

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments
Governing Waste Management at Wood
Treating Operations Minn. Rules
Pts. 7001.0623, 7045.0020, 7045.0292,
7045.0528, 7045.0541, 7045.0628,
and 7045.0644

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the proposed amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the management of hazardous waste. Specifically, the proposed amendments pertain to the regulation of waste management at wood treating operations.

The Agency is required to adopt new federal regulations in order to maintain U.S. Environmental Protection Agency (EPA) authorization to administer its hazardous waste program when the new regulations are more stringent than current state rules. The federal amendments that the proposed state amendments adopt were promulgated by the EPA under the authority of both the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA). Amendments promulgated under the authority of RCRA are not effective in Minnesota until they are incorporated into state rules. Amendments promulgated under the authority of HSWA are effective in Minnesota under federal authority on the effective date of the federal rule.

The proposed amendments are either RCRA or HSWA amendments depending on the type of waste being managed at individual wood treating facilities. The proposed amendments are considered to be RCRA requirements for wood treating operations that manage wood

preserving wastes that are listed as hazardous wastes under RCRA. Likewise, the proposed amendments are considered to be HSWA requirements for wood treating operations that manage wood preserving wastes listed as hazardous wastes under HSWA. The EPA will enforce the HSWA elements of these requirements in Minnesota until the proposed amendments are adopted into state rules.

The proposed amendments incorporate the federal regulations by reference, giving the federal regulations the full force and effect of law in Minnesota when adopted. When the federal regulations governing wood treating operations are amended on the federal level, the adoption by reference will make the federal amendments automatically applicable in Minnesota without further rulemaking. Where references to other federal regulations exist within the regulations being adopted by reference, they are superseded by the state rules equivalent to those federal regulation references.

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 methods to reduce the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1992). Part V documents the economic factors the Agency considered in drafting the proposed amendments as required by Minn. Stat. § 116.07, subd. 6 (1992). 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.

Minn. Stat. § 14.11, which requires the Agency to estimate the costs to local public bodies to implement proposed amendments, is not applicable to the proposed amendments. The proposed amendments apply only to wood treating facilities, which are privately owned businesses. No wood treating facilities in Minnesota are owned by local public bodies. Thus, there will be no cost to local public bodies resulting from the proposed amendments.

The authority to adopt these amendments is provided under Minn. Stat. § 116.07, subd. 4 (1992).

II. NEED FOR THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

Minn. Stat. ch. 14 (1992) 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 that requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate. Need is a broad test that 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 for environmental protection.

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 state requirements are at least as stringent as federal requirements. In terms of consistency, EPA's goal is to achieve an integrated national program that 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 that they adopt.

Minnesota received final authorization from EPA for its hazardous waste program pursuant to RCRA effective February 11, 1985 (see 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 that were promulgated pursuant to RCRA. In order to maintain its authorization, the state must enact equivalent requirements within specific time frames when new, more

stringent federal requirements are promulgated by EPA. The federal amendments incorporated by the proposed amendments regarding the management of wastes at wood treating operations are more stringent than current state rules. Therefore, the proposed amendments are needed in order for state rules to be consistent with federal regulations and in order for the Agency to maintain its authorization to administer the hazardous waste program.

B. Need for Environmental Protection.

The wood preserving operations regulated by the proposed amendments pose a potential threat to the environment. Approximately 54 wood treating facilities are on the Superfund National Priorities List and there are also wood treating operations on the state Superfund program's Permanent List of Priorities in Minnesota. Cases of environmental damage resulting from these operations are sometimes severe and long-term (see Exhibit 7). The proposed amendments seek to correct and prevent these problems by mandating specific management practices for wood preserving operations, including the use of drip pads to collect wood preserving wastes and prevent them from contaminating environmental media such as soil and groundwater. The proposed amendments are needed in order to provide the standards necessary to help protect human health and the environment from the potential hazards posed by wood preserving operations.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1992) 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 the EPA into the state hazardous waste rules. A complete discussion of the reasonableness of these federal amendments is presented in Exhibits 1 to 5 listed in Part VII of this document, which are hereby incorporated by reference. Proposed amendments to state rules to incorporate these federal amendments are found in Minn. Rules pts. 7001.0623, 7045.0020, 7045.0292, 7045.0528, 7045.0541, 7045.0628, and 7045.0644. The reasonableness of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules pt. 7001.0623 Part B Information Requirements for Drip Pads.

