, No. 120, pages 25454-25519, "Hazardous Waste Treatment, Storage, and Disposal Facilities--Organic Air Emission Standards for Process Vents and Equipment Leaks" published on June 21, 1990.
2	Federal Register, Vol. 55, No. 85, pages 18496-18513, "Hazardous Waste Management System: Identification and Listing of Hazardous Waste and CERCLA Hazardous Substance Designation and Reportable Quantity Adjustment-- 1,1-Dimethylhydrazine Production Wastes" published on May 2, 1990.

DATE:

Dec. 2, 1991


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