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SEP 19 1994

**STATE OF MINNESOTA**  
**DEPARTMENT OF PUBLIC SAFETY**

September 14, 1994

Ms. Maryanne V. Hruby, Executive Director  
Legislative Commission to Review Administrative Rules  
55 State Office Building  
100 Constitution Avenue  
St. Paul, Minnesota 55155

Re: Proposed Rules Amendment of the State Department of Public Safety,  
Emergency Response Commission

Dear Ms. Hruby,

The Minnesota Department of Public Safety intends to amend the permanent rules relating to Emergency Response Commission fees. A Notice of Intent to Adopt Rules, a Statement of Need and Reasonableness, and a copy of the proposed rules amendment will be published in the State Register on September 19, 1994.

Enclosed please find a copy of these three documents. If you have any questions about these rules, please contact me at 296-2906.

Yours very truly,

A handwritten signature in cursive script that reads "Hope Jensen".

Hope Jensen  
Rules Coordinator



**State Of Minnesota  
Department Of Public Safety  
Emergency Response Commission**

**Proposed Permanent Rules Relating To Fees; Minnesota Rules, Chapter 7507**

**Notice Of Intent To Adopt Rules Without A Public Hearing**

**Introduction.** The Minnesota Emergency Response Commission (ERC) intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules.

**Agency Contact Person.** Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to: Paul Aasen, Executive Director, Emergency Response Commission, 175 Bigelow Building, 450 North Syndicate Street, St. Paul, Minnesota 55104, 643-3002, and fax 643-3005.

**Subject Of Rules And Statutory Authority.** The proposed rules relate to the due date for certain fees collected in conjunction with hazardous materials reporting. The statutory authority to adopt the rules is Minnesota Statutes, section 299K.09. The ERC receives hazardous materials reports under the Minnesota Emergency Planning and Community Right-To-Know Act, Minnesota Statutes, chapter 299K. The Minnesota Act implements the federal Emergency Planning and Community Right-to-Know Act, United States Code, title 42, sections 11001 to 11046, (SARA Title III). The ERC and the Office of Waste Management (OWM) administer four different fees based on the hazardous materials reports. The ERC and the OWM wish to improve service to facilities subject to these fees by developing a joint invoice system to administer the fees. This would allow 92% of the affected facilities to receive one billing a year, instead of possibly two or three separate billings. The remaining 8% of the affected facilities would receive two billing per year. The proposed rules amend Minnesota Rules, part 7507.0500, subpart 1, by moving the due date of two ERC fees forward from March 1, to June 1, of a given year. This will allow the due dates of the different fees to be consolidated. A copy of the proposed rules amendment is published in the State Register. A free copy of the rules is available upon request from Paul Aasen at the address and telephone number listed above.

**Comments.** You have until 4:30 p.m., Wednesday, October 19, 1994, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

**Request For A Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on October 19, 1994. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the ERC will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by data and views submitted to the ERC and may not result in a substantial change in the proposed rules as printed in the State Register. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

**Statement Of Need And Reasonableness.** A Statement Of Need And Reasonableness is now available. This Statement describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules. A free copy of the Statement may be obtained from Paul Aasen at the address and telephone number listed above.

**Small Business Considerations.** The rules will have a direct impact on small businesses that pay fees associated with SARA Title III reporting in Minnesota. The ERC has considered the methods for reducing the impact, as required by Minnesota Statutes, section 14.115, subdivision 2. This rules amendment will reduce the impact of the rules by creating an invoice-based billing system, making it easier for facilities to track, verify, and pay fees. Note that the due date change will not affect the fee amount, which is based on the number of chemicals present at a facility and reflects relative business size.

**Expenditure Of Public Money By Local Public Bodies.** Pursuant to Minnesota Statutes, section 14.11, subdivision 1, the Commission has determined that the proposed rules amendment will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the amendment.

**Impact On Agriculture Lands.** Pursuant to Minnesota Statutes, section 14.11, subdivision 2, the Commission has determined that the proposed rule amendment will have no impact on agricultural land.

**Notice To Department Of Finance.** In accordance with Minnesota Statutes, section 16A.1285, subdivision 5, pertaining to departmental charges, the ERC has notified the Commissioner of Finance of the ERC's intent to adopt rules in the above-entitled matter. A copy of the ERC's notice and the Commissioner of Finance's comments and recommendations are attached to the Statement Of Need And Reasonableness.