The proposed amendments create a new type of hazardous waste management unit - the drip pad. The drip pad requirements have been designed to specifically address the normal operating conditions of wood treating operations that hold newly treated wood in a drippage area until all drippage has ceased. Drip pads are to be used in drippage areas in the collection and accumulation of listed wood preservative wastes. If owners of operations using drip pads do not meet the proposed requirements of Minn. Rules pt. 7045.0292, regarding the accumulation of hazardous waste (see item C below), or if they treat hazardous wastes on their drip pads, they must obtain a facility

permit to operate their drip pad. This part contains the information that must be included in Part B of the applicant's permit application. The information that this part requires owners and operators of wood treating operations to be submitted includes the types of wastes to be managed on their drip pads and the design, construction, operation, and maintenance of their drip pads. It is reasonable to require a permit for operations that will be storing hazardous wastes for an extended period of time or treating hazardous wastes on drip pads, because in doing so, they are increasing the potential for a release of hazardous waste to the environment. It is also reasonable that a permit containing the information specified in this part be required to allow the Agency to more closely monitor the activities of facilities operating in this manner in order to assure protection of human health and the environment.

The federal regulations incorporated in this part refer to an exemption contained in 40 CFR 264.90(b) from the regulations regarding releases. This exemption existed in the federal regulations before the promulgation of the wood treating regulations and applied to other types of hazardous waste management units. However, this exemption was intentionally not incorporated into state rules at the time it was originally federally promulgated because of concern about groundwater protection. The Agency is also not including the reference to this exemption in the proposed amendments in order to be consistent with the level of stringency in the current state rules regarding the groundwater protection standards for other types of hazardous waste management units.

Subpart 3 of this part sets the effective date for this part to be six months after the printing of the notice of adoption for the proposed amendments. It is reasonable to allow six months for facilities to submit the required information, which includes an engineering report, since this will require an in-depth assessment of current and future facility design and operations. Six months will provide sufficient time for businesses to supply this information.

B. Minn. Rules pt. 7045.0020 Definitions.

The existing Minn. Rules pt. 7045.0020 provides definitions for a number of terms in the hazardous waste rules. The proposed amendments add the term "drip pad", "existing drip pad", and "new drip pad" to this part. It is reasonable to include these definitions in order to clarify the meaning of these new terms that are used throughout the proposed amendments.

The definitions of new and existing pads are based on the type of waste managed on drip pads, as well as on the time at which the drip pads were constructed. Drip pads which are used to manage hazardous waste with the waste code of F032 (pentachlorophenolic wood preservative wastes) are already regulated federally and are considered existing or new drip pads based on dates established by the federal regulations incorporated by the proposed amendments. However, drip pads used to manage hazardous waste with the waste codes of F034 (creosote wood preservative wastes) or F035 (wood preservative wastes containing chromium or arsenic) were not regulated before the adoption of the proposed amendments and are determined to be existing or new pads based on dates established by the proposed amendments. The

federal regulations incorporated by the proposed amendments contain different requirements for existing and new drip pads. It is reasonable to promulgate these definitions which distinguish between existing and new pads so that owners and operators of drip pads can determine which set of requirements they must follow.

C. Minn. Rules pt. 7045.0292 Accumulation of Hazardous Waste.

The existing Minn. Rules pt. 7045.0292 contains the standards generators must follow for the accumulation of hazardous waste without having a hazardous waste storage permit. The existing rules of this subpart address the accumulation of hazardous waste in containers and in tanks. In light of the proposed amendments contained in pt. 7045.0644 regarding the use of drip pads as accumulation units (see item E below), it is reasonable to provide accumulation standards for drip pads. The proposed amendments allow for accumulation of hazardous waste on drip pads without a permit provided that the drip pad standards of pt. 7045.0644 are met and all wastes are periodically removed from the pad. The standards require that wastes be removed once every 90 days at large quantity generator sites and once every 180 days at small and very small quantity generator sites. Very small quantity generator sites are not addressed by the federal regulations, but very small quantity generators are regulated by Minnesota rules as hazardous waste generators. It is reasonable to apply consistent accumulation standards to all very small quantity generators because of the significant hazards posed by their wastes.