**Notice To Chairs Of Certain Legislative Committees.** In accordance with Minnesota Statutes, section 16A.1285, subdivision 4, the ERC has sent a copy of this notice and a copy of the proposed rules to the Chairs of the House Ways And Means Committee and the Senate Finance Committee prior to submitting this notice to the State Register.

**Adoption And Review Of Rules.** If no hearing is required, after the end of the comment period the ERC may adopt the rules. The rules and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rules are submitted to the Attorney General or be notified of the Attorney General's decision on the rules. If you wish to be so notified, or who wish to receive a copy of the adopted rules, submit your request to Paul Aasen listed above.

Date

Paul W. Aasen, Executive Director  
Emergency Response Commission

**STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SAFETY  
EMERGENCY RESPONSE COMMISSION**

**In The Matter Of The Proposed Rules  
Of The Emergency Response Commission  
Relating To Fees**

**STATEMENT OF NEED  
AND REASONABLENESS**

**General Statement**

The Minnesota Emergency Response Commission (Commission) is a part of the Division of Emergency Management in the Department of Public Safety. The Commission gathers information on hazardous materials use, storage, and release from fixed facilities across the state. This information is made available to emergency personnel and to the general public. This is done in an effort to improve emergency response to and community awareness of hazardous materials. The Commission has the authority to enforce hazardous materials reporting provisions and to collect fees to support program administration. The federal Emergency Planning and Community Right-to-Know Act, United States Code, title 42, sections 11001 to 11046, (SARA Title III) is implemented in Minnesota through these activities by the Commission and through the Minnesota Emergency Planning and Community Right-to-Know Act, Minnesota Statutes, chapter 299K.

This rules amendment changes the due date for certain fees collected in conjunction with hazardous materials reporting. The Commission proposes a restructuring of fee due dates in order to implement an invoice billing system for payment of fees associated with SARA Title III reporting. Four fees are associated with SARA Title III reporting. Three of these fees are administered by the Commission; the one exception is noted. These fees and their respective due dates are:

- A. The annual Hazardous Chemical Inventory Fee is currently due on March 1, upon submission of the hazardous chemical inventory report.
- B. The Material Safety Data Sheet Fee, also currently due on March 1, is paid by a facility if the facility submits material safety data sheets in lieu of a hazardous chemical inventory report.
- C. A Hazardous Materials Incident Response Act Fee based on storage of an extremely hazardous substance (Section 302 of SARA) and/or the release of toxic chemicals (Section 313 of SARA). This fee does not have an established due date.
- D. The Minnesota Pollution Prevention Fee, which is based on the release of toxic chemicals reported under Section 313 of SARA. This fee is due by January 1 of the year following the report. This fee is administered by the Office of Waste Management under the authority of the Minnesota Pollution Prevention Act of 1990.

Currently facilities are required to submit storage information to the Commission on March 1, of each year, the same date that fees A and B are due. These fees have been self-invoiced by facilities which has led to many problems including checks without documentation and incorrect payments. The Commission

and the Office of Waste Management wish to implement a joint invoice-billing system. This rules amendment proposes to change the due date for fees A and B from March 1, to June 1, of the year of the report submission. This would effectively move the due date forward three months from what it is presently, allowing the Commission to receive storage information on March 1, process inventory reports, invoice each site, and mail the invoiced bills out for payment by June 1.

This rules amendment would also allow for the consolidation of due dates for a majority of the facilities required to pay fees. The amendment would make fees A and B due on June 1. Since fee C does not have an established due date, it can now be collected on June 1, for facilities storing an extremely hazardous substance, and on January 1, for facilities reporting a release of toxic chemicals under Section 313. Fee D already has a due date of January 1. The result of these changes is that 92% of facilities paying fees under SARA Title III will receive one invoice due on June 1; the remaining 8% will receive two invoices, one due on June 1, and the other due January 1, of the following year.

The amendment does not change the amount of revenue collected under any of the listed fees, the late fee structure, or any reporting deadlines. Approximately \$220,000 is collected annually under fees A and B. An estimated \$400,000 will be collected annually under fee C. Approximately \$1,000,000 is collected annually under fee D.