It is reasonable to allow accumulation of hazardous wastes on drip pads without a permit for the short period of time allowed by this part because short-term accumulation presents little risk to human health and the environment. As long as the drip pad standards and the waste removal times established by this subpart are met, a full permit for the accumulation of hazardous waste on drip pads is unnecessary.

D. Minn. Rules pts. 7045.0528 Tank Systems, Facility Standards and 7045.0628 Tank Systems, Interim Status Standards.

Drip pads are used to collect wood preserving process wastes. Drip pads are also used to convey wood preservative drippage from newly treated wood into a collection device, such as a tank system. The existing Minn. Rules pts. 7045.0528 and 7045.0628 contain requirements for the use of tank systems. The proposed amendments to these parts state that tank systems used in conjunction with drip pads are subject to the requirements of the tank system rules.

It is reasonable that tank systems used in conjunction with drip pads be subject to the existing tank system requirements because they are of the same nature and are used for a similar purpose as other types of tank systems already regulated by the existing rules.

E. Minn. Rules pts. 7045.0541 Drip Pads, Facility Standards and 7045.0644 Drip Pads, Interim Status Standards.

These parts contain the proposed drip pad requirements. The drip pad requirements have been designed to specifically address the normal operating conditions of wood treating operations, which include the holding of newly treated wood in a drippage area until all

dripping has ceased. The proposed amendments of these parts require operators of wood treating facilities that use holding areas to allow for dripping of any wood treating formulations listed in pt. 7045.0135 to use drip pads to collect this waste. These parts also contain the requirements for drip pad design, construction, operation, and maintenance.

It is reasonable to require the use of drip pads in holding areas to collect hazardous wood preservative dripping because these wastes pose a significant risk to human health and the environment. Properly designed and operated drip pads will prevent these hazardous wastes from being released to the environment.

The requirement to install a leak collection system in subpart 2 of each of these parts applies only to certain drip pads. Whether or not this requirement applies to a drip pad depends on the type of waste the drip pad is used to manage as well as when the drip pad was constructed. Drip pads used to manage hazardous waste with the waste code of F032 are already regulated federally. Whether or not the leak collection system requirement applies to them depends on a drip pad construction date contained in the federal rules incorporated by the proposed amendments. Drip pads used to manage hazardous waste with the waste code of F034 or F035 are not regulated before the state's adoption of these proposed amendments. Whether or not the leak collection system requirement applies to them depends on whether the drip pad was constructed after the effective date of the proposed amendments. Only pads constructed after the effective date of the proposed amendments are required to have a leak collection system. It

is reasonable to require new drip pads to have leak collection systems because of the added degree of environmental protection leak collection systems afford and the fact that leak collection systems can be readily incorporated into the design of new pads.

Subpart 6 of each of these parts establishes the effective date for these parts as six months after the printing of the notice of adoption for these proposed rules. It is reasonable to allow six months for compliance with the proposed amendments because of the modifications to wood treating facilities that will have to be made in light of the proposed amendments. For example, modifications may include the sealing and curbing of existing drip pads, the installation of leak collection systems, or the installation of entire new drip pads. Six months will provide sufficient time for businesses to make the necessary modifications.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

To comply with Minn. Stat. § 14.115 (1992), the Agency has considered the statutory methods for reducing the impact of the proposed amendments on small businesses. The statute requires that each of the following methods be considered with respect to each rule:

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.

The Agency is required to adopt the proposed amendments regarding the management of waste at wood treating operations in order to maintain its authorization to administer the hazardous waste program, as explained in Parts I and II of this document. Since the proposed amendments may not be less stringent than the federal regulations that they adopt, the Agency may not make the proposed amendments less stringent in order to benefit or accommodate all small businesses. The Agency does have the freedom to regulate Very Small Quantity Generators of hazardous waste ("VSQGs", which are those generating 100 or less kilograms of hazardous waste per month) less stringently than larger generators, since the federal government does not regulate this class of generator. VSQGs may in some cases also be small businesses.