#### Statutory Authority

Minnesota Statutes, section 299K.09, directs the Commission to adopt rules to set fees for submission of hazardous chemical inventory forms and for submission of material safety data sheets in lieu of hazardous chemical inventory forms. Section 299K.09 also gives the Commission authority to set late fees for a facility that fails to pay its fees in a timely manner. The fee structure and payment schedule is set out in Minnesota Rules, chapter 7507, which was adopted effective January 3, 1991.

#### Small Business Considerations

This rules amendment will have a direct impact on small businesses that pay fees associated with SARA Title III reporting in Minnesota. The ERC has considered methods for reducing the impact, as required by Minnesota Statutes, section 14.115, subdivision 2. This rules amendment will reduce the impact of the rules by creating an invoice-based billing system, making it easier for facilities to track, verify, and pay fees. Note that the due date change will not affect the fee amount, which is based on the number of chemicals present at a facility and reflects relative business size.

#### Fees Imposed By The Rules

**Notice To Department Of Finance.** This rules amendment changes only the due date for payment of fees set out in the rule. Even though the amendment does not change or adjust the amount of the fees, Minnesota Statutes, section 16A.1285, was followed pertaining to departmental earnings from charges for goods and services, licenses, or regulation. In accordance with section 16A.1285, this rules amendment was submitted to the Commissioner of Finance for review and comment. The Commissioner of Finance approved the rules amendment.

**Notice To Chairs Of Certain Legislative Committees.** In accordance with Minnesota Statutes, section 16A.1285, subdivision 4, paragraph (c), the Commission has reported any departmental earnings changes or adjustments to the Chairs of the Senate Committee On Finance and the House Ways And

Means Committee. This was done by sending a copy of the Notice Of Intent To Adopt and the Rules Amendment to the Committee Chairs prior to submitting the Notice to the State Register.

### Other Statutory Requirements

Minnesota Statutes, section 14.11, subdivision 1, does not apply because amendment of this rule will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following its adoption. Minnesota Statutes, section 14.11, subdivision 2, does not apply because amendment of this rule will not have an impact on agricultural land. Minnesota Statutes, sections 115.43, subdivision 1, and 116.07, subdivision 6, regarding pollution control and Minnesota Statutes, section 144A.29, subdivision 4, regarding nursing homes are not applicable to these rules.

### Witnesses

If this rules amendment goes to a public hearing, a list of witnesses will be attached to this Statement Of Need And Reasonableness and will be sent to all persons who request a copy of the Statement.

### Rule-By-Rule Analysis

**Part 7507.0500, subpart 1**, is amended to require payment of fees associated with submission of the emergency and hazardous chemical inventory form or the material data safety sheet by June 1. This change moves the due date for paying the fees forward three months, but does not change the current fee schedule or late payment fee. This change will allow for a coordinated invoice billing system for all fees associated with submission of hazardous materials reports under SARA Title III. As discussed above, this change will reduce the impact of the rules on small businesses in keeping with the small business considerations of Minnesota Statutes, section 14.115.

### Conclusion

Based on the foregoing, the Commission's proposed rules amendment is both necessary and reasonable.

Date

Paul Aasen, Executive Director  
Emergency Response Commission



1 Department of Public Safety

2

3 Proposed Permanent Rules Relating to State Emergency Response

4 Commission Due Date on Certain Fees

5

6 Rules as Proposed

7 7507.0500 PROCESSING FEE.

8 Subpart 1. Persons required to pay fee. ~~A person~~ This  
9 subpart applies to an owner or operator of a facility who is  
10 required to submit an emergency and hazardous chemical inventory  
11 form under United States Code, title 42, section 11022. The  
12 owner or operator must pay a processing fee based upon the  
13 schedule in subpart 2. The fee must be paid by ~~March 1,~~  
14 ~~beginning in 1991 and annually thereafter, for each facility for~~  
15 ~~which an owner or operator is required to submit an emergency~~  
16 ~~and hazardous chemical inventory form under United States Code,~~  
17 ~~title 42, section 11022~~ June 1 of the year following submission  
18 of the form. If ~~a person~~ an owner or operator periodically  
19 moves the hazardous chemical stored at one facility to another  
20 facility during the same calendar year as part of normal  
21 operations, and if the hazardous chemicals stored at these  
22 facilities are the same, then that ~~person~~ owner or operator must  
23 pay a fee for only one facility.

24

[For text of subp 2, see M.R.]