The Agency as a matter of established policy regulates VSQGs as hazardous waste generators because of the potential hazards of the wastes that VSQGs generate, and because it is appropriate to regulate hazardous wastes regardless of the size of the business generating them. Generally, all sizes of businesses must meet similar requirements with respect to the hazardous waste rules, but the

existing rules contain certain provisions that seek to lessen the regulatory burden on VSQGs to the extent possible without compromising environmental protection. These existing rules also affect the implementation and effect of the proposed amendments, lessening their burden on VSQGs.

The proposed amendments governing drip pad standards apply to all businesses, regardless of size. Although these standards may increase the cost of proper hazardous waste management for some small wood treating businesses, these costs are appropriate to ensure the protection of human health and the environment provided by the proposed amendments. An additional consideration is the cost savings the proposed amendments will provide through the prevention of future cleanups of environmental contamination. Several wood treating facilities in Minnesota have been designated as Superfund sites, which have undergone or are undergoing expensive remediation activities. The drip pad standards of the proposed amendments are a preventative measure aimed at eliminating the need for such cleanups at wood treating facilities in the future.

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 regarding the management of hazardous wastes at wood preserving operations will impose additional costs on businesses that are affected by them. However, the Agency is required to adopt the proposed amendments in order to maintain its EPA authorization to administer the hazardous waste program, as explained in Parts I and II of this document. The Agency is required by the EPA to make the proposed amendments at least as stringent as the federal amendments they adopt. Thus, the Agency may not lessen the requirements of the proposed amendments in consideration of economic factors. Although the proposed amendments may increase the cost of proper hazardous waste management, these costs are appropriate to ensure protection of human health and the environment. Another consideration is the cost savings the proposed amendments will provide through the prevention of future cleanups of environmental contamination from wood treating facilities.

VI. CONCLUSION

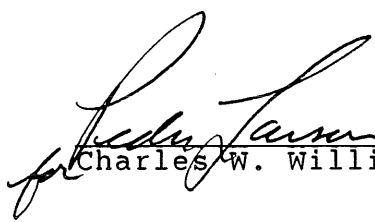
The Agency has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's hazardous waste rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to the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

VII. LIST OF EXHIBITS

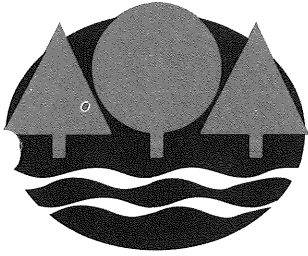
The MPCA is relying on the following documents to support these amendments:

- | Agency
Ex. No. | Title |
|-------------------|--|
| 1. | <u>Federal Register</u> , Vol. 53, No. 251, pages 53282-53330,
December 30, 1988. |
| 2. | <u>Federal Register</u> , Vol. 55, No. 235, pages 50450-50490,
December 6, 1990. |
| 3. | <u>Federal Register</u> , Vol. 56, No. 30, pages 5910-5915,
February 13, 1991. |
| 4. | <u>Federal Register</u> , Vol. 56, No. 114, pages 27332-27336,
June 13, 1991. |
| 5. | <u>Federal Register</u> , Vol. 56, No. 126, pages 30192-30198,
July 1, 1991. |
| 6. | <u>Federal Register</u> , Vol. 57, No. 248, pages 61492-61505,
December 24, 1992. |
| 7. | <u>Minnesota Government Report</u> , Vol. 14, No. 27, page 5,
April 4, 1991. |

Date 8/23/93



Charles W. Williams



Minnesota Pollution Control Agency

August 27, 1993

Ms. Maryann Hruby, Director
Legislative Commission to Review
Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

As required by the Administrative Procedures Act, I am forwarding to you a copy of the Statement of Need and Reasonableness (SONAR) and proposed rule amendments for a rule amendment package which incorporates federal regulations into state rules. The proposed rules govern the management of hazardous waste at wood preserving facilities. These proposed rules and a notice of intent to adopt rules without a public hearing were published in the State Register on August 23, 1993. The comment period for these rules ends on September 22, 1993 at 4:30 p.m.

If you have any questions, please contact me at 297-8319.

Sincerely,

A handwritten signature in cursive script that reads "Glenn D. Skuta".

Glenn D. Skuta
Rules Unit
Program Development Section
Hazardous Waste Division

GDS/jmp

Enclosures

